Petition before the Inter-American Commission on Human Rights
Organization of American States

THE GLEANER COMPANY LIMITED AND DUDLEY STOKES – JAMAICAN CITIZENS

Submitted on April 6, 2004

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Mr. Oliver F. Clarke represents *The Gleaner Company Limited* and Dudley Stokes was a named defendant together with the Gleaner Company Limited in all aspects of the proceedings that took place in Jamaica and before the Privy Council, and which are the object of this petition.

III. OAS Member State Against Which the Complaint is Brought

This complaint before the Inter-American Commission on Human Rights (hereinafter "the Commission") is brought against the State of Jamaica (hereinafter "Jamaica") for violations of the American Convention on Human Rights, "Pact of San Jose, Costa Rica," (hereinafter "the Convention"). Jamaica ratified the Convention on August 7, 1978.

As friends of the Court, the following brief and supporting documents are filed.

In the case of the:

Eric Anthony Abrahams (Jamaican citizen)

versus

The Gleaner Company Limited and Dudley Stokes (Jamaican citizens)

Filed before the Inter-American Commission on Human Rights of the Organization of the American States

BRIEF OF FREEDOM OF THE PRESS ADVOCATES AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANTS THE GLEANER COMPANY LIMITED AND DUDLEY STOKES

The undersigned respectfully submit this brief *amicus curiae* in opposition to the July 14, 2003 ruling of the Privy Council that confirmed the Appellate Court in Jamaica on the ruling in favor of the libel plaintiff Eric Anthony Abrahams against *The Gleaner Company Limited* and Dudley Stokes in the amount of J$35 million on July 31, 2000.

IV. Facts Denounced

Oliver F. Clarke is the Chairman, Manager and Director of The Gleaner Company Limited and Dr. Dudley Stokes was the Editor-in-Chief of three of the most important and widely circulated newspapers in Jamaica; the "Daily Gleaner," the "Sunday Gleaner," and the "Star" (hereinafter "the newspapers" or "The Gleaner" and "The Star"). These newspapers are also circulated in the Caribbean, North America, and the United Kingdom. The Gleaner Company Ltd. (hereinafter "the Company"), established in 1848, owns the newspapers. The present dispute arises out of three articles that were published in The Star and in The Gleaner concerning a former Minister of Tourism, Mr. Abrahams, and his possible indictment in the United States for an alleged corruption scandal.

1. Preliminary Statement

The plaintiff was granted relief stemming from an action filed against defendants The Gleaner and Dr. Stokes in 1987 under Jamaican law and in a Jamaican

court for several libelous publications. The final result was and adjudication of an award of J$35 million that was confirmed by the Privy Council in 2003 after 16 years of endless litigation.

The astonishing amount of award initially granted to the plaintiff in the amount of J$80.7 million later reduced by the Court of Appeals of Jamaica, to J$35 million, constituted the highest libel award granted in the history of such country.

The award exceeds any reasonable amount by far in a country whose income per capita does not exceed US$2,000 per year according to the recent passage of a salary increase approved by Parliament in September of 2003. An estimated 17 percent of Jamaicans earn the minimum wage or less according to official sources.

2. Summary of the Facts

Mr. Dudley Stokes was the Editor-in-Chief of three of the most important and widely circulated newspapers in Jamaica; the "Daily Gleaner," the "Sunday Gleaner," and the "Star". These newspapers are also circulated in the Caribbean, North America, and the United Kingdom. The Gleaner Company Ltd., established in 1848, owns the newspapers.

The present dispute arises out of three articles that were published in The Star and in The Gleaner concerning a former Minister of Tourism, Mr. Abrahams, and his possible indictment in the United States for an alleged corruption scandal.

On September 17, 1987 the Associated Press, the world's oldest and largest news organization, sent a wire story to The Star offices in Jamaica. The story stated that federal authorities in the United States were investigating whether American public relations firms had paid kickbacks to Jamaican tourism officials in relation to lucrative tourism contracts. Mr. Abrahams, a former Minister of Tourism, was named as being suspected of receiving kickbacks.

The AP wire was viewed with great interest as it involved Mr. Abrahams, a Jamaican public official. Mr. Abrahams was Minister of Tourism for the Jamaican Government from 1980 to 1984. Though retired from that position, Mr. Abrahams remained in the public spotlight as a Member of Parliament for East Kingston from 1980 to 1989. In addition, he was in private practice as a tourism consultant.

According to the findings of federal authorities, in 1981 the Jamaican Tourism Board had appointed Young & Rubicam Inc., an American advertising agency to mount an expensive advertising campaign in the United States. In 1983, the US Internal Revenue Service (IRS) was also investigating Mr. Robin Moore (hereinafter "Mr. Moore"), an American novelist with Jamaican connections, on suspicions of tax evasion. The IRS seized Mr. Moore's papers, some of which suggested he had been party to arrangements by which Young & Rubicam paid

a share of their commission (hereinafter "kickbacks") to Jamaicans as a bribe for assistance in obtaining the contracts.

In April 1986, Mr. Moore pleaded guilty to tax avoidance, and as part of the plea bargain, agreed to assist federal authorities with further investigations. The US Attorney in Connecticut empanelled a grand jury to consider indicting Young & Rubicam and other conspirators. Mr. Moore spoke freely about his testimony to the grand jury to a staff journalist, Ms. Lisa Marie Peterson, of The Advocate of Stamford, Connecticut. Ms. Peterson drafted the AP article, which was later sent to The Gleaner Company, in which Mr. Moore alleged that Mr. Abrahams had received bribes from the American advertising executives.

On October 6, 1989 the Grand Jury in Connecticut delivered indictments alleging corruption of various forms against Young and Rubicam and certain of its executives. Two Jamaicans were also indicted, Mr. Abrahams being one of them.

The publication of three articles gave rise to this dispute. At the dates of publication of all three articles, Mr. Abrahams was being investigated by US authorities. The investigation resulted in an indictment lifted in 1990, three years after the AP article was reproduced in the Petitioner's newspapers. The first article, which carried the AP story in full, was reprinted in The Star on September 17, 1987 It made clear, both in the headline ("Author says his diary sparked kickbacks investigation") and in the article itself, that the newspaper was acting as a reporter of allegations made by Mr. Moore and by The Advocate, rather than The Star conducting its own investigations. The article was clearly identified as coming from Stamford, Connecticut and the "AP" was identified as the author of the piece.[1]

The article reported the suspicions of Mr. Moore, saying that Mr. Abrahams, when Minister of Tourism, had taken bribes from US public relations and advertising agencies in return for awarding them lucrative contracts for promoting tourism in Jamaica. As the article stated,

> "Author Robin Moore says his personal diary and files contributed to Federal authorities [sic] suspicions that New York business executives paid kickbacks to Jamaican officials for lucrative tourism promotion contracts. 'All I can say is that I suspected the Minister of Tourism was exacting a toll', the writer, Robin Moore of Westport, told the Advocate of Stamford in a copyright story published Tuesday."[2]

The article then stated,

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[1] See Exhibits.

[2] Id.

> "Moore said on Monday that his files helped lead Federal agents to suspect that Anthony Abrahams, Jamaica's former Tourism Minister was being paid by American businessmen for the multi-million-dollar tourism contracts."

Subsequently, the article made clear that Moore's allegations were no more than unsubstantiated suspicions based on hearsay, and in the next paragraph quoted Moore as saying,

> "I have no definitive proof that this ever happened – it was just a suspicion of mine...People were talking. There were certain things everybody knew. There was no secret about the situation with the (former) Minister of Tourism."[3]

The article also made clear that Moore was not a person of unblemished character, stating, "Moore said IRS agents seized his diary and other documents in June 1983, when he was being investigated for his part in phony literary tax shelters. Moore is now awaiting sentencing on his 1986 conviction of evading taxes."[4]

A second article was published in The Daily Gleaner on September 18, 1987 under the headline "Robin Moore: I suspected Jamaican Tourism Minister."[5] It was identical to the article published in The Star, except that it omitted the following:

> "People were talking. There were certain things everybody knew. There was no secret about the situation with the (former) Minister of Tourism."[6]

A third article was published in The Daily Gleaner on September 19, 1987 in a box headed "Clarification."[7] It stated,

> "Absolutely no reference was made, or intended to be made, to the current Minister of Tourism in headline: 'Robin Moore: I suspected Jamaica Tourism Minister', in the second paragraph of the Associated Press (AP) story, 'All I can say is I suspected the Minister of Tourism was exacting a toll, the writer Robin Moore of Westport, told the Advocate of Stamford...' Which was published on page 2 of yesterday's Gleaner Sept. 18, 1987."

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[3] Id.

[4] Id.

[5] Associated Press, *Robin Moore: I suspected Jamaican Tourism Minister*, The Daily Gleaner, September 18, 1987.

[6] Id. at Exhibits.

[7] *Clarification*, The Daily Gleaner, September 19, 1987. [Exhibits]

Mr. Abrahams denied the AP story, and Mr. Stokes published a denial in the Sunday Gleaner on September 20, 1987.[8] The Sunday Gleaner has significantly broader circulation than The Gleaner and The Star, The Gleaner Company's other two newspapers.[9] The denial was drafted by Mr. Abrahams and his lawyers. It was published under the headline, "Abrahams: Has never accepted 'kickback.'"[10]

V. Procedural History

Mr. Abrahams issued a writ and statement of claim on September 23, 1987. On October 2, the defendants entered an appearance. But they did not file a defense within the time allowed by the rules and on October 23, 1987, the plaintiff entered judgment in default of defense. The defendants then applied to set judgment and for leave to file a defense relying upon justification and qualified privilege.[11]

Mr. Stokes and The Gleaner Company filed pleadings of justification and qualified privilege on December 18, 1991. They presented a sworn affidavit by a Mr. John Gentles, a prior Director of Tourism and afterwards Chairman of the Jamaica Tourist Board. In 1987 he was running a hotel in Chicago and was willing to assist the Federal investigation in Connecticut.[12] The affidavit, dated January 18, 1998, *inter alia*, stated that,

5. "It is true that the United States of America federal authorities in Connecticut are investigating public relations and advertising executives suspected of making payments to Jamaican government officials for the award of contracts by Jamaican agencies to the firms of those executives.
6. The matters involved are currently being investigated by a Federal Grand Jury in Connecticut aforesaid and I have given evidence before the said Grand Jury. I was asked to identify a number of documents and the signatures therein and these included public relations and advertising contracts and cheques either drawn by or made payable to the Plaintiff and on which the Plaintiff's signature appeared. I identified the Plaintiff's signature on those cheques.
7. I am aware that the Plaintiff is a key figure in the Federal Grand Jury's investigation."[13]

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[8] *See Abrahams: Has never accepted 'kickback,'* Sunday Gleaner, September 20, 1987. See Exhibits.

[9] The Daily Gleaner had a circulation of 65,000 (Monday-Friday) and 44,000 (Saturday), the Sunday Gleaner had a circulation of 105,000. Case for Appellants, *The Gleaner Co. Ltd. & Stokes v. Abrahams*, App. Cas. 86 (P.C. 2001) (appeal taken from Jamaica) at 3 n.2 .

[10] See Exhibits.

[11] *Privy Council Decision,* at para. 17.

[12] Mr. Gentles had been dismissed by Mr. Abrahams who alleged that a company selling goods to the Tourist Board was controlled by his wife. After the dismissal, Mr. Gentles was employed by Mr. Oliver Clarke the Chairman of The Gleaner Company. *Privy Council Decision*, at para. 18-19.

[13] *Privy Council Decision*, at para. 19.

Mr. Abrahams sought further and better particulars with respect to pleadings of justification and qualified privilege raised by the defense. The summons was dismissed on October 13, 1992 by the Supreme Court (Bingham J), which decided that further and better particulars were not necessary.

Mr. Abrahams appealed and judgment was delivered on January 24, 1994. The Court concluded that on the pleadings there was no defense, ordered the defense to be struck out and remitted the case to the court below to be proceeded with, as if there was no defense.[14] As the Petitioner and The Gleaner Company argued,

> "The effect of the decision was decisive of the civil rights and obligations of the parties because it meant that the Petitioner and the Gleaner Company were liable for having committed the tort of libel and would have to face a trial confined only to the extent of liability in damages. The Court of Appeal did not consider the effect of the decision on the enjoyment of the Appellant's constitutional right to free speech..."
>
> "The Appellants had particularized the defenses as far as it was possible to do so before discovery and interrogatories. Because of the way in which the Court of Appeal struck out the defenses, the Appellants were deprived of the opportunity to prove the relevant facts, for example, by calling Mr. Gentles as a witness, cross examining the Respondent, seeking discovery of the Respondent's bank statements and checkbooks, and copies of public relations and advertising contracts which he had signed, administering interrogatories, seeking to subpoena copies of relevant contractual documents from the Ministry of Tourism, and giving notice to the Respondent to admit relevant facts..."
>
> "Furthermore, in requiring the Appellants to fully state their case on justification at the interim stage, the Court of Appeal relied on dicta of Lord Denning M.R. in *Associated Leisure v. Associated Newspapers* [1970] 2 All ER 754 (see Downer JA [1:37-40]) which required a defendant pleading justification to have "*clear and sufficient evidence of the truth of imputation*". Those dicta were subsequently disapproved of in *McDonald's Corp v. Steel* [1995] 3 All ER (CA); Neill LJ held that the test of "clear and sufficient evidence" was not appropriate as a threshold test. It imposes and unfair and unrealistic burden on a defendant, who should be able to

[14] As the lawyers for Mr. Stokes and The Gleaner Company stated in their "Case for the Appellants," at the time of this decision the law in Jamaica and elsewhere in the Commonwealth was not well developed in relation to the circumstances in which the media could invoke qualified privilege for the publication of defamatory allegations on matters of public interest and legitimate public concern. The House of Lords had not yet decided Derbyshire County Council v. Times Newspaper Limited [1993] AC 534 (HL) holding that the values underpinning the US Supreme Court's decision in NY Times v. Sullivan 376 US 254 (1964) also apply to the common law's protection of free expression and that the chilling effect of the strict liability rule of English libel law on freedom of speech and of the press prevents governments institutions from invoking libel law to protect their so called "governing reputation." *See Case for the Appellants*, at para. 6.11.

seek support for his case from documents revealed in the course of discovery or interrogatories."[15]

Following the Court's decision to strike the defenses, on July 10, 1995, The Star and The Daily Gleaner published the following apology,

> "In September 1987 the story of which complaint is made concerning Mr. Anthony Abrahams, former Minister of Tourism of Jamaica, came from the Associated Press of the United States, in the ordinary and regular course of business. At that time we honestly believed the information to be true and accurate considering the usually reliable source from which it came. This agency has supplied us with material suitable for publication over a number of years and is responsible and reputable.
>
> Accordingly, we published the information in the issue of the newspaper of the 18th September 1987. We were sued by Mr. Abrahams in libel and in our defense we pleaded justification and qualified privilege, sincerely and innocently believing that we could obtain the evidence to support these defenses. As it turned out the Court of Appeal dismissed these defenses since the evidence was not forthcoming. We now realize that we cannot sustain these allegations. Accordingly we hereby withdraw these allegations.
>
> In the circumstances we tender our sincere apologies to Mr. Abrahams and are very sorry for any embarrassment or discomfort arising from the article."[16]

The trial took place in 1996 and judgment for damages was delivered on July 17, 1996. Mr. Abrahams was awarded J$80.7 million, at the time the equivalent of 1.2 million British pounds. No damages of such a scale had ever been awarded in a prior Jamaican libel or personal injury case.[17]

Mr. Abrahams had pleaded general damages without any specific evidence as to losses.[18] Therefore, the jury was charged not to consider any specific damages. The jury did not take into consideration Mr. Abrahams' intention to seek damages up to US$50 million from individuals involved in procuring the indictment in the United States.[19] In addition, no consideration was given in the jury's decision to the fact that the Petitioner and the newspapers reproduced a newswire by a reputable third party news agency. Further, the jury did not appear to consider

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[15] *Case for the Appellants*, at para. 6.14-6.16

[16] See *Apology*, The Star, July 10, 1995 ; *Apology*, The Daily Gleaner, July 10, 1995. -Exhibits.

[17] *See Case for the Appellants*, at pp 22-24.

[18] Privy Council Decision, at para. 31.

[19] *See* Exhibits.

that Mr. Abrahams had continued to be a Member of Parliament until 1989 and that no specific proof was introduced showing a limited ability by Mr. Abrahams to perform this function because of loss of prestige. Similarly, no specific proof was introduced regarding his income as a tourism consultant between 1984 and 1987, in advance of the alleged libel. Further, no questioning occurred as to whether Mr. Abrahams' suffering should have been attributed to the indictment itself, rather than the Petitioner's publications.

The unprecedented award was granted even though the jury rejected Mr. Abrahams' claim for exemplary damages. Thus the award of J$80.7 million was restricted solely to compensatory damages.[20]

The Petitioner and The Gleaner Company appealed. The Court of Appeal rejected all criticisms of the trial judge's summing up but decided that the damages were excessive. The award was set aside and substituted with J$35 million, at the time equivalent to 527,100 British pounds. The substituted award, also unprecedented in Jamaican libel and personal injury awards, was rendered without identifying any underlying criteria or justification. Even though exemplary damages were rejected by the Court of Appeal, Forte P. stated that the sum awarded was "sufficient to achieve the purpose of punishing the Appellants and to deter others from similar conduct."[21] No consideration was given to previous defamation or personal injury awards in Jamaica. Equally, no regard was had to the chilling effect that the exorbitant award would have on the right to freedom of expression in Jamaica.

The Petitioner and The Gleaner Company appealed to the Privy Council arguing, *inter alia*, that the award was disproportionate, that it erred in including an element of punishment, that it was so out of line with existing law that it violated the principle of legal certainty as well as the principle of legal proportionality, and that the Court of Appeal decision violated the Appellants' and their readers' constitutional rights of freedom of expression, seriously chilling the freedom of political expression of the media and public.

The Judicial Committee of the Privy Council held when dismissing an appeal by the defendants, the publishers and the former editor of the *Daily Gleaner* and the *Star* newspapers in Jamaica, from the decision of the Court of Appeal of Jamaica (Forte P, Langrin and Harrison JJA) on July 31, 2000, reducing a jury's award of damages for libel to the plaintiff, Eric Anthony Abrahams, from J$80.7m, then equivalent to £1.2m, to J$35m, or £533,000.

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[20] It seems likely that one reason for the magnitude of the jury's award was that exemplary or punitive damages were erroneously included in compensatory damages by the jury. Certainly, nothing was said the Judge's very lengthy summing up to warn the jury that, if they rejected Mr. Abrahams' claim for exemplary damages, they should not have regard to the need to punish or deter the Appellants when deciding upon an appropriate compensatory award.

[21] *Court of Appeal Decision*, at 40.

The jury's award, made in 1996, was in respect of the publication in both newspapers in September, 1987, of allegations that Mr. Abrahams, when minister of tourism for Jamaica, had accepted bribes. Defenses of justification and qualified privilege having been struck out, the sole issue at trial was the amount of damages. The Court of Appeal agreed there was ample evidence on which the jury could have awarded aggravated damages, but nevertheless decided their award was excessive.

The defendants argued that the substituted award was still excessive, that it curtailed the right to freedom of expression under s 22 of the Constitution of Jamaica, and that the Court of Appeal erred in law in ruling that juries should not be referred to awards of damages for pain and suffering and loss of amenity in personal injury cases, following the practice established by John v. MGN Ltd [1997] QB 586.

Nor could they be criticized for failing to explain how they arrived at the substituted figure of $35m. The test laid down in *Rantzen v Mirror Group Newspapers* (1986) Ltd [1994] QB 670 for whether an award was excessive was: "Could a reasonable jury have thought this award was necessary to compensate the plaintiff and re-establish his reputation?" That test was founded on art. 10(2) of the Convention for the Protection of Human Rights and Fundamental Freedoms (1953) (Cmd 8969). The language of s 22 of the Jamaican Constitution was differently worded but had the same meaning. The substitution of the word "reasonable" for "necessary" in the test applied by the Court of Appeal of Jamaica did not water down the *Rantzen* test, though in future it would be better to adhere to the original formulation.

VI. INTEREST OF AMICUS CURIAE

The Inter American Press Association (IAPA) is a voluntary, incorporated association of newspaper editors and directors as well as reporters that works to defend the free speech, free press rights and freedom of information interests of the news media. The IAPA has provided representation, guidance and research in unifying and harmonizing the emerging Inter-American freedom of the press doctrine since its initial intervention as *Amici* in the Advisory Opinions OC-85 and the OC-87 that were issued by the Inter-American Court of Human Rights in 1985 and 1987, respectively.

However, the IAPA has been advocating freedom of the press and freedom of speech since its inception in 1942. Currently, it gathers more than 1,300 newspapers as members in the Western Hemisphere.

Its presence and its sphere of influence of more than 1,300 newspapers in moving forward legal reform and general acceptance of greater safeguards for freedom of the press, freedom of expression and freedom of information is well recognized in the majority of the Latin American countries as well as in the Caribbean and around the world among press freedom organizations.

Amicus curiae's interest in this case is to support redress on behalf of the defendants The Gleaner and Dr. Stokes in reversing the decision of the Jamaican Courts and the Privy Council as the excessive award granted against their newspaper in favor of Anthony Abrahams constitutes a severe restriction to freedom of the press in violation of the guarantees set forth in the American Convention of Human Rights that has the adverse effect to freedom of press and of speech in Jamaica and consequently, in the hemisphere.

There is a number of reasons why the judgment cannot stand. The emerging doctrine and case law[22], which has constituted the strengthening of democracies through the enforcement of legal and constitutional safeguards of freedom of expression within the Inter-American system laid down by the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights and the office of Special Rapporteur of the Inter-American Commission on Human Rights. The pervasive trend towards strengthening Freedom of Expression in the Western Hemisphere confirms the growing relevancy of freedom of expression[23]

As an argument of policy, the judgment in question due its inhibiting effects and restrictive nature is in direct conflict with the said trend clearly marked by the emergence of an inter-American doctrine of freedom of expression.[24]

The amount of the award granted to the plaintiff against The Gleaner Company is excessive and disproportionate to the extent that it may jeopardize the financial stability of what has been the leading news source in the country since 1834.

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[22] *See Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85 of November 13, 1985. Series A No. 7. *Enforceability of the Right to Reply or Correction (Arts. 14(1), 1(1) and 2 American Convention on Human Rights)*, Advisory Opinion OC-7/86 of August 29, 1986. Series C No. 54. I/A Court H.R., Inter-American Commission on Human Rights Organization of American States Annual Report 1994 Case 11,012 Verbitsky.Inter-American Commission on Human Rights Organization of American States Annual Report 1996 Case 11,230 *Martorell Ivcher Bronstein Case. Competence.* Judgment of September 24, 1999. Series C No. 73. I/A Court H.R., *"The Last Temptation of Christ" Case. (Olmedo Bustos et al.).* Judgment of February 5, 2001. Series C No. 84. I/A Court H.R., *Ivcher Bronstein Case. Interpretation of the Judgment on the Merits.* (Art. 67 American Convention on Human Rights). Judgment of September 4, 2001. *La Nación*, Case No. 12,367, Application to the Inter-American Court of Human Rights by the Inter-American Commission on Human Rights. Declaration of the Principles of Freedom of Expression, *in* Office of the Special Rapporteur for Freedom of Expression, *Annual Report of the Inter-American Commission on Human Rights 2002*, OEA/Ser.L/V/II.117 Doc. 5 rev. 1 (2003), 159. Office of the Special Rapporteur for Freedom of Expression, *Annual Report of the Inter-American Commission on Human Rights 2002*, OEA/Ser.L/V/II.117 Doc. 5 rev. 1 (2003), 99. OEA/Ser.L/V/II.88 Doc.9 rev. 17 February 1995 Chapter V Report On The Compatibility Of "Desacato" Laws With The American Convention On Human Rights

[23] See the Declaration of Chapultepec issued in Mexico City, Mexico (1994); the Declaration See at www.oas.org the *Declaration of Principles on Freedom of Expression* issued in December of 2000 by the Inter-American Commission on Human Rights. As a result of the Summit of the Americas in Santiago, Chile in 1998, the Office of the Special Rapporteur for Freedom of Expression was established and thus, such Declaration was approved by the Commission in direct support of the changes sponsored by the Inter-American system of protection of human rights as set forth in the Preamble. Declaration of Santiago, Second Summit of the Americas, April 18-19, 1998, Santiago, Chile, in "Official Documents of the Summit Process from Miami to Santiago," Volume I, Office of Summit Follow-up, Organization of American States.

[24] *See* Claudio Grossman, *Freedom of Expression in the Inter-American System for the Protection of Human Rights*, Nova L. R., vol. 25 (2001).

VII. LEGAL ARGUMENTS: AMICI

I. The Jamaican courts and the Privy Council in the *sub judice* case erred by not applying the proper standards of public officials when reporting on matters of public interest. The Jamaican State has the duty to implement the necessary safeguards to allow full political debate which includes criticism of public officials.

Libel laws have been utilized to deter freedom of speech and of the press in the Western Hemisphere. Typically, libel laws are of the criminal nature in the vast majority of the Latin American countries. Notwithstanding, that this case is not a result of a criminal libel action, Jamaica does have criminal libel law provisions and such laws along with its civil libel laws tend to punish political speech in particular.[25]

The IAPA has reported for years[26] at its hemisphere meetings on the growing concern of the continued effort of individuals in political and economic positions of power and influence of recurring to the use of the libel laws to hinder free reporting on matters of public concern.[27]

Exposés through the press on matters of public concern such as possible corrupt public officials have been consistently targeted and attacked under the various libel laws that seem to exist in every statutory scheme in Latin America and the Caribbean.[28]

The adoption of the actual malice standard espoused by the famous *New York Times v. Sullivan* case passed down by the U.S. Supreme Court in 1964, seems to be slowly developing into the Latin American standard for libel in the case of public officials by emphasizing the prevalence of matters of public interest over matters of private interest in the public domain,[29] however, many already have adopted the aforesaid standard such as the case in Argentina[30] and Colombia.[31]

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[25] See *Freedom of the Press and the Law*, IAPA Publications (1999) under the chapter that covers Jamaica, there are numerous legal provisions that evidence restrictions on freedom of the press. Special attention was given to the libel laws.
[26] See www.iapa.org under annual reports of freedom of the press.

[27] *Justicia y Libertad de Prensa*, Robert J. Cox, IAPA Publications 2003, at XI. Cox refers to the chilling effect that libel actions
have regarding media defendants.

[28] *Supra* footnote 2.

[29] Some countries have begun to apply special standards of scrutiny regarding criticism of public officials.

[30] *See* Adolfo Roberto Vásquez, *Libertad de Prensa*, Ediciones Ciudad Argentina, at 94, 99. The Argentine Supreme Court
adopted the "actual malice" standard in the cases Morales Solá, Joaquín Miguel 12/11/1996; and Ramos Juan José v. LR3 Radio Belgrano and others, 12/17/1996 by a majority vote for public officials as plaintiffs in defamation actions. Though there is no *stare decisis* in Argentina, many lower courts have applied the standard following the cases from the Higher Court.

[31] T-066/1998 *see* the majority opinion of Justice Eduardo Cifuentes Muñoz

The Constitutional Court of Colombia has stated that when there are public officials, the balancing test between the right to honor or privacy versus the right to information, what needs to be taken in consideration is that the content of what is protected concerning privacy or honor is much more limited for public officials than those who are attempting to avoid the public sphere.[32] The Colombian Constitutional Court has manifested that when there is a conflict between the right to inform and the rights to a good name, privacy and honor, when regarding people and matters of public interest, the former prevails over the latter prima facie. "The fact they are in government creates matters of public interest and that is why their public activities as well as their private ones are observed closely."[33]

The judgment against The Gleaner Company ignores totally the "actual malice" doctrine providing unjustified protection to a former public official accused of corruption. Though it is obvious that the reporting of The Gleaner, i.e., *The Daily Gleaner* and *The Star* could not be defended upon the basis of justification, notwithstanding, such judgment stands for such punishment without any parallel in the history of Jamaican libel law that beyond being a reparation for the plaintiff or a redress of a grievance, it rises to the level of an attack upon press freedom with the dissuasive effect directed towards intimidating further commentary or public denouncement of possible corruption and encourages self-censorship.

The Jamaican courts erred in not applying the appropriate standard when judging the conduct of public officials and thus, violated Articles 1 and 2 of the American Convention of Human Rights. The Jamaican State has the duty to incorporate the guarantees and standards necessary to ensure the full protection of freedom of expression and of the press as set forth by Article 13 of the said Convention.

Article 1(1) of the Convention provides that:

> The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth or any other social condition.

Article 2 of the Convention states that:

> Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights of freedoms.

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[32] *Id.*

[33] *Id.*

The kind of political debate encouraged by freedom of expression and information inevitably will generate some speech critical of, or even offensive to, those who hold public posts or are intimately involved in public policymaking. Rather than protecting people's reputations, libel or slander laws are often used to attack, or rather to stifle, speech considered critical of public administration.

In a representative democracy, public officials, or anyone involved in matters of public interest, must be held accountable to the men and women they represent. The individuals who make up a democratic society confer upon their representatives the task of managing matters of interest to society as a whole. However, society retains ownership of these matters and must enjoy a broad right, with the fewest restrictions possible, to exercise control over the management of public affairs by their representatives.

In this regard, the IACHR stated:

A law that targets speech that is considered critical of public administration by virtue of the individual who is the object of the expression, strikes at the very essence and content of freedom of expression.[34]

Actual malice, faithful reporting and forum for reply

Thorough and effective oversight of public management as a tool to guarantee the existence of a democratic society requires a different type of protection for those responsible for public affairs than that accorded an individual not involved in matters of public interest. In this regard, the Inter-American Commission has stated that the application of laws protecting the honor of public officials acting in an official capacity unjustifiably grants them a right to protection that other members of society lack. This distinction indirectly inverts the fundamental principle of a democratic system in which the government is subject to controls, including public scrutiny, to prevent or check abuses of its coercive power.[35]

Moreover, the fact that public officials and public figures generally have easy access to the mass media allowing them to respond to attacks on their honor and personal reputation, is also a reason to provide for a lower level of legal protection of their honor.[36] The plaintiff -former Minister of Tourism - being a radio announcer had ample alternative channels to respond to the attacks of the newspapers in question.

The Jamaican courts did not apply the standard of "actual malice" as a legal doctrine applicable to cases in which the honor of public officials or public figures

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[34] *IACHR, Annual Report*, OAS/Ser.L/V/II.88.Doc.9.rev. February 17, 1995, p.218. See ECHR, Lingens v. Austria, Series A, Nº103, 1986; ECHR, Castells v. Spain, Series A, No. 236, 1992.

[35] *Id.*

[36] *Id.*

are at stake. In practice, this standard means that only civil sanctions are applied in cases where false information has been produced with "actual malice,"[37] produced with full knowledge that the information was false or with manifest negligence in the determination of the truth or falsity of the information. The burden of proof is on those who believe they have been affected by the false or inaccurate information to demonstrate that the author of the news item acted with malice.

Additionally, according to the doctrine of faithful reporting, the faithful reproduction of information does not give rise to responsibility, even in cases in which the information is not correct and could cause harm to the honor of a person. This doctrine arises from the necessity of freedom of expression and information for the existence of a democratic society. In a democratic society, debate must be fluid and open. The publication of information provided by third parties should not be restricted by the threat of responsibility simply for repeating what has been stated by another person. This constitutes an unnecessary restriction that limits the right of individuals to be informed.

Unlike the United States with its *Sullivan v. New York Times* [38]ruling, the British, like the Jamaican press, do not enjoy substantial cushion against libel, particularly in cases involving public officials.

The Inter-American system embraced the *New York Times* standard of scrutiny of public officials through the implementation of the Inter-American Declaration of Principles of Freedom of Expression through its subsection 10 that states, "Privacy laws should not inhibit or restrict investigation and dissemination of information of public interest. The protection of a person's reputation should only be guaranteed through civil sanctions in those cases in which the person offended is a public official, a public person or a private person who has voluntarily become involved in matters of public interest. In addition, in these cases, it must be proven that in disseminating the news, the social communicator had the specific intent to inflict harm, was fully aware that false news was disseminated, or acted with gross negligence in efforts to determine the truth or falsity of such news."[39]

The right to guarantees of freedom of expression and thought is inextricably linked to the very existence of a democratic society; open and free discussion

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[37] IACHR, OC-5-85, para 74-76.

[38] *New York Times Co. v. Sullivan, 376 U.S. 254 (1964).*

[39] See at www.oas.org the *Declaration of Principles on Freedom of Expression* issued in December of 2000 by the Inter-American Commission on Human Rights. As a result of the Summit of the Americas in Santiago, Chile in 1998, the Office of the Special Rapporteur for Freedom of Expression was established and thus, such Declaration was approved by the Commission in direct support of the changes sponsored by the Inter-American system of protection of human rights as set forth in the Preamble. Declaration of Santiago, Second Summit of the Americas, April 18-19, 1998, Santiago, Chile, in "Official Documents of the Summit Process from Miami to Santiago," Volume I, Office of Summit Follow-up, Organization of American States.

keeps society from becoming paralyzed and prepares it for the tensions and frictions that destroy civilizations.[40]

A free society, now and in the future, is one that openly fosters vigorous public debate about itself.[41]

Subsection 11 embodies the New York Times standard of scrutiny of public officials by stating, " Public officials are subject to greater scrutiny by society."[42]

> In the *Times* case an action was brought by an elected official who supervised the Montgomery, Alabama police force during the height of the civil rights movement in the 1960s. The official claimed that he was defamed by a full-page advertisement, published in the *Times,* that accused the police of mistreating non-violent protestors and harassing one of the leading figures in the civil rights movement, the Rev. Martin Luther King.
>
> The Supreme Court found that even though some of the statements in the advertisement were false, the First Amendment nevertheless protected the *Times* from the official's suit. The court considered the case **"against the background of a 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."** In light of this commitment, the court adopted the rule that a public official may not recover damages for a defamatory falsehood related to his official conduct "unless he proves that the statement was made with 'actual malice' -- that is, with knowledge that it was false or with reckless disregard of whether it was false or not." The court later extended this rule beyond "public officials" to cover libel suits brought by all "public figures," as in the Curtis case.[43]
>
> The First Amendment also protects the right to parody public figures, even when such parodies are "outrageous," and even when they cause their targets severe emotional distress. In *Hustler Magazine, Inc. v. Falwel*[44]*l,* the court considered an action for "intentional infliction of emotional distress" brought by Jerry Falwell -- a well-known conservative minister who was an active commentator on political issues -- against Larry Flynt, the publisher of *Hustler,* a sexually explicit magazine.

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[40] *Denis v. U.S.*, 341 U.S. 494, 584 (1951).

[41] Report Nº 11/96, Case 11.230, Chile, Francisco Martorell, May 3, 1996.

[42] Ibid. *supra* Note 2.

[43] *Curtis Publishing Co. v. Butts* and *Associated Press v. Walker,* 388 U.S. 130 (1967).

[44] *485 U.S. 46 (1988).*

The *Hustler* case arose from a parody of a series of Campari liqueur advertisements in which celebrities spoke about their "first times" drinking the liqueur. The *Hustler* magazine parody, titled "Jerry Falwell talks about his first time," contained an alleged "interview" in which Falwell stated that his "first time" was during a drunken, incestuous encounter with his mother in an outhouse. The parody also suggested that Falwell preached only when he was drunk.

The Supreme Court held that the First Amendment barred Falwell's contention that a publisher should be held liable for an "outrageous" satire about a public figure. The court noted that throughout American history, "graphic depictions and satirical cartoons have played a prominent role in public and political debate."

Although the Supreme Court opined that the *Hustler* parody at issue bore little relation to traditional political cartoons, it nonetheless found that Falwell's proposed "outrageousness" test offered no principled standard to distinguish between them as a matter of law.

The court emphasized the need to provide the press with sufficient "breathing space[45]" to exercise its First Amendment freedom. Even when erroneous statements are published, the statements may be protected, because "erroneous statement is inevitable in free debate."[46] The court added that "if it is the speaker's opinion that gives offense, that consequence is a reason for according it constitutional protection. For it is a central tenet of the First Amendment that the government must remain neutral in the marketplace of ideas."[47]

The protection of the First Amendment extends beyond press reports concerning major government policies and well-known public figures. The Supreme Court has held that if the press "lawfully obtains truthful information about a matter of public significance then [the government] may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order," *Smith v. Daily Mail Publishing Co.*[48]

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[45] The term "breathing space" was used by the New York Times v. Sullivan Court to refer to the level of common mistakes by the nature of day-to-day reporting in which "natural mistakes or inaccuracies" tend to occur.

[46] N.Y. Times Co. v. Sullivan, 376 U.S. at 271 (1964).

[47] See Justice Oliver Wendell Holmes in *Schenck v. United States*, 249 US 47 (1919).

[48] *443 U.S. 97 (1979).* Applying this principle, the Supreme Court has employed the First Amendment to strike down state laws which threatened to punish the press for reporting the following: information regarding confidential judicial misconduct hearings, *Landmark Communications, Inc. v. Virginia, 435 U.S. 829 (1978)*; the names of rape victims, *Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975)*; and the names of alleged juvenile offenders, *Smith v. Daily Mail Publishing Co., 443 U.S. 97 (1979).* The court also struck down a law which made it a crime for a newspaper to carry an election day editorial urging voters to support a proposal on the ballot, *Mills v. Alabama, 384 U.S. 214 (1966).*

The cause of action, as stated above, originated from a news story out of the United States by the American wire service, the Associated Press (AP), alleging that Abrahams was under investigation in the US for taking kickbacks from an advertising agency.

The claim grew out of remarks by the American novelist, Robin Moore, who was under grand jury investigation for alleged tax evasion.[49] AP withdrew the original story, which had no input from Abrahams, but it found its way through the system into the Star,[50] the Gleaner Company's afternoon tabloid. The same story was subsequently run by the Gleaner[51], without the updates and input from Abrahams that were added by AP.

The issue was further complicated by a clarification by the Gleaner to point out that the former tourism minister referred to in the story was not Hugh Hart, who was then in-charge of the portfolio.[52] There was also a delay in publishing a response from Abrahams.

For the next decade, the case meandered through the court, with the Gleaner claiming qualified privilege as its defense, but, for various reasons, being unable to present the supporting documentation for its defense. By 1996, the Jamaican Supreme Court had struck out the Gleaner's defense and the arguments at the hearing were essentially to determine the quantum of damages to Abrahams.

In this context, the Inter-American Court has stated that abuses of freedom of expression can not be subject to preventive measures, but may be grounds for the subsequent imposition of liability of the person implicated. In this case, the subsequent imposition of liability must be carried out through the subsequent application of civil sanctions rather than prior censorship of the unpublished expression.[53]

The amout of damages granted to the Plaintiff offers no other effect than to deter future exposés of public corruption and creates a chilling effect on futire publications which is greater than the subsequent liability set forth under Article 13 of said Convention.

The First Amendment also prevents the government from telling the press what it must report. In *Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241 (1974)*, the Supreme Court considered whether a state statute could grant a political candidate a right to equal space to reply to a newspaper's criticism and attacks on his record. The court struck down the law, holding that the First Amendment forbids the compelled publication of material that a newspaper does not want to publish. The court held that the statute would burden the press by diverting its resources away from the publication of material it wished to print, and would impermissibly intrude into the functions of editors.

[49] The initial publication was done by The Advocate in Samford, Connecticut, who published the Associated Press.

[50] Published by *The Star* on September 17, 1987.

[51] On September 18, 1987, The Gleaner ran the story.

[52] Clarification was published on September 19, 1987 by The Gleaner.

[53] IACHR, OC-5/85, supra note 15, para. 39.

It is without a doubt that The Gleaner was reporting on a matter that was of national concern, possible governmental corruption through the National Board of Tourism and the plaintiff.

In the context of protection of public debate and the uninhibited discussion of political ideas, it is relevant to discuss the First Amendment of the United States treatment of public denunciations as it has contributed to the development of an Inter-American doctrine for freedom of expression and of the press in the last decades.

"[T]here is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs."[54] "For speech concerning public affairs is more than self-expression; it is the essence of self-government." [55]

As exposed by the U.S. Supreme Court government accountability and free political discussion are key components to democratic exercise. "The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system."[56]

The right to freely criticize government is part of the history of the United States as it is highlighted by a "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." [57]

The skepticism of government and the importance of the right to freely criticize it are concepts with both deep roots in American history and continuing importance.[58]

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[54] *Mills v. Alabama*, 384 U.S. 214, 218 (1966).

[55] *Garrison v. Louisiana*, 379 U.S. 64 (1964) at 74-75.

[56] Stromberg v. California, 283 U.S. 359, 369 (1931).

[57] N.Y. Times Co. v. Sullivan, 376 U.S. 254, 270 (1964).

[58] See 1 J. Trenchard & T. Gordon, Cato's Letters: Essays on Liberty, Civil and Religious 96, 246-47 (1755) ("The exposing therefore of public Wickedness, as it is a Duty which every Man owes to Truth and his Country, can never be a Libel in the Nature of Things."); C.R. Sunstein, Democracy and the Problem of Free Speech 134 (1993) (arguing that distrust of the government is strongest when "it is regulating speech that might harm its own interests; and when the speech at issue is political, its own interests are almost always at stake. It follows that the premise of distrust of government is strongest when politics is at issue").

The seminal New York Times case contains several requirements that constrain libel law when the challenged statement is about a public official that are worth mentioning while discussing defamation of public officials.

For public officials to recover damages, they must prove "that the statement was made with 'actual malice' -- that is, with knowledge that it was false or with reckless disregard of whether it was false or not."[59]

The "actual malice" standard is distinct from common law malice, which refers to spite or ill will.[60]

The court originally defined "public official" narrowly: "The employee's position must be one which would invite public scrutiny and discussion of the person holding it, entirely apart from the scrutiny and discussion occasioned by the particular charges in controversy."[61]

Under the U.S. view, in practice, the term is now used more broadly and includes many government employees, including police officers.[62]

The Court later extended actual malice protection to speech about public figures as well as public officials.[63]

Finally, in *Gertz v. Robert Welch*,[64] Inc., the Court also applied constitutional constraints to civil suits for defamation when the plaintiff is a private person but the statement involves matters of public concern.

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[59] 376 U.S. at 279-80.

[60] See Rosenbloom v. Metromedia, 403 U.S. 29, 52 n.18 (1971); Garrison, 379 U.S. at 78 (actual malice does not mean "hatred, ill will or enmity or a wanton desire to injure").

[61] Rosenblatt v. Baer, 383 U.S. 75, 86 (1966).

[62] L. Tribe, American Constitutional Law § 12-12, at 866 (2d ed. 1988); see, e.g., St. Amant v. Thompson, 390 U.S. 727, 730 & n.2 (1968) (deputy sheriff); Price v. Viking Penguin, Inc., 881 F.2d 1426, 1431 (8th Cir. 1989) (FBI agent); Coughlin v. Westinghouse Broad. & Cable, Inc, 780 F.2d 340, 342 (3d Cir. 1985) (police officer); McKinley v. Baden, 777 F.2d 1017, 1021 (5th Cir. 1985) (same); Gray v. Udevitz, 656 F.2d 588, 591 (10th Cir. 1981) (same); Meiners v. Moriarty, 563 F.2d 343, 352 (7th Cir. 1977) (federal narcotics agent).

[63] See Harte-Hanks Communications, Inc. v. Connaughton, 491 U.S. 657, 665-66 (1989) (describing the convoluted history of this doctrine). While the definition of "public figure" remains opaque, political candidates unquestionably fall under that rubric. Id. at 660; see Monitor Patriot Co. v. Roy, 401 U.S. 265, 271 (1971).

[64] 418 U.S. 323 (1974) at 335, 347.

II. The Declaration of Chapultepec clearly expresses the standard that no journalist should be punished for criticizing a public official. There is a hemisphere adherence to this Declaration and thus, it is a part of the emerging doctrine of freedom of expression in the inter-American sphere.

The Declaration of Chapultepec that was approved during a hemisphere summit in 1994 and to date has been signed by more than 30 heads of state[65] in the Western Hemisphere states under its Principle 10. that, " No news medium nor journalist may be punished for publishing the truth or criticizing or denouncing the government".

It is our belief that the Declaration of Chapultepec has been incorporated into the scheme of the inter-American through its ratification and public endorsement by a number of heads of States of the O.A.S. and its numerous references, citations and applications.[66]

As a consequence of the Tenth Principle of the Declaration of Chapultepec is the belief that, in the exercise of freedom of the press, an abuse only exists if the information is disseminated with malice and full awareness of its falsehood just as espoused by the *Times v. Sullivan* case.

Neither presumptive liability nor the presumption of harm is sufficient. In case of doubt, the solution must be favorable to freedom of the press through application of the democratic principle: *in dubio pro libertate*.

It is not possible for every newspaper to verify each piece of news or information that it disseminates hence, the judgment in this case attacks the very essence of reporting or informing the public because it is fundamentally imposing the stringent duty for all newspapers to verify what is being reported on particularly on matters of public interest such as the dealings of the Jamaican Tourist Board and a former Minister of Tourism.

The Associated Press (AP) and *The Advocate* of Stamford, Connecticut, are both credible sources but yet both published the erroneous information concerning the plaintiff. The defendant The Gleaner Company published what was to be believed a credible story by credible sources. There was no prima facie element of inaccuracy of the news wire story.

Direct malice by the journalist or communications outlet and whether the media outlet or the journalist was acting in the interest of the public must be considered in all cases.

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[65] *See* www.declaraciondechapultepec.org for the dates and countries that have signed the Declaration of Chapultepec.

[66] See the Preamble to the *Inter-American Declaration of Principles on Freedom of Expression* (2000). Also, see Asdrúbal Aguiar, La *Libertad de Expresión: De Cádiz a Chapultepec*, Caracas, SIP/UCAB. 2002. Also reproduced in *Justicia y Libertad de Prensa*, Sociedad Interamericana de Prensa, Miami, 2003 at 417.

A restriction on freedom of expression or information, including the protection of the reputations of others, cannot be justified unless it can convincingly be established that it is necessary in a democratic society as enshrined under Article 13 of the American Convention. In particular, a restriction cannot be justified if:

i. less restrictive, reasonable means exist by which the legitimate interest can in practice be protected in the circumstances; or
ii. taking into account all the circumstances, the restriction fails a proportionality test because the benefits in terms of protecting reputations do not significantly outweigh the harm to freedom of expression.[67]

Defamation laws cannot be justified if their purpose or effect is to protect individuals against harm to a reputation which they do not have or do not merit, or to protect the 'reputations' of entities other than those which have the right to sue and to be sued. In particular, defamation laws cannot be justified if their purpose or effect is to prevent legitimate criticism of officials or the exposure of official wrongdoing or corruption. The nature of the news published by both The Star and The Daily Gleaner was denunciation of possible public corruption.[68]

Under no circumstances should defamation law provide any special protection for public officials, notwithstanding their rank or status. This principle embraces the process by which complaints are brought and processed, the standards to be applied to public officials in determining whether a defendant is liable, and the penalties to be imposed.

Even where a statement of fact on a matter of public concern has been shown to be false, defendants should benefit from a defense of reasonable publication.

The defense is made out if it is reasonable in all the circumstances for a person in the position of the defendant to have disseminated the material in the manner and form done. In determining whether dissemination was reasonable in the circumstances of a particular case, the Court shall take into account the importance of freedom of expression with respect to matters of public concern and the right of the public to receive that information.[69]

The articles published by The Gleaner Company were of and concerning the plaintiff in the context of a public matter as Minister of Tourism and demanded the public's attention to this matter as reported by the AP and The Advocate.

An increasing number of jurisdictions are recognizing a reasonableness defense – or an analogous defense based on the ideas of due diligence or good faith –

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[67] *See* American Convention of Human Rights (1969).

[68] *See* supra 39 and 40.

[69] See Principle 2 of the Declaration of Chapultepec, "Every person has the right to seek and receive information, express opinions and disseminate them freely. No one may restrict or deny these rights."

due to the harsh nature of the traditional rule which held defendants liable whenever they disseminated false statements, or statements which could not be proven to be true. Such a rule is particularly unfair for the media, which are under a duty to satisfy the public's right to know and cannot wait until they are sure that every fact alleged is true before they publish or broadcast a story. Even the best journalists make honest mistakes and to leave them open to punishment for every false allegation would be to undermine the public interest in receiving timely information.

A more appropriate balance between the right to freedom of expression and reputations is to protect those who have acted reasonably, while allowing plaintiffs to sue those who have not. For the media, acting in accordance with accepted professional standards should normally satisfy the reasonableness test.

Certain types of statements should be exempt from liability unless they can be shown to have been made with malice, in the sense of ill-will or spite. These should include statements made in the performance of a legal, moral or social duty or interest. The fact that The Gleaner alleged the defense justification through the 1991 is not indicative of ill-will or even reckless disregard of the truth. The element of knowledge of the falsity would have been material to prove under plaintiff's burden.

This case hinged upon a legitimate concern of the public regarding possible corruption and their national tourism.

As argued in this brief, no one should be liable under defamation law for a statement of which he or she was not the author, editor or publisher and where he or she did not know, and had no reason to believe, that what he or she did contributed to the dissemination of a defamatory statement.

III. The Privy Council erred when it considered the *sub judice* case as one that did not involve press freedom. This is particularly wrong due to the chilling effect the excessive awards against The Gleaner may have on press freedom.

The Inter-American Court on Human Rights has stated that because freedom of expression and thought plays a crucial and central role in public debate, the American Convention places an "extremely high value" on this right and reduces to a minimum any restrictions on it.[70]

Article 13 of the American Convention contains the most pertinent definition of freedom of expression. It states:

> 1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information

[70] OC-5/85, Compulsory Membership, supra, par. 30-32, pp.100-101.

and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure:

a. respect for the rights and reputation of others; or

b. the protection of national security, public order, or public health and morals.

3. The right of expression may not be restricted by indirect methods or means, such as the abuse of government or private controls over newsprint, radio broadcasting frequencies, or equipment used in the dissemination of information, or by another means tending to impede the communication and circulation of ideas and opinions.[71]

The Court has noted the broad "scope and character" of the right to freedom of expression under Article 13.[72]

Article 13 establishes two distinct aspects of the right to freedom of expression. It includes not only the freedom to express thoughts and ideas, but also the right and freedom to seek and receive them.[73]

By simultaneously guaranteeing the rights to express and receive such expressions, the Convention enhances the free interchange of ideas needed for effective public debate within the political arena.[74]

The Court has also concluded that the American Convention is more generous in its guarantee of freedom of expression and less restrictive of this right than relevant provisions in either the European Convention for the Protection of Human Rights and Fundamental Freedoms or the International Covenant on Civil and Political Rights.[75]

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[71] Article 13, paragraph 3 of the American Convention on Human Rights (hereinafter the Convention).

[72] OC-5/85, Compulsory Membership, par. 30, p.100.

[73] Id.

[74] Id., par. 32-33, p. 101.

[75] Id., par. 50, p.111. The relevant provision in the European Convention for the Protection of Human Rights and Fundamental Freedoms is Article 10 (hereinafter known as the European Convention.) The relevant provision in the International Covenant on Civil and Political Rights is Article 19 (hereinafter known as the UN Covenant.)

This is particularly significant considering that the European Court has repeatedly asserted that freedom of expression is one of the "essential foundations of a democratic society."[76]

The consensus among the American and European Human Rights bodies is evidence that the protection of freedom of expression is an indispensable element of democracy, well-grounded in international law. By protecting this right as found within Article 13 of the Convention, the Court has simply reinforced the Convention's intent, which is to create a system of "personal liberty and social justice" within the "framework of democratic institutions."[77]

Restrictions on freedom of expression are only permissible through the subsequent imposition of liability, which must be expressly established by law, where the ends sought to be achieved are legitimate, and the means for establishing liability are necessary to achieve those ends.[78]

Subsequent imposition of liability is regulated by Article 13 of the Convention and may only be applied in a limited manner as necessary to ensure respect for the rights and reputation of others. "Restrictions on the subsequent imposition of liability are contemplated as a guarantee of freedom of expression, to preclude certain individuals, groups, ideas or mediums for expression from being excluded, *a priori*, from public debate."[79] The Plaintiff Abrahams was afforded ample opprtunity to access to public debate if he had been defamed and felt a need of vindication.

The Inter-American Court of Human Rights has also emphasized that there are two aspects to freedom of expression: the right to express thoughts and ideas, and the right to receive them. Therefore, limitation of this right through arbitrary interference affects not only the individual right to express information and ideas, but also the right of the community as a whole to receive all types of information and opinions.[80]

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[76] See Eur. Court H.R., Lingens Case, judgment of 8 July 1986, Series A, Nº 103, par. 41, p.26; see also Eur. Court H.R., Handyside Case, judgment of 7 December 1976, Series A, Nº 24, par. 49, p. 23; Eur. Court H.R., The Sunday Times Case, judgment of 26 April 1979, Series A, Nº 30, par. 65, p. 40; Eur. Court H.R:, Case of Aberschlick v. Austria, judgment of 23 May 1991, Series A, Nº 204, par. 57, p.25; Eur. Court H.R., Case of Castells v. Spain, judgment of 23 April 1992, Series A., Nº 236, par. 42, p.22.

[77] OC-5/85, Compulsory Membership, supra, par. 42, p.106. Moreover, other provisions in the Convention further illustrate the importance of public debate as an aspect of freedom of expression. The Convention's broad concept of freedom of expression is reinforced by the prohibition against prior censorship stipulated in Article 13(2) and by the right of reply guaranteed by Article 14. The prohibition against prior censorship assures that certain ideas and information will not be automatically excluded from the public arena. Thus, people will not only be free to express their own ideas but will have access to the ideas of others so as to broaden their understanding of the political debate within society. In addition, the right of reply provided for in Article 14 guarantees access to an appropriate medium of communication for those injured by inaccurate or offensive statements.
Article 14(1) of the Convention provides: "Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium or communication has the right to reply or make a correction using the same communications outlet, under such conditions as the law may establish."

[78] IACHR, OC-5/85, supra note 15, para. 59.

[79] Court, "The Last Temptation of Christ" *supra* note 2, para. 61e.

[80] IACHR, OC-5/85, supra note 15, para. 30-32.

For example, in a decision finding that the applicant's conviction for defamation of a public official violated Article 10 of the European Convention, the European Court stated that the protection of freedom of expression must extend not only to information or ideas which are favorable, but also to those that "offend, shock or disturb."[81]

The same opinion underlined the special importance of protecting "freedom of expression as regards minority views, including those that offend, shock or disturb the majority."[82] A society that is to be free both today and in the future must engage openly in rigorous public debate about itself.

The norms under which these restrictions are interpreted must be compatible with the preservation and development of democratic societies as articulated in Articles 29 and 32 of the Convention.

In interpreting these articles, the Court stated that Article 29(c) indicates that no provision of the Convention should be interpreted as "precluding other rights or guarantees....derived from representative democracy as a form of government." In addition, Article 29(d) guarantees that no provision shall be interpreted as excluding or limiting the effect of the American Declaration of the Rights and Duties of Man[83] which provides that the "rights of man are limited....by the just demands of the general welfare and the advancement of democracy."[84]

Article 32(2) states that all rights delineated in the Convention may be restricted by the "rights of others, by the security of all, and by the just demands of the general welfare in a democratic society."[85]

As the Court asserted, this constant reference to democracy in Article 29 and 32 indicates that when provisions of the Convention are critical to the "preservation and functioning of democratic institutions," the "just demands of democracy must guide their interpretation."[86]

Thus, interpretation of the Article 13(2) restrictions on freedom of expression must be "judged by reference to the legitimate needs of democratic societies and institutions," precisely because freedom of expression is essential to democratic forms of governance.[87]

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[81] Castells, supra, par. 20, p. 22.

[82] Id.

[83] Article 29, section d of the Convention.

[84] Chapter 1, Article 28 of the American Declaration of the Rights and Duties of Man.

[85] Article 32, paragraph 2 of the Convention.

[86] OC-5/85, Compulsory Membership, supra 22, par. 44, p. 108.

[87] Id., par. 42, p. 106.

If we consider that public functionaries acting in their official capacity are the Government for all intents and purposes, then it must be the individual and the public's right to criticize and scrutinize the officials' actions and attitudes in so far as they relate to the public office.[88]

As mentioned above, the right to freedom of expression is precisely the right of the individual and the entire community to engage in active, challenging and robust debate about all issues pertaining to the "normal and harmonious functioning of society." The sort of political debate encouraged by the right to free expression will inevitably generate some speech that is critical of, and even offensive to those who hold public office or are intimately involved in the formation of public policy. A law that targets speech that is considered critical of the public administration by virtue of the individual who is the object of the expression, strikes at the very essence and content of freedom of expression. Such limitations on speech may affect not only those directly silenced, but society as a whole. In the words of John Stuart Mill,

> It is not the minds of heretics that are deteriorated most by the ban... The greatest harm is done to those who are not heretics and whose whole mental development is cramped and their reason cowed by the fear of heresy. No man can be a great thinker who does not recognize that as a thinker it is his first duty to follow his intellect to whatever conclusions it may lead. Truth gains more even by the errors of one who, with due study and preparations thinks for himself than by the true opinions of those who hold them only because they do not suffer themselves to think.[89]

The grounds for imposing liability must be necessary to achieve the legitimate end sought. Legitimacy is not an empty concept to be freely and arbitrarily defined by States. Rather, it falls under what legal doctrine refers to as indeterminate legal concepts. These are concepts whose content must be predictable based on the principles of reason and common sense and whose definitive interpretation permits only a fair solution.The grounds for imposing liability must be necessary to achieve the legitimate end sought. Legitimacy is not an empty concept to be freely and arbitrarily defined by States. Rather, it falls under what legal doctrine refers to as indeterminate legal concepts. These are concepts whose content must be predictable based on the principles of reason and common sense and whose definitive interpretation permits only a fair solution.[90]

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[88] IACHR, Annual Report 1994, Report on the Compatibility of desacato Laws with the American Convention on Human Rights, OEA/Ser L/V/II.88, Doc. 9 Rev (1995).

[89] John Stuart Mill, quoted in D. Sandifer & L. Scheman, The Foundations of Freedom 69-82 (1966).

[90] Eduardo Garcia de Enterría. *Hacia una Nueva Justicia Administrativa.* Madrid, 1996.

Respect for and protection of freedom of expression plays a fundamental role without which other elements for strengthening democracy and human rights cannot develop. The right to and respect for freedom of expression serves as an instrument for the free exchange of ideas, strengthens democratic processes and offers citizens an indispensable tool for informed participation. Moreover, through the mass media, citizens are empowered to participate in and/or exercise control over the conduct of public officials. As the Inter-American Court of Human Rights stated:

[F]reedom of expression is a cornerstone upon which the very existence of a democratic society rests. . . . It represents, in short, the means that enable the community, when exercising its options, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free. Freedom of expression, therefore, is not just the right of individuals, but of society as a whole.[91]

Requiring the truth or impartiality of information is based on the premise that there is one indisputable truth. In this regard, it is important to distinguish between subjects related to concrete facts, and that may be proven factually, and value judgements. In the latter case, it is impossible to speak of the veracity of the information. Requiring truthfulness could lead to virtually automatic censorship of all information that cannot be proved. This would eliminate, for example, virtually all public debate based primarily on ideas and opinions, which are inherently subjective. Even in cases of information regarding concrete events that may be factually proven, it is still impossible to demand veracity since, unquestionably, there may be a considerable number of markedly different interpretations of a single fact or event.

Unquestionably, the right to freedom of expression also protects information that we have termed "erroneous." In any event, in accordance with international standards and the most highly developed jurisprudence, only information found to be produced with "actual malice" is punishable.[92]

In this sense, the Government's prosecution of a person who criticizes a public official acting in his or her official capacity does not comply with the requirements of Article 13(2) because the protection of honor in this context is conceivable without restricting criticism of the public administration. As such, these laws are also an

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[91] IACHR, *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism*, Advisory Opinion OC-5/85 Series A, No. 5, paragraph 70.

[92] The doctrine of "actual malice" refers to the fact that that "the constitutional guarantees require . . . a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with "actual malice"—that is, with knowledge that it was false or with reckless disregard of whether it was false or not." New York Times v. Sullivan, 376 U.S. 255 (1961).

unjustified means to limit certain speech that is already restricted by laws that all persons, regardless of their status, may invoke.[93]

Even assuming *arguendo* that protecting public officials from offensive and critical expression is a legitimate protection of public order within a democratic society, any law which restricts freedom of expression must also be "necessary to ensure" this legitimate purpose.[94]

The term "necessary" as used in Article 13(2), must be something more than "useful," "reasonable" or "desirable." For a restriction to be "necessary," there must be a showing that the legitimate purpose cannot reasonably be achieved through a means less restrictive to freedom of expression.[95]

The open and wide-ranging public debate, which is at the core of democratic society necessarily involves those persons who are involved in devising and implementing public policy.[96]

Since these persons are at the center of public debate, they knowingly expose themselves to public scrutiny and thus must display a greater degree of tolerance for criticism.[97]

Articles 13(2) and (3) recognize that the zone of legitimate State intervention begins at the point where the expression of an opinion or idea interferes directly with the rights of others or constitutes a direct and obvious threat to life in society. However, particularly in the political arena, the threshold of State intervention with respect to freedom of expression is necessarily higher because of the critical role political dialogue plays in a democratic society. The Convention requires that this threshold be raised even higher when the State brings to bear the coercive power of its criminal justice system to curtail expression. Considering the consequences of criminal sanctions and the inevitable chilling effect they have on freedom of expression, criminalization of speech can only apply in those exceptional circumstances when there is an obvious and direct threat of lawless violence. Article 13(5) stipulates that:

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[93] IACHR, Annual Report 1994, Report on the Compatibility of desacato Laws with the American Convention on Human Rights, OEA/Ser L/V/II.88, Doc. 9 Rev (1995).

[94] OC-5/85, Compulsory Membership, supra 22, par. 79, p. 127.

[95] Id.

[96] See *Lingens*, supra 17, par. 42, p.26 ; *Oberschlick* supra 17, par. 59, p.26.

[97] In this regard, the European Court concluded in *Lingens* Case that the right to freedom of expression in the European Convention had been violated when the petitioner was convicted of defamation under the Austrian Criminal Code. The European Court held that although petitioner used language in reference to a public official that might damage his reputation, the articles dealt with issues that were of great public interest and controversy. The European Court decided that the verbal weapons used were to be expected in the political arena and open debate about the controversial political situation outweighed any injury to the public officials reputation and honor. Moreover, although the petitioner received only a fine, the European Court concluded that even these sanctions would lead to self-censorship and thus deter participation in the discussion of issues affecting the community.

> any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or any similar action against any person or group of persons on any grounds including those of race, color, religion, language, or national origin shall be considered as offenses punishable by law.

The Commission has considered that the State's obligation to protect the rights of others is served by providing statutory protection against intentional infringement on honor and reputation through civil actions.

In this sense, the State guarantees protection of all individual's privacy without abusing its coercive powers to repress individual freedom to form opinions and express them.

The Commission has found that the State's use of its coercive powers to restrict speech lends itself to abuse as a means to silence unpopular ideas and opinions, thereby repressing the debate that is critical to the effective functioning of democratic institutions. [98]

The Privy Council, in their decision delivered by Lord Hoffman, insisted that the Abrahams case was not about free speech and the right to publish on which the high award would have a negative impact. Rather, the law lords suggested it was primarily about the serious damage to a person's character and the ill-tempered behavior of a newspaper over the long period.

"This is not a case in which freedom to publish is in issue,"[99] said Lord Hoffman in the judgment. "It is accepted by the defendants, even though with bad grace, that publication was wrongful and fell outside the permissible limits of Section 22(1). So the only question is whether the damages were no more than was necessary adequately to compensate the plaintiff. For the reasons already stated at length, their Lordships would not interfere with the Court of Appeal's assessment of the necessary amount. They were entitled to take the view that if it had a chilling effect upon this kind of conduct, that would be no bad thing. Their Lordships see no reason to think that the award of so large an amount in the special circumstances of this case will inhibit responsible journalism.

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[98] IACHR, Annual Report 1994, Report on the Compatibility of desacato Laws with the American Convention on Human Rights, OEA/Ser L/V/II.88, Doc. 9 Rev (1995).

[99] *Privy Council Decision,* at para. 72.

Moreover, the Gleaner, led by its managing director and chairman, Oliver Clarke, has argued that few newspapers in the Caribbean could pay damages at that level, plus costs, and survive.[100]

The IAPA does not side with the argument presented by the Privy Council upholding the award of damages to the plaintiff regarding the deterrent effect as it stated on record, "Awards in the adequate amount may also be necessary to deter the media from riding roughshod over the rights of other citizens".[101] Awards such as the one in the present case does not accomplish anything but than to punish the media for reporting on matters of public interest.

The IAPA has reported on this case since 1996 on a yearly basis as a matter of great concern for freedom of the press in the hemisphere. During its General Assembly in Los Angeles in the month of October of 1996, in its country by country analysis, it stated..."that it [the Abrahams case] could have grave consequences for freedom of the press in Jamaica because it could become a precedent in jury trials which no other media outlet could endure as a financial loss".

In November of 1999 in Punta del Este, Uruguay, the IAPA Freedom of the Press Committee reported on the libel judgment and viewed it as a serious attack to freedom of the press.

In Houston at its 1999 General Assembly, the IAPA reported on the libel suit against The Gleaner by Mr. Abrahams and cautioned on its severity to Jamaican press freedom if confirmed.

During the Santiago 2000 General Assembly, the IAPA included the libel judgment as an insurmountable restriction on freedom of the press.

In the IAPA'S press freedom reports of 2001, at its Washington D.C. General Assembly, the IAPA members unanimously condemned the libel judgment as an imminent threat to press freedom in the hemisphere to be set as a negative precedent for its excessive award.

Once again, in the year-end press freedom reports, the IAPA reported in Lima, Peru, at the General Assembly, in 2002 that the judgment would bring irreparable harm to press freedom in Jamaica.

The newspaper members of the IAPA at the Chicago General Assembly in October of 2003, included The Gleaner case as one to mention in light of the Privy Council's decision to uphold the damages award against the newspaper.

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[100] Oliver F. Clarke, CEO and Chairman of The Gleaner Company, Limited will be called as an expert witness by the *Amici*.

[101] *Privy Council Decision,* at para. 53.

IV. The amount of the award granted to plaintiff and the burden of proof applied in this case inextricably constitute a restriction to freedom of the press because it lacks specific guidelines.

The IAPA has sustained that the actual damage suffered cannot be presumed in a civil lawsuit, and in regards to moral damages, the award shall not exceed reasonable bounds.

The plaintiff must clearly prove when the defamatory matter published refers to public officials, public figures or private individuals involved in matters of public interest that the defamatory matter in the concrete case, the exact amount of damages which cannot be presumed actual damages suffered as well as the falsehood of the facts published and actual knowledge of its falsehood by direct malice by the journalist or communications outlet.

In the foregoing action, there was a clear absence of guidelines indicative of the real damages sustained by the plaintiff and the Privy Council ignored any consideration of referring to similar cases of libel for the estimate of the damages. There is no indication on the record of the nature of the estimate of the compensatory damages commensurate with the elevated amount awarded.

The Jamaican Courts did not address properly the issue of the general damages as opposed to the specific damages. There was no mention of any proportionality of the damages which seems to prevail in today's modern libel law theory.

The Jamaican Courts apparently did not consider the facts that the Plaintiff Abrahams was still in Parliament after such alleged defamatory stories were published and afterwards, continued to work as a radio talk host for several months.

Disproportionate remedies or sanctions can significantly limit the free flow of information and ideas. As a result, it is now well established that remedies or sanctions, like standards, are subject to scrutiny under the test for restrictions on freedom of expression. Excessively high pecuniary awards are the most obvious problem in this area.

Freedom of expression demands that the purpose of a remedy for defamatory statements is, in all but the very most exceptional cases, limited to redressing the immediate harm done to the reputation of the individual(s) who has been defamed. Using remedies to serve any other goal would exert an unacceptable chilling effect on freedom of expression which could not be justified as necessary in a democratic society.

It would seem that in light of the award adjudicated to the Plaintiff that the defendant is being somehow punished for having published the defamatory matter. This is contrary to the goals and guarantees set forth by the Convention.

The subsequent liability set forth in Article 13 of the Convention should hold proportionality with the legitimate interest pursued as laid down under subsections a) and b) in order to avoid the chilling effect that may rise to the level of prior restraint.[102]

It is a general principle of civil law that plaintiffs have a duty to mitigate damage. In the area of defamation law, this implies that the plaintiff should take advantage of any available mechanisms which might redress or mitigate the harm caused to his or her reputation. Anthony Abrahams did so by participating in the Jamaican Parliament and having an ample channel of communication to set any record straight through his won access to the public and his own public stature.

In assessing the quantum of pecuniary awards, the potential chilling effect of the award on freedom of expression should, among other things, be taken into account. Pecuniary awards should never be disproportionate to the harm done, and should take into account any non-pecuniary remedies and the level of compensation awarded for other civil wrongs.

Compensation for actual financial loss, or material harm, should be awarded only where that loss is specifically established. This is not clearly established on record by the Plaintiff in this case.

The level of compensation which may be awarded for non-material harm to reputation – that is, harm which cannot be quantified in monetary terms – should be subject to a fixed ceiling if not it may be detrimental to freedom of the press. This ceiling should be applied only in the most serious cases.

Pecuniary awards which go beyond compensating for harm to reputation should be highly exceptional measures, to be applied only where the plaintiff has proven that the defendant acted with knowledge of the falsity of the statement and with the specific intention of causing harm to the plaintiff.

This was not proven on record by the Plaintiff. This constitutes a violation of the principles of the Inter-American Doctrine as cited in this Amicus brief.

VIII. Conclusion

For the foregoing reasons, the Honorable Inter-American Commission on Human Rights should admit accordingly the defendant's petition to be heard and provided an opportunity to seek relief through the Inter-American system of justice by initiating an inquiry as set forth under the American Convention of Human Rights.

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[102] Claudio Grossman, *Freedom of Expression in the Inter-American System for the Protection of Human Rights*, Nova L. R., vol. 25 (2001). Reprinted in *Justicia y Libertad de Prensa*, Sociedad Interamericana de Prensa, Miami, 2003 at 363.

The Inter-American Press Association requests that the judgment entered into against the defendants The Gleaner Company, through its newspapers -The Gleaner and The Star – and Dr. Dudley Stokes, be set aside and that the State of Jamaica be ordered to implement accordingly the safeguards both substantive and procedural aimed at ensuring the full protection of freedom of the press and of speech in such State.

We respectfully request that we be allowed to be present for all or any hearings to be possibly set during the forthcoming month of September and are available for any service at our headquarters in Miami.

Dated: April 6, 2004

Respectfully submitted,

Jack Fuller, President

THE INTER AMERICAN PRESS ASSOCIATION

1801 S.W. 3rd Avenue

Miami, FL 33129

IX. Exhibits

- Exhibit A: Associated Press, *Author says his diary sparked kickbacks investigation*, The Star, September 17, 1987.

- Exhibit B: Associated Press, *Robin Moore: I suspected Jamaican Tourism Minister*, The Daily Gleaner, September 18, 1987.

- Exhibit C: *Clarification*, The Daily Gleaner, September 19, 1987.

- Exhibit D: *Abrahams: Has never accepted 'kickback,'* Sunday Gleaner, September 20, 1987.

- Exhibit E: *Apology*, The Star, July 10, 1995.

- Exhibit F: *Apology*, The Daily Gleaner, July 10, 1995.

- Exhibit G: Summing up to the Jury by his Lordship Mr. Justice Smith *Abrahams v. The Gleaner Co., Ltd. & Stokes*, Suit No. CLA 196/87 (Sup Ct of Judicature of Jamaica 1996)

- Exhibit H: "Judgment of the Jamaican Court of Appeal" *The Gleaner Co., Ltd. & Stokes v. Abrahams*, Civ. App. No. 70/96 (Ct App 2000).

- Exhibit I: "Speaking Notes for the Appellants" *The Gleaner Co., Ltd. & Stokes v. Abrahams*, In the Judicial Committee of the Privy Council on Appeal from the Court Appeal of Jamaica.

- Exhibit J: "Case for the Appellants" *The Gleaner Co. Ltd., & Stokes v. Abrahams*, App. Cas. 86 (P.C. 2001) (appeal taken from Jamaica).
  * See also "Table of Personal Injury Awards in Jamaica" at Appendix 2.

- Exhibit K: "Privy Council Decision *The Gleaner Co. Ltd., & Stokes v. Abrahams*, [2003] App. Cas. 86 (P.C. 2001) (appeal takes from Jamaica)

X. Expert Witnesses

Petitioner offers the following witnesses:

Rafael Molina Morillo, Chairman of the Freedom of the Press Committee of the IAPA

The Honorable O.F. Clarke, Chairman, Manager, & Director of *The Gleaner Company Ltd.*