

2005
Lawyers of the Year **HOWARD M. COOPER**
Boston

Howard M. Cooper overcame the legal odds when he successfully sued the Boston Herald for defaming his client, Superior Court Judge Ernest B. Murphy, once referred to by the newspaper as “Evil Ernie.” Now Cooper has a reputation as the “go-to guy” for judges who feel their reputations have been compromised by falsely reported information in media outlets.

But don’t tell Cooper that. He insists that suing newspapers on behalf of judges is by no means a new niche for him, and that his general litigation practice remains as varied as it has been throughout his more than 20-year legal career.

Nevertheless, his \$2.1 million victory on behalf of the embattled judge broke new ground in the difficult task of proving defamation of a public official.

Q. *Some have called the standard necessary to prove that a public official was libeled nearly insurmountable. Why did you decide to take the Judge Murphy case?*

A. I had known Judge Murphy for several years before the articles appeared in the Boston Herald. When I read them, I felt on a very personal level that they could not be true. And when I confirmed that they weren’t true and saw how much the articles had affected him and his family, it was a very easy decision. Frankly, I was honored to be asked to represent him.

Q. *A judge isn’t necessarily the most sympathetic of plaintiffs, particularly in this*



Photo by Jason Scally

Born: Dec. 7, 1959; Boston
Education: Boston University School of Law, 1984; Union College, 1981
Bar admission: 1984
Professional experience: Todd & Weld, founding partner (1991-present); Hale & Dorr (1984-1991)
Professional affiliations: Boston and Massachusetts bar associations; Massachusetts and National Associations of Criminal Defense Lawyers; Criminal Justice Act Panel attorney; Alliance for Children Foundation, chairman

be hearing from the judge directly as to what happened.

Q. *So was the judge’s testimony the most compelling in your opinion?*

A. I think the testimony from the very first witness — the reporter from the Boston Herald — was probably the most significant and ultimately persuasive for the jury. Without characterizing that testimony, I think that the jury was able to see exactly the type of reporter they were dealing with in the case.

Q. *What did the reporter say that allowed the jury to make that kind of determination?*

A. I think the jury saw a reporter who not just failed to do his homework, but recklessly avoided facts that were not just readily available to him but were told to him.

Q. *Speaking of the jury, who were you looking for and who were you trying to avoid?*

A. We were looking for people who would be open to the possibility that jail time for every criminal defendant isn’t necessarily the right thing. We were allowed brief sidebar questioning of anybody who felt they couldn’t

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case where Murphy had allowed four convicted rapists to walk without serving any jail time. How did you endear your client to the jury?

A. I think Judge Murphy endeared himself to the jury. Anyone who sat in the courtroom and heard from him and his wife, one of his daughters, his friends and colleagues, heard about a man who was not capable of saying what was reported. All I did was to let the jury know at the outset of the case that they would

adjudicate this case in an unbiased and fair way. It broke down about half and half — those who felt they could not trust what they read in the newspaper and those who felt a judge who was not a hard sentencer was someone who they could not tolerate. So people came up to the sidebar and said, “I don’t believe what I read in the Herald,” or, “Everybody knows that it’s a tabloid.” Others came up and said, “Anybody who didn’t give jail time to a convicted felon should be drawn and quartered.” Those people were all excused.

Q. *How did you feel throughout the trial? Did you feel that you were winning?*

A. Anyone who tries cases and who thinks during a case that he’s winning should probably turn his case over to someone else, because it’s never over until a jury comes back. The momentum of a trial can change on a dime and a good trial lawyer takes nothing for granted.

Q. *What was your reaction to the dollar amount?*

A. I thought it was very appropriate. How one values the loss of reputation is anybody’s guess, and it seemed to me, just at a very gut level, that the jury agreed that the loss of reputation is really worth something. By the same token, it would have been inappropriate if it was \$100 million, because I think that would have just looked like a runaway, angry jury and that’s not what this jury was.

Q. *What did you learn from the case?*

A. Well, the Herald has filed a notice of appeal, so the case is not over yet. But what I take away is a lot of inspiration from Judge Murphy. I was just the lawyer. He’s the one who put himself, his name and his reputation up for scrutiny.

Q. *Back in May you filed a defamation suit against the Herald on behalf of the chairman of the board of the Islamic Society of Boston, who claimed the paper unfairly harmed him by linking him to terrorism. What is the status of that case?*

A. There are actually three cases pending in which the Herald was the defendant involving this group. Two of the individual leaders of the Islamic Society of Boston have filed suits, and most recently the Islamic Society itself has filed suit alleging a variety of things including defamation. My hope and expectation is that all of those cases will eventually be consolidated.

Q. *So, just how many times have you sued the Herald?*

A. Twice that I’m aware of.

Q. *What about other media outlets?*

A. FOX Television is named in these other lawsuits as well [brought by the Islamic Society and two individual members of that group].

Q. *Do you plan to represent other judges who claim defamation by media outlets? Is this a niche for you?*

A. I don’t think of it that way. I have always thought of myself as a general trial lawyer, both on the criminal and civil side, and I think my practice currently reflects that. What I do see is more of a willingness of people from all quarters who are the subject matter of stories in the media who, before the Murphy case, may have felt there was simply nothing that could be done about [alleged defamation], willing to try to do things about it now.

Q. *Nonetheless, you have a reputation for successfully representing a judge in a case that everyone thought would be a loser. Is there a market out there for judges claiming harm by defamation?*

A. There isn’t to my knowledge. I should say, being that I’m talking to a newspaper which I have a lot of respect for, the overwhelming number of people in the media are interested in only getting it right. Occasionally there are reporters who lose their way. And on those infrequent occasions I do hope that people now feel empowered to have a voice — even those in public offices. We live in a world of instant global communication. If it’s a story that is at all sexy or controversial, it’s a story that makes it around the world over the Internet before you’re home for dinner. And then it goes on the “O’Reilly Factor.”

Q. *Yes, but how do you respond to critics who say that in a jurisdiction without elected judges, the media must be extra vigilant in scrutinizing their behavior?*

A. Judges must be scrutinized in the media and media outlets can make mistakes. But they cannot publish false information with awareness that it’s false. Criticism, scrutiny and disagreement are absolutely appropriate. But the intentional destruction of someone on a professional and personal basis through the circulation of false information is not appropriate.

MLW

— TONY WRIGHT

Questions or comments may be directed to the writer at tony.wright@lawyersweekly.com.

Howard Cooper on ...

Most memorable moment at law school: “Teaching [Lawyers Weekly Publisher] David Yas in his first year writing course.”

Highlight of your legal career: “About six years ago I was asked to represent an international adoption agency on several cases, which resulted in my wife and me adopting our youngest daughter.”

How you celebrate a big win: “Getting a good night’s sleep.”

How you deal with a big loss: “Same as above.”

Role models: “My father, who was a lawyer for over 40 years in Boston, and who is a role model in all aspects of life.”

One thing you would change about the practice of law: “Get rid of BlackBerries and e-mail and go back to the days when things were actually mailed to you without the expectation that you would reply in a nano-second.”

What you do to relax: “Playing sports, mostly hockey in a very over-the-hill league.”

All-time favorite film or book: “East of Eden,” “Love and Death.”

Name one thing about yourself that might surprise people: “I live on a horse farm in Concord devoted to doing psychotherapeutic work with children. It’s my wife’s work.”

What has kept you in the practice of law: “I cannot imagine a more challenging profession and a profession in which the challenges change on a daily basis.”

The biggest challenge facing Massachusetts courts: “Maintaining the independence of the judiciary. By that I mean having an environment in which judges can appropriately exercise their discretion without fear of attack from one political group or another.”

The most important legal decision of the last 25 years: “Goodridge. It showed courage and was groundbreaking for a large group of people whose rights have yet to be fully recognized.”