10-1983

Keeton v. Hustler Magazine, Inc.

Lewis F. Powell Jr.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

December 10, 1982

RE: Cases Held for No. 81-1493, Gillette v. Miner

No. 82-461 - Phillips Petroleum Co. v. Duckworth
No. 82-485 - Keeton v. Hustler Magazine

MEMORANDUM TO THE CONFERENCE:

Gillette v. Miner was dismissed for want of jurisdiction because of the absence of a final judgment on December 6. The following cases have been held for Gillette and will appear on the Conference list for January 7, 1983.

No. 82-461. I WILL VOTE TO DENY CERT. Like Gillette, this case involves the constitutionality of asserting jurisdiction over a nationwide class of plaintiffs. Although this case has proceeded further than Gillette in that the Kansas trial court has certified this class, there has been no final judgment on the merits of the plaintiff-class' case. Thus, this case is probably also premature. There were several votes to DIG Gillette because the due process claim was not ripe for review. The same problem exists here. Finally, the case is here on mandamus, and thus carries with it standard-of-review problems.

No. 82-485. I WILL VOTE TO DENY CERT. In this case, CA1 affirmed dismissal of a libel suit brought in New Hampshire by a non-resident plaintiff against a non-resident defendant. The court held that defendant's contacts with the forum were not sufficient in view of the fact that plaintiff was not herself a resident. Although a decision of Gillette might have had bearing on the appropriate disposition here, I do not think this case in itself merits review.

Regards,

Deny. Mike

PRELIMINARY MEMORANDUM

October 29, 1982 Conference
List 3, Sheet 3

No. 82-485

KEETON

v.

HUSTLER MAGAZINE, et al.

Cert to
CA1 (Coffin, Bownes, Breyer)

Federal/Civil

Timely

1. SUMMARY: Petr, who sought to sue resps for defamation, disputes CA1's holding that, under the facts of this case, the right of the forum state to exercise jurisdiction over the defendant is violative of due process.

Deny. This involves a proper application of legal principles to the unusual facts of this case. Mike

2. FACTS AND DECISIONS BELOW: Petr is a N.Y. resident who claims that she was libeled by photographs and comments that appeared in "Hustler Magazine" and "The Best of Hustler." Petr sued resps, an Ohio corporation and a California resident, in state court in Ohio, where the magazines are published. The Ohio court held that her libel claim was barred by the Ohio statute of limitations, and her invasion of privacy claim was barred by the N.Y. statute of limitations, which the Ohio court considered to be "migratory." Petr then brought suit in N.H., which, according to petr, is the only state where the statute of limitations has not run. The N.H. long-arm permits jurisdiction over non-residents to the fullest extent permitted under the U.S. Constitution, but the DC court dismissed the suit on the grounds that due process would not permit N.H. to exercise jurisdiction over resps in this case.

CA1 aff'd. It held that the basic legal standard imposed by the due process clause in cases like this is whether it is "reasonable" or "fair" to subject the resps to suit in this forum under these circumstances. See International Shoe Co. v. Washington, 326 U.S. 310 (1945); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980). Resp's contacts with N.H. were considered minimal by CA1 in that resps have absolutely no business connection with the state other than selling a relatively small proportion of its magazines in N.H. Although CA1 case-law makes it clear that resp's contacts would be sufficient if petr were a N.H. resident suing for libel occurring in N.H., petr has no contact with N.H., other than being a

corporate officer of one magazine ("Penthouse") and an editor of two other magazines ("Viva" and "Omni") that are circulated in N.H. N.H. has no interest in protecting a non-resident against primarily out of state activity, and petr has slept on her rights so as to preclude suit in other states where her injury was greater, including her home state (N.Y.). It would be unfair to expose a publisher to the risk of being sued for damages suffered everywhere as long as there is one state where the statute of limitations had not yet run. Although CA1 did not hold that an out-of-state plaintiff can never sue an out-of-state publisher for damage inflicted when his publication is sent into the forum state, "considering this case on the individual facts alleged in the complaint ... we decide here that the New Hampshire tail is too small to wag so large an out-of-state dog."

3. CONTENTIONS: Petr contends that CA1 erred in focusing on plaintiff's contact with the forum. The resp's contact is all that matters, and CA1 admitted that resp's contacts here would be sufficient but for the lack of petr's contact, and the resulting lack of N.H.'s interest in providing a forum for this suit. Rush v. Savchuk, 444 U.S. 320 (1980) establishes that the plaintiff's contacts are not decisive in determining whether due process rights are violated. The opinion below has far-reaching consequences for every litigant who seeks to bring an action in a jurisdiction other than his home state. CA1 unfairly characterized petr as sleeping on her rights so as to preclude a suit in her home state because the N.Y. long-arm

excepts a cause of action for defamation. Contrary to the DC's and CA1's determinations, N.H. has an interest in adjudicating this matter because the state has a demonstrated interest in deterring wrongful conduct that occurs in the state. In any event, resps' contacts to N.H. are substantial in light of the number of copies of "Hustler" circulated in the state.

Resp replies that in World-Wide Volkswagen, the Court held that implicit in the concept of whether exercise of jurisdiction over a defendant was "reasonable" were considerations relevant to the forum state's interest in adjudicating the dispute. CA1 correctly considered petr's lack of contacts, resps' minimal contacts, the fact that petr could have chosen a more appropriate forum if she had not slept on her rights, the policy of having an efficient resolution of alleged multi-state defamation, and the fact that the allegedly defamatory material was not aimed exclusively at N.H. CA1's determination was entirely fact-specific to this case, and it did not hold that an out-of-state plaintiff can never sue an out-of-state publisher. Rush rejected focus on the plaintiff's contacts, but only insofar as they were used exclusively to support jurisdiction over a defendant with no contacts to the forum state. Further, Rush emphasized that the variety of factors relating to the particular cause of action were to be considered. Although the N.Y. long-arm excepts defamation, petr had a cause of action for invasion of privacy to which the N.Y. long-arm would apply, and petr could have obtained substantially the same damages. Petr's figures concerning the number of issues

of the magazine circulated in N.H. were extrapolated from statistics supplied by resps, but the actual figures are not contained in the record, and petr's extrapolations are incorrect.

4. DISCUSSION: Although the Court in World-Wide Volkswagen stated that the forum state does not violate due process if it asserts personal jurisdiction over a corporation that delivers its goods into the stream of commerce with the expectation that those goods will find their way into the forum state, see 444 U.S. a7 297-98, the Court also noted that the "reasonableness" concept in exercise of jurisdiction is not limited exclusively to determination of the defendant's contact with the forum state. See id., at 292. Other factors that may be considered are the the forum's interest in adjudicating the matter, and the interstate judicial system's interest in obtaining the most efficient resolution of conbtroversies. See ibid. CA1 did not act improperly in considering a number of factors relating to N.H.'s interest, and in finding that a forum of minimal damage was inappropriate for suit in this case. Even if the court misjudged the intensity of N.H.'s interest, the issue does not require review by this Court. The "reasonableness" concept was intended to embody some degree of flexibility, and CA1 was careful to state that its decision was limited to the facts of this case.

I recommend denial.

There is a response.

October 19, 1982 Francione Op'n in pet'n

October 29, 1982

Court	*Voted on*....., *19*...		
Argued ....., *19*...	*Assigned* ....., *19*...	No.	82-485
Submitted ....., *19*...	*Announced* ....., *19*...		

KEETON

vs.

HUSTLER MAGAZINE

Jurisdictional issue ~~also~~ in Gillett 81-1493

Hold for Gillett 81-1493 (jurisdiction?)

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.	✓		✓										
Brennan, J.			✓										
White, J.	✓		✓										
Marshall, J.			✓										
Blackmun, J.	✓		✓										
Powell, J.	✓												
Rehnquist, J.	✓												
Stevens, J.	✓												
O'Connor, J.	✓												

January 7, 1983

Court	*Voted on*....., *19*...	No.	82-485
Argued ....., *19*...	*Assigned* ....., *19*...		
Submitted ....., *19*...	*Announced* ....., *19*...		

KEETON

vs.

HUSTLER MAGAZINE

Heretofore held for 81-1493, Gillette Co. v. Miner.

Related for WHR

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.													
Brennan, J.													
White, J.													
Marshall, J.													
Blackmun, J.													
Powell, J.		✓											
Rehnquist, J.													
Stevens, J.		✓											
O'Connor, J.													

January 14, 1983

Court .....
Argued ....., *19*...
Submitted ....., *19*...

Voted on....., *19*...
Assigned ....., *19*...
Announced ....., *19*...

No. 82-485

KEETON

vs.

HUSTLER MAGAZINE

Heretofore held for 81-1493, Gillette Co. v. Mider

Relist
on
WHR.

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.													
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White, J.													
Marshall, J.													
Blackmun, J.													
Powell, J.													
Rehnquist, J.													
Stevens, J.													
O'Connor, J.													

The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: JAN 18 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

KATHY KEETON *v.* HUSTLER MAGAZINE, INC., ET AL.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 82-485. Decided January ——, 1983

JUSTICE REHNQUIST, dissenting from the denial of certiorari.

Petitioner is the associate publisher and senior vice-president of several monthly magazines. She brought suit in the United States District Court for the District of New Hampshire claiming, among other things, that she had been libeled by respondent in several issues of a magazine that it published. The district court dismissed petitioner's complaint, on the grounds that the Due Process Clause did not permit the exercise of personal jurisdiction over respondent, and the United States Court of Appeals for the First Circuit affirmed. Because the decision below resolves—I believe incorrectly—important questions concerning the restrictions placed by the Due Process Clause on the power of states to assert personal jurisdiction over nonresidents, I dissent from the Court's denial of certiorari.[1]

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[1] As indicated below, the case presents issues related to those raised in *Gillette Co.* v. *Miner*, No. 81-1493. In *Gillette*, the Court granted certiorari to decide, among other things, whether "the Due Process Clause . . . prohibit[s] a state court in a class action from exercising jurisdiction over class members (1) who are not resident of the forum State, (2) who have no contacts whatever with the forum State, and (3) who have not affirmatively consented to such jurisdiction, where the purpose of such exercise is to adjudicate class members' claims which arise entirely in other States and in which the forum State has no significant interest." This case involves the related question whether a forum State's lack of contacts with the plaintiff and the bulk of the injuries suffered by the plaintiff would render it impermissible, under the Due Process Clause, for a state to assert jurisdiction

Still deny. This case is so unusual that it is not cert-worthy.

Mike

Petitioner does not reside in New Hampshire, and, so far as the record indicates, was connected with that State only because of the circulation there of a substantial number of copies of the magazines that she assisted in producing.[2] Copies of the publications bore petitioner's name in several places crediting her with editorial and other work. Respondent's contacts with New Hampshire were confined to sending some 10,000 copies of its publication to purchasers in that State each month. The Court of Appeals acknowledged that New Hampshire had adopted a "long arm" statute authorizing service of process on nonresident defendants whenever permitted by the Due Process Clause. Pet. App. at 13a; see *Leeper* v. *Leeper*, 319 A. 2d 626 (N.H. 1974). Moreover, the court conceded, as our precedents required, that respondent's connections with New Hampshire ordinarily would be sufficient to satisfy the Due Process Clause's requirement that a state's assertion of personal jurisdiction over a nonresident be predicated on "minimum contacts" between the party and the state. See *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U. S. 286 (1980); *International Shoe Corp.* v. *Washington*, 326 U. S. 310 (1945).

The court thought, however, that the *plaintiff's* minimal contacts with New Hampshire in this case barred the assertion of personal jurisdiction over the defendant. The court observed that New Hampshire had an unusually long limitations period for libel actions; indeed, New Hampshire was the only state where petitioner's suit would not have been time-barred when it was filed. Moreover, the court was of the view that the "single publication rule" ordinarily applicable in multistate libel cases would require it to award petitioner

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over the defendant.

[2] Although the record does not indicate how many copies of the magazines edited by petitioner were sent into New Hampshire each month, it does suggest that petitioner and respondent were similarly situated competitors. It is fair to infer that some 10,000 copies of the magazine entered New Hampshire each month.

Even accepting the Court of Appeals' conclusion that New Hampshire lacks sufficient interest in adjudicating petitioner's claims for damages from out-of-state injuries to permit it to exercise jurisdiction over those claims, the lower court improperly disposed of petitioner's complaint. Petitioner's complaint made claims for damages for all the injuries—both those occurring within New Hampshire and those occurring without—caused by respondent's alleged libel. As noted above, the Court of Appeals dismissed petitioner's entire complaint. Where the power of a State to award relief for wrongs actually committed on its territory is at issue, a more carefully tailored remedy than this is mandated.

It is beyond dispute, and the court below recognized, that New Hampshire has an overwhelming interest in redressing injuries that actually occur within the State. The New Hampshire Supreme Court has made this abundantly clear:

> "A state has an especial interest in exercising judicial jurisdiction over those who commit torts within its territory. This is because torts involve wrongful conduct which a state seeks to deter, and against which it attempts to afford protection, by providing that a tortfeasor shall be liable for damages which are the proximate result of his tort." *Leeper* v. *Leeper*, 114 N.H. 294, 298 (1974).

Moreover, as regards the injuries allegedly suffered within New Hampshire, no other State can provide as convenient or well-suited a forum as that State: a jury of New Hampshire citizens and a trial judge resident in that State are uniquely qualified to determine what harm, if any, respondent has done to petitioner's reputation in New Hampshire. In short, I believe it beyond question that, had petitioner sought only damages for injuries sustained within New Hampshire, the Due Process Clause would have posed no conceivable bar to her action.

Indeed, nothing in the Court of Appeals' reasoning throws the slightest doubt on the power of New Hampshire courts to adjudicate petitioner's claim for damages suffered within that

State. The Court of Appeals apparently believed that the application of New Hampshire's unusual statute of limitations to claims for out-of-state injury worked some unfairness on respondent—at least where out-of-state injuries were significantly larger than those suffered within the State. Even if this were the case, the court could have eliminated the "unfairness" that it perceived simply by limiting the scope of petitioner's claim for damages to those resulting from in-state injuries. Put differently, since the court's real concern seemed to be with the extraterritorial impact of the New Hampshire statute of limitations, it should have held that it was *that* statute, and not the State's long-arm statute, that could not be applied to out-of-state injuries in the circumstances of this case. Instead, the lower court concluded that the State lacked the power even to hear claims relating to torts committed within its boundaries. This result neither reflects the court's concerns with fairness nor New Hampshire's legitimate interest in providing redress for torts committed within its borders.

Second, I believe the court below erred in concluding at this stage of the case that New Hampshire's interests in adjudicating this controversy were insufficient to justify the "unfairness" of imposing nation-wide damages on respondent. The Court of Appeals seemed to suggest that New Hampshire's legitimate interests extended only to providing redress for in-state injuries to New Hampshire residents. Pet. App. at 19a. Plainly though, New Hampshire—which has provided petitioner with a cause of action and a forum for all her injuries—does not agree. See also *Leeper* v. *Leeper*, *supra*. The State's judgment, which deserves substantial deference, may well be found justified after a full trial. There is, of course, "no constitutional value in false statements of fact," *Gertz* v. *Robert Welch, Inc.*, 418 U. S. 323, 340 (1974). Such statements harm both the subject of the falsehood *and* the readers of the statement, and New Hampshire may rightly employ its libel laws to discourage the deception of its citizens with such statements. And, contrary to the suggestion of the courts below, New Hampshire's de-

sire to safeguard its populace from falsehoods is unaffected by the fact the immediate victim of a particular falsehood is or is not a resident of the State.

The Court of Appeals also indicated that the State's interest in asserting jurisdiction over respondent was considerably weakened because much of the harm done to the plaintiff occurred outside the state. This reasoning, of course, begins with the premise that petitioner's New Hampshire suit must necessarily involve adjudication of *all* her damage claims. Even accepting this assumption, see *supra*, I cannot agree with the analysis of the Court of Appeals. In almost every libel action brought somewhere other than the plaintiff's domicile the bulk of the damage to the plaintiff occurs outside the forum state. As noted above, in all such cases the forum state nonetheless possesses a powerful interest in redressing grievances within its borders. In addition, in cooperation with other states, New Hampshire through the "single publication" rule, undertakes to provide a forum for efficiently litigating issues concerning the libel in a unitary proceeding. The application of this rule serves substantial state interests in reducing the potentially serious drain of libel cases on judicial resources. Moreover, the "single publication" rule serves to protect defendants from harassment resulting from multiple suits, Restatement (Second) of Torts § 577A, comment f (1977). Because of these entirely legitimate state interests, the forum state's power to adjudicate claims for both in-state and out-of-state damages is unquestioned. Just as there is no constitutional objection to the assertion of jurisdiction by a State in typical multistate libel cases, I can see none in this case.

The fact that the statutes of limitations in other states may have run does not distinguish the situation from one in which other procedural and substantive rules of the forum state are more favorable to the plaintiff than the laws in other states. Such differences have never been thought to create the type of "unfairness" necessary to violate the Due Process Clause. Petitioner's successful search for a state with a lengthy statute of limitations is no different from the litigation strategy of

countless plaintiffs who seek a forum with favorable substantive or procedural rules or sympathetic local populations. Certainly respondent, who chose to enter the New Hampshire market, can be charged with knowledge of its laws—and no doubt would have claimed the benefit of them if it had a complaint against a subscriber, distributor, or other commercial partner. In short, I cannot accept the notion that New Hampshire's interests in adjudicating the present dispute are insufficient to satisfy the Due Process Clause.

Finally, this Court has never approved inquiry into the contacts of a plaintiff with a forum state in determining whether the Due Process Clause permits a State to assert personal jurisdiction over a nonresident defendant. On the contrary, we have upheld the assertion of jurisdiction where such contacts were entirely lacking. In *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U. S. 437 (1952), none of the parties were residents of the forum state; indeed, neither plaintiff nor the subject-matter of his action had any relation to that state. Likewise, the defendant's activities in the forum state were apparently confined to its president's storage of company files in his home and his correspondence relating to the "necessarily limited wartime activities of the company," see *id.*, at 447–448. These bare minimum contacts of the defendant were held sufficient to justify personal jurisdiction over the company. Respondent's contacts with New Hampshire were more extensive than those of the defendant in *Perkins*. Likewise, petitioner's contacts with the State, although not substantial, were more significant than those of the plaintiff in *Perkins*. In short, I cannot square the decision below with our holding in *Perkins*. Moreover, I would think that, if anything the plaintiff's lack of contacts with a forum state would reduce the danger of unfairness because of local prejudice and to equalize the burden placed upon the defendant of litigating in an unfamiliar and distant forum. Accordingly, I dissent.

The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: _____

Recirculated: JAN 20 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

KATHY KEETON *v.* HUSTLER MAGAZINE, INC., ET AL.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 82-485. Decided January ——, 1983

JUSTICE REHNQUIST, with whom JUSTICE O'CONNOR joins, dissenting from the denial of certiorari.

Petitioner is the associate publisher and senior vice-president of several monthly magazines. She brought suit in the United States District Court for the District of New Hampshire claiming, among other things, that she had been libeled by respondent in several issues of a magazine that it published. The district court dismissed petitioner's complaint, on the grounds that the Due Process Clause did not permit the exercise of personal jurisdiction over respondent, and the United States Court of Appeals for the First Circuit affirmed. Because the decision below resolves—I believe incorrectly—important questions concerning the restrictions placed by the Due Process Clause on the power of states to assert personal jurisdiction over nonresidents, I dissent from the Court's denial of certiorari.[1]

[1] As indicated below, the case presents issues related to those raised in *Gillette Co.* v. *Miner*, No. 81-1493. In *Gillette*, the Court granted certiorari to decide, among other things, whether "the Due Process Clause . . . prohibit[s] a state court in a class action from exercising jurisdiction over class members (1) who are not resident of the forum State, (2) who have no contacts whatever with the forum State, and (3) who have not affirmatively consented to such jurisdiction, where the purpose of such exercise is to adjudicate class members' claims which arise entirely in other States and in which the forum State has no significant interest." This case involves the related question whether a forum State's lack of contacts with the plaintiff and the bulk of the injuries suffered by the plaintiff would render it impermissible, under the Due Process Clause, for a state to assert jurisdiction

Petitioner does not reside in New Hampshire, and, so far as the record indicates, was connected with that State only because of the circulation there of a substantial number of copies of the magazines that she assisted in producing.[2] Copies of the publications bore petitioner's name in several places crediting her with editorial and other work. Respondent's contacts with New Hampshire were confined to sending some 10,000 copies of its publication to purchasers in that State each month. The Court of Appeals acknowledged that New Hampshire had adopted a "long arm" statute authorizing service of process on nonresident defendants whenever permitted by the Due Process Clause. Pet. App. at 13a; see *Leeper* v. *Leeper*, 319 A. 2d 626 (N.H. 1974). Moreover, the court conceded, as our precedents required, that respondent's connections with New Hampshire ordinarily would be sufficient to satisfy the Due Process Clause's requirement that a state's assertion of personal jurisdiction over a nonresident be predicated on "minimum contacts" between the party and the state. See *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U. S. 286 (1980); *International Shoe Corp.* v. *Washington*, 326 U. S. 310 (1945).

The court thought, however, that the *plaintiff's* minimal contacts with New Hampshire in this case barred the assertion of personal jurisdiction over the defendant. The court observed that New Hampshire had an unusually long limitations period for libel actions; indeed, New Hampshire was the only state where petitioner's suit would not have been time-barred when it was filed. Moreover, the court was of the view that the "single publication rule" ordinarily applicable in multistate libel cases would require it to award petitioner

over the defendant.

[2] Although the record does not indicate how many copies of the magazines edited by petitioner were sent into New Hampshire each month, it does suggest that petitioner and respondent were similarly situated competitors. It is fair to infer that some 10,000 copies of the magazine entered New Hampshire each month.

"damages caused in *all* states" should she prevail in her suit. Pet. App. at 17a (emphasis in original).[3] In addition, it emphasized the fact that the bulk of petitioner's alleged injuries had been sustained outside New Hampshire. The Court of Appeals concluded that, under these circumstances, it would be "unfair" to assert jurisdiction over respondent. *Id.*, at 18a. The apparent source of the perceived unfairness lay in what the court saw as New Hampshire's minimal interest in applying its unusual statute of limitations to, or awarding damages for, injuries occurring outside the state, particularly since petitioner suffered a relatively small proportion of her total claimed injury within the State. The Court of Appeals summarized its concerns with the statement that "the New Hampshire tail is too small to wag so large an out-of-state dog." Pet. App. at 19a. The court affirmed the dismissal of petitioner's complaint.

I believe the analysis of the Court of Appeals is faulty in three respects. First, the court adopts a remedy wholly unsuited to what it identifies as the unconstitutional aspects of assertion of personal jurisdiction over respondent. Second, the court misapprehends the character and weight of New Hampshire's interests in providing a forum for libel suits. Finally, and more broadly, I believe that there is substantial question whether our precedents permit the consideration of the contacts of a *plaintiff* with the forum state in determining whether personal jurisdiction may be asserted over a defendant consistent with the Due Process Clause.

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[3] The "single publication rule" has been summarized as follows:

As to any single publication, (a) only one one action for damages can be maintained; (b) all damages suffered in all jurisdictions can be recovered in the one action; and (c) a judgment for or against the plaintiff upon the merits of any action for damages bars any other action for damages between the same parties in all jurisdictions." Restatement (Second) of Torts § 577A(4) (1977).

The rule is "to be administered to accomplish its purpose of avoiding multiplicity of suits, as well as harassment of defendants and possible hardship upon the plaintiff himself." Restatement (Second) of Torts § 577A, comment on subsection (3) (1977).

Even accepting the Court of Appeals' conclusion that New Hampshire lacks sufficient interest in adjudicating petitioner's claims for damages from out-of-state injuries to permit it to exercise jurisdiction over those claims, the lower court improperly disposed of petitioner's complaint. Petitioner's complaint made claims for damages for all the injuries—both those occurring within New Hampshire and those occurring without—caused by respondent's alleged libel. As noted above, the Court of Appeals dismissed petitioner's entire complaint. Where the power of a State to award relief for wrongs actually committed on its territory is at issue, a more carefully tailored remedy than this is mandated.

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Moreover, as regards the injuries allegedly suffered within New Hampshire, no other State can provide as convenient or well-suited a forum as that State: a jury of New Hampshire citizens and a trial judge resident in that State are uniquely qualified to determine what harm, if any, respondent has done to petitioner's reputation in New Hampshire. In short, I believe it beyond question that, had petitioner sought only damages for injuries sustained within New Hampshire, the Due Process Clause would have posed no conceivable bar to her action.

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Second, I believe the court below erred in concluding at this stage of the case that New Hampshire's interests in adjudicating this controversy were insufficient to justify the "unfairness" of imposing nation-wide damages on respondent. The Court of Appeals seemed to suggest that New Hampshire's legitimate interests extended only to providing redress for in-state injuries to New Hampshire residents. Pet. App. at 19a. Plainly though, New Hampshire—which has provided petitioner with a cause of action and a forum for all her injuries—does not agree. See also *Leeper* v. *Leeper*, *supra*. The State's judgment, which deserves substantial deference, may well be found justified after a full trial. There is, of course, "no constitutional value in false statements of fact," *Gertz* v. *Robert Welch, Inc.*, 418 U. S. 323, 340 (1974). Such statements harm both the subject of the falsehood *and* the readers of the statement, and New Hampshire may rightly employ its libel laws to discourage the deception of its citizens with such statements. And, contrary to the suggestion of the courts below, New Hampshire's de-

sire to safeguard its populace from falsehoods is unaffected by the fact the immediate victim of a particular falsehood is or is not a resident of the State.

The Court of Appeals also indicated that the State's interest in asserting jurisdiction over respondent was considerably weakened because much of the harm done to the plaintiff occurred outside the state. This reasoning, of course, begins with the premise that petitioner's New Hampshire suit must necessarily involve adjudication of *all* her damage claims. Even accepting this assumption, see *supra*, I cannot agree with the analysis of the Court of Appeals. In almost every libel action brought somewhere other than the plaintiff's domicile the bulk of the damage to the plaintiff occurs outside the forum state. As noted above, in all such cases the forum state nonetheless possesses a powerful interest in redressing grievances within its borders. In addition, in cooperation with other states, New Hampshire through the "single publication" rule, undertakes to provide a forum for efficiently litigating issues concerning the libel in a unitary proceeding. The application of this rule serves substantial state interests in reducing the potentially serious drain of libel cases on judicial resources. Moreover, the "single publication" rule serves to protect defendants from harassment resulting from multiple suits, Restatement (Second) of Torts § 577A, comment f (1977). Because of these entirely legitimate state interests, the forum state's power to adjudicate claims for both in-state and out-of-state damages is unquestioned. Just as there is no constitutional objection to the assertion of jurisdiction by a State in typical multistate libel cases, I can see none in this case.

The fact that the statutes of limitations in other states may have run does not distinguish the situation from one in which other procedural and substantive rules of the forum state are more favorable to the plaintiff than the laws in other states. Such differences have never been thought to create the type of "unfairness" necessary to violate the Due Process Clause. Petitioner's successful search for a state with a lengthy statute of limitations is no different from the litigation strategy of

countless plaintiffs who seek a forum with favorable substantive or procedural rules or sympathetic local populations. Certainly respondent, who chose to enter the New Hampshire market, can be charged with knowledge of its laws—and no doubt would have claimed the benefit of them if it had a complaint against a subscriber, distributor, or other commercial partner. In short, I cannot accept the notion that New Hampshire's interests in adjudicating the present dispute are insufficient to satisfy the Due Process Clause.

Finally, this Court has never approved inquiry into the contacts of a plaintiff with a forum state in determining whether the Due Process Clause permits a State to assert personal jurisdiction over a nonresident defendant. On the contrary, we have upheld the assertion of jurisdiction where such contacts were entirely lacking. In *Perkins* v. *Benguet Consolidated Mining Co.*, 342 U. S. 437 (1952), none of the parties were residents of the forum state; indeed, neither plaintiff nor the subject-matter of his action had any relation to that state. Likewise, the defendant's activities in the forum state were apparently confined to its president's storage of company files in his home and his correspondence relating to the "necessarily limited wartime activities of the company," see *id.*, at 447–448. These bare minimum contacts of the defendant were held sufficient to justify personal jurisdiction over the company. Respondent's contacts with New Hampshire were more extensive than those of the defendant in *Perkins*. Likewise, petitioner's contacts with the State, although not substantial, were more significant than those of the plaintiff in *Perkins*. In short, I cannot square the decision below with our holding in *Perkins*. Moreover, I would think that, if anything, the plaintiff's lack of contacts with a forum state would reduce the danger of unfairness because of local prejudice and equalize the burden placed upon the defendant of litigating in an unfamiliar and distant forum. Accordingly, I dissent.

We have never been concerned about "contacts" of a Π.

good point.

January 21, 1983

Court .....

Argued ....., 19...

Submitted ....., 19...

Voted on ....., 19...

Assigned ....., 19...

Announced ....., 19...

No. 82-485

KEETON

vs.

HUSTLER MAGAZI

WHR's dissent is persuasive

Heretofore held for 81-1493, Gillette v. Miner.

Order List

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.		✓											
Brennan, J.			✓										
White, J.		✓											
Marshall, J.			✓										
Blackmun, J.			✓										
Powell, J.			✓										
Rehnquist, J.		✓											
Stevens, J.		✓											
O'Connor, J.		✓											
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HUSTLER

Fld

LARRY FLYNT
Chairman of the Board

SEP 19 1983

September 14, 1983

Dear Justice:

Considering you are a public servant, who no doubt wants to stay well informed on all social issues and trends, I have taken the liberty of adding you to HUSTLER's complimentary subscription list. You now will receive on a regular, monthly basis the world's greatest porn magazine.

HUSTLER will keep you up-to-date in the latest cooze news, sex reviews, humor, and political satire, the finest in fiction and the most in-depth, investigative articles published anywhere. I am as committed to my pornography as the Pope is to his celibacy, so the quality of HUSTLER will never be compromised.

I am sure that your constituents, who appreciate good pornography, will be happy to know that you have a subscription to their favorite magazine.

Sincerely,

Larry Flynt

Larry C. Flynt
Editor and Publisher

LCF:mlr

Enclosure - 1

This letter - together with a c c of the magazine - was sent to each Justice. The magazine should be banned from the mails. But we should simply ignore Flynt. I will not reply to this letter. Z Fp

2029 CENTURY PARK E. / LOS ANGELES, CALIFORNIA 90067 (213) 556-9200

LARRY FLYNT FOR PRESIDENT COMMITTEE

November 3, 1983

The Honorable Justice Louis F. Powell, Jr.
Office of the Clerk
Supreme Court of the United States
Washington, D.C. 20543

Dear Justice Powell:

This is to advise you that due to unforeseen circumstances I have fired my attorney of record in Kathy Keeton v. Hustler Magazine, Inc., et al., No. 82-485, which has been scheduled for oral argument on November 8, 1983.

I regret to inform you that because of the short amount of time remaining between now and November 8, 1983, I will not be able to obtain another attorney who could familiarize himself with this case in that time. However, since I am one of the defendants and the owner of the other defendants in this case, I am thoroughly familiar with every aspect of this case, as well as the briefs which have been filed (including the amici briefs). These briefs represent the cornerstone of the argument that I will make on Tuesday, November 8, 1983.

I trust that for the sake of justice and the preservation of the judicial system you will permit me to argue this case in the spirit of the grand American tradition by allowing me to retain the counsel of my choice--namely me.

Very truly yours,

Larry C. Flynt

LCF/sb

LARRY FLYNT FOR PRESIDENT COMMITTEE
364 SAINT CLOUD ROAD, BEL AIR, CALIFORNIA 90024 (213) 476-7514

Revised 11/07
Extremely well reasoned.

jen 11/06/83

BENCH MEMORANDUM

No. 82-485 Keeton v. Hustler Magazine Inc.

No. 82-1401 Calder v. Jones

To be Argued November 8, 1983

Joseph Neuhaus November 6, 1983

Questions Presented

1. To what extent does New Hampshire have personal jurisdiction over a nonresident publisher in a suit for libel printed in New Hampshire, where the publication has substantial circulation in the state but the plaintiff lives elsewhere (Keeton)?

2. To what extent does California have personal jurisdiction over a nonresident reporter and editor in a suit for libel printed and widely circulated in California, where some newsgathering activities took place in that state and the plaintiff lives there (Calder)?

Summary of Facts & Decisions Below

1. Keeton v. Hustler Magazine Inc. In 1975, Hustler Magazine printed a nude centerfold of a woman purportedly named Kathy Keeton who was purportedly employed by a competing men's magazine. The accompanying text suggested that the woman pictured was sexually promiscuous. Plaintiff, who at the time worked for Penthouse Magazine, alleges that the pictures and text falsely injured her reputation. In 1976, Hustler published a cartoon that plaintiff says falsely suggested that she had venereal disease.

Plaintiff's libel action in Ohio, the residence of Hustler Magazine Inc., was eventually dismissed under the Ohio statute of limitations. Plaintiff then brought suit in federal court in New Hampshire, the only state in which the statute of limitations had not yet run. The defendants are Hustler Magazine Inc.; its Ohio holding company; and the magazine's publisher, editor, and owner, Larry Flynt, a resident of California. Their only contact with the state is that they circulate about 10,000 to 15,000 copies of their magazine in the state each month through an independent distributor. The DC (Caffrey, J.) dismissed the action for lack of personal jurisdiction over the three defendants. (The New Hampshire personal jurisdiction statute has been interpreted to be coextensive with the Constitution.) The DC acknowledged that the defendants had more than random, isolated, or transitory contacts with New Hampshire because of the magazine's circulation in the state. But it read this Court's decision in World Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1979), to require an

examination of the forum state's interest in the litigation. The court found that since the plaintiff was not a resident of New Hampshire and had no connection with it, the state had only a "tenuous, generalized interest" in the litigation. Petn. App. 7a.

CA1 (Breyer, J.) affirmed. Like the DC, it relied on World Wide Volkswagen and determined that New Hampshire had no "special interest" in the litigation. Id., at 18a. It found that the defendants' circulation of their magazine in the state would constitute sufficient contacts to support jurisdiction if the suit were by a New Hampshire resident for libel occurring in the state. But because most of the damages from the libel in this case occurred out of state, and because New Hampshire's "single publication rule" would require that all the damages be litigated in a single action, asserting personal jurisdiction would be unfair. As the court put it, "[T]he New Hampshire tail is too small to wag so large an out-of-state dog." Id., at 19a.

CA1 no special state interest

2. Calder v. Jones. In October 1979, the National Enquirer published an article stating that plaintiff, the actress Shirley Jones, had become "a crying drunk" as a result of her husband's bizarre behavior, which was said to include cheating associates and philandering. The Enquirer's president, who had responsibility for the entire editorial process at the paper, refused to print a retraction. Jones sued the Enquirer, the reporter (South), and the editor (Calder) in California state court. The defendants' contacts with the state were that the Enquirer has a circulation of about 600,000 in California, and

that South makes regular one- to two-week newsgathering trips to California. Whether the story at issue arose out of one of those trips is the subject of dispute (the courts below so found), but it is clear that South made numerous phone calls into the state with regard to the article.

The Enquirer itself admitted jurisdiction. The TC (Chernow, J.) dismissed the action against South and Calder for lack of personal jurisdiction. The California long-arm statute explicitly extends jurisdiction to the limits of the Constitution. The court held that First Amendment considerations should be considered part of personal jurisdiction analysis, and that the practical effect of holding reporters and editors liable because of their paper's circulation would be to chill reporting. The court distinguished jurisdiction over a publisher, who is the one who balances risk and reward in establishing the character of his publication and makes substantial profit from publishing stories of widespread interest.

The Court of Appeal (Lillie, J.) reversed. It held that the First Amendment offers no special protection from personal jurisdiction to libel defendants. Under what it considered to be ordinary minimum-contacts analysis, it found jurisdiction over both defendants on the basis of their sending the article into California with, under the allegations of the complaint, an intent to cause injury in the state. In any case, it found that South's newsgathering activities in the state were a sufficient basis for jurisdiction over him. Having found that the requisite minimum contacts were present, the court then balanced the inconvenience

to defendant against the interest of the plaintiff and of the forum state, and determined that an exercise of jurisdiction would be appropriate.

Discussion

1. Summary. In the area of "products liability", the lower courts, and this Court in dictum, have adopted the concept that personal jurisdiction may be based on the placing of merchandise into the "stream of commerce" with the expectation or purpose that it will end up in the forum state ("the effects doctrine"). The basic question in both of these cases is whether that doctrine should be extended to the area of libel. Because media defendants are no different from others in their ability to structure their primary conduct based on where they circulate their publications, I conclude that the doctrine should apply as well in the libel area. The lower courts are in agreement. Similarly, largely because the weight of lower court authority rejects the idea that the First Amendment affects personal-jurisdiction analysis, I also conclude that the First Amendment should not alter the analysis. Were these suits brought by residents of the forum state against "publishers" of libel purposefully circulated in that state, therefore, I would not hesitate to find sufficient contacts to justify jurisdiction on the basis of the substantial in-state circulation of each of the publications.

basic Q

clear case

Each of these cases presents a problem beyond this paradigm case, however. In Keeton, the plaintiff is not a resident of the forum. I conclude that this does not make a difference, since

but there are differences in these two cases

Keeton different: P a non-resident
Calder " : Ds are an affiliate & reporter, neither is the publisher

under the general rule of libel injury may occur wherever the publication is circulated. New Hampshire courts ought to have the power to remedy such injury; in holding otherwise, CA1 confused choice-of-law limitations with limitations on the assertion of personal jurisdiction. In Calder, the question is whether the reach of the effects doctrine should be different when applied to individual reporters and editors. I conclude that the "fiduciary shield" doctrine only protects corporate agents from being held on the basis of their corporation's contacts with the forum; Calder and South share the Enquirer's contacts with California in that they share the purpose to communicate to California readers. Both Calder and South are thus subject to personal jurisdiction in California because they placed an article into the stream of commerce with the purpose that it be read and have an effect in that state.

Finally, I conclude that Calder is a proper appeal.

2. The "Effects" Doctrine. World Wide Volkswagen, supra, establishes that the fundamental interest protected by the constitutional limits on personal jurisdiction is that a defendant should be able to "reasonably anticipate being haled into court" in a given jurisdiction. 444 U.S., at 297. "The Due Process Clause, by ensuring the 'orderly administration of the laws,' gives a degree of predictability to the legal system that allows potential defendants to structure their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." Ibid. (citation omitted). As a result, at least in some cases, it is not necessary that the

analogy to "products liability"

defendant ever personally do anything within the boundaries of the forum state. Rather, personal jurisdiction can be based on conduct that takes place out of state that has expected or intended effects within the state. In the area of products liability actions, this doctrine is generally accepted. Thus, in Volkswagen the Court flatly stated that "[t]he forum State does not exceed its powers under the Due Process Clause if it asserts personal jurisdiction over a corporation that delivers its products into the "stream of commerce" with the expectation that they will be purchased by consumers in the forum State." Id., at 297-298. The lower courts agree. See, e.g., Gray v. American Radiator & Standard Sanitary Corp., 22 Ill. 2d 432, 176 N.E.2d 761 (1961); Buckeye Boiler Co. v. Superior Court of Los Angeles County, 80 Cal. Rptr. 113, 458 P.2d 57 (1969); see also Restatement (Second) of Conflict of Laws §37 (1971) (not limited to products liability cases).

"World-Wide"

The only dispute is over the degree of intent or expectation that an action will have an effect in the forum state that is required. Volkswagen made clear that mere foreseeability of an effect is insufficient. There, the likelihood that one of a New York automobile distributor's cars would end up in Oklahoma was not enough to predicate jurisdiction. Only if the distributor of autos made efforts "to serve, directly or indirectly, the market for its products in [Oklahoma]" would it be reasonable to subject him to suit. 444 U.S., at 297. Contra Buckeye Boiler, supra, at 66 (case can be read to sanction jurisdiction based on mere

Should "products liability" doctrine be extended to libel?

foreseeability of resale of pressure tank to California customer).

The rationale of the effects doctrine is that a manufacturer or distributor should not be able to escape liability in a state by using agents or middlemen to deliver its products. Gray, supra, at 766. More important, the company has elected to serve the state's market; it has purposefully availed itself of the benefits of the state's laws, and should be held to the burdens as well. Id., at 765, 766. If it wishes to avoid suit, it can structure its primary conduct to do so.

The primary question underlying both of the cases at bar is whether this doctrine should be extended to defamation actions. That is, should a nonresident defendant be subject to personal jurisdiction in a state if he inserts a libelous article into "the stream of commerce" with the intention that it be read in that state? Generally, there is nothing about defamation actions that would distinguish them from other tort suits for this purpose. One still wants to ensure that an author or publisher cannot avoid liability in the state merely by circulating his scurrilous writing through middlemen. The author or publisher still obtains the benefit of having his writing read in the state. Most important, he still can structure his primary conduct to avoid jurisdiction simply by ensuring that the article or magazine is not sold to distributors who will circulate it in the forum state. (I suppose unstructured circulation — i.e. not planned or organized — would not suffice. It would not have been placed into the "stream of commerce")

Judicial opinion appears to be in agreement. The Volkswagen Court addressed and rejected the contention again advanced here that the effects doctrine is limited to dangerous products:

> [T]oday, under the regime of International Shoe, we see no difference for jurisdictional purposes between an automobile and any other chattel. The "dangerous instrumentality" concept apparently was never used to support personal jurisdiction; and to the extent it has relevance today it bears not on jurisdiction but on the possible desirability of imposing substantive principles of tort law such as strict liability.

Moreover, the CAs appear to be unanimous, or nearly so, that at least in some cases a libel defendant can be subject to personal jurisdiction primarily or solely because the effects occur in the forum state. See, e.g., Church of Scientology v. Adams, 584 F.2d 893, 897 (CA9 1978) ("In an action based on tort, [including defamation,] the inquiry necessarily extends beyond whether there has been submission to the sovereignty of the forum by some consensual act, and it requires an examination of the expected consequences of the defendant's conduct."); Anselmi v. Denver Post Inc., 552 F.2d 316, 325 (CA10) ("when the story was written and published it was foreseeable that it would be given substantial attention within the State of Wyoming"), cert. denied, 432 U.S. 911 (1977); Curtis Publishing Co. v. Golino, 383 F.2d 586, 594 (CA5 1967) ("Curtis can reasonably anticipate that the sale, distribution, and promotion of its publications might entail libel actions ....").

The fact that the "effects doctrine" is applied to media need not mean that a publication will be subject to suit wherever a single copy happens to be carried. As Volkswagen makes clear, a

must "purposefully serve the market"

defendant will only be held liable under an effects test if he purposefully serves the market in the forum state. Thus, the fact that a newspaper may foreseeably end up in the forum state is not sufficient. Even if the newspaper has a handful of paid subscribers in the forum state, it may not be subject to jurisdiction under Volkswagen. See 444 U.S., at 297 ("if the sale of a product of a manufacturer or distributor such as Audi or Volkswagen is not simply an isolated occurrence, but arises from ... efforts ... to serve .. the market," jurisdiction will be proper). Thus, a publication will only be deemed to be purposefully availing itself of the benefits of the forum state if it actively seeks out business in that state, or otherwise develops a substantial readership there--if it attempts to serve the market there in more than an isolated fashion. Ultimately, the courts may develop a threshold number or proportion of copies that must be distributed in a forum before jurisdiction will lie. I have little doubt that both of these national publications would meet that test in every state of the Union.

The courts below did not reject the application of the effects doctrine to defamation actions as a general matter. Rather, the TC in Calder and the defendants in both cases suggest that the First Amendment should alter the analysis of personal jurisdiction.

3. The First Amendment. The weight of lower-court authority appears to reject a role for First Amendment considerations in personal-jurisdiction analysis. It appears that among the CAs, only CA5 and, by derivation, CA11, provide any explicit

first amend. should not change "effects" rule's application

consideration of First Amendment values. Primarily for this reason, I do not think that Amendment should provide a "thumb on the scales" of minimum contacts analysis.

At the outset, however, it should be noted that even as applied in CA5, First Amendment considerations might not help any of the defendants in these cases. As one commentator has noted, CA5's First Amendment considerations merely have ensured that local media are not subject to personal jurisdiction outside of their primary markets. National publications are still subject to jurisdiction largely on the basis of their circulation in the state. Scott, Jurisdiction Over The Press: A Survey and Analysis, 32 Fed'l Comm. L.J. 19, 27-29 (1980). Compare Curtis Publishing Co. v. Golino, 383 F.2d 586, 590-591 (CA5 1967) (jurisdiction over the Saturday Evening Post), with New York Times v. Connor, 365 F.2d 567 (CA5 1966) (no jurisdiction over the Times), and Cox Enterprises, Inc. v. Holt, 678 F.2d 936, 939 (CA11 1982) (circulation of Atlanta newspaper in Alabama is "incidental and not a part of the paper's primary circulation area"; no jurisdiction). As noted, the same result may be reached under analysis of the "purposefully availing" requirement after Volkswagen. Both publications at issue in these cases serve national markets.

As for Calder v. Jones, there is nothing in these CA5 and CA11 cases that suggests that First Amendment considerations would require greater contacts to assert jurisdiction over individual defendants like Calder and South than over publishing companies. Moreover, as Jones points out, the cases in other jurisdictions cited for the proposition that First Amendment consider-

ations may differentiate between individuals and the publishing company actually involve narrower long-arm statutes that provide some basis for the distinction. E.g., Bradlee Mgmt. Servs. Inc. v. Cassells, 249 Ga. 614, 292 S.E.2d 717 (1982) (statute required that tortfeasor derive substantial revenue from services rendered in Georgia), cited in Brief for Appellants in Calder v. Jones, at 39. Finally, even CA5 has taken pains recently to point out that its early cases "indicat[e] not so much a rule as [they] expres[s] a cautionary note," suggesting that that court too is backing away from a vigorous role for the First Amendment. Edwards v. AP, 512 F.2d 258, 266 (CA5 1975) (finding jurisdiction over AP).

Even if case law does not support a First Amendment analysis that would prevent an otherwise permissible assertion of jurisdiction in these cases, such a role for that Amendment can be imagined, particularly in the case of Calder and South. Nevertheless, I believe an explicit role for the First Amendment in personal-jurisdiction analysis would be unwise. Theoretically, the effect of inserting the First Amendment into personal jurisdiction can be precisely identified: First Amendment analysis would add a concern with whether assertions of jurisdiction would chill certain favored conduct, to wit, speech; the standard personal-jurisdiction inquiry accepts the possibility that a potential defendant might structure its primary conduct so as to avoid activity in the forum state. Practically, however, considering the First Amendment would insert further ambiguity into an already cloudy procedure. Should reporters get more benefit from

Yes But

the First Amendment than editors, since the former are more likely to be chilled? What about free-lancers? Should a small publication receive greater protection than a large one? Yet, if one thing in litigation should be simple to ascertain, it is the question of jurisdiction. Defendants should be able to tell with reasonable certainty when they can safely default. Courts should not be required to engage in mini-trials to ascertain whether they can hear a case. Thus, the Court should be reluctant to add any new layer of analysis to the determination of personal jurisdiction.

Whether the First Amendment should influence personal jurisdiction is, however, fundamentally a question of policy. To what extent is it important to protect media from the process costs of answering complaints in far-off places? Or, as Judge Friendly put it, does one think that "plaintiffs are much more given to making unjust claims than [media] defendants are to not paying just ones"? Buckley v. New York Post, 373 F.2d 175, 181 (CA2 1967). The answer Friendly gave is persuasive:

> Newspapers, magazines, and broadcasting companies are businesses conducted for profit and often make very large ones. Like other enterprises that inflict damage in the course of performing a service highly useful to the public, such as providers of food or shelter or manufacturers of drugs designed to ease or prolong life, they must pay the freight; and injured persons should not be relegated to forums so distant as to make collection of their claims difficult or impossible unless strong policy considerations demand.

Id., at 182. Friendly concluded that the existing special protections for libel defendants, e.g., New York Times Co. v. Sullivan, 376 U.S. 254 (1964), were sufficient. He added that First

Friendly

Amendment considerations might give special dimension to the doctrine of forum non conveniens, but that it should not add ambiguity to the determination of jurisdiction. The advantage of this approach, he said, is that it would focus attention on the facts allegedly creating hardship in each case, without mandating a uniform rule regardless of whether the forum is 25 or 2500 miles from point of publication. 373 F.2d, at 183.

The weight of lower-court authority, as well as commentary, agrees with Judge Friendly that the First Amendment should not influence personal jurisdiction analysis. See, e.g., Church of Scientology, supra, at 899 ("We observe that first amendment protections are better developed in the context of substantive defenses on the merits rather than at the initial jurisdictional stage of a defamation proceeding."); Anselmi, supra, at 324; Scott, supra, at 33 ("The incorporation of First Amendment considerations into jurisdictional analyses has been widely criticized by both the judiciary and law review commentators."). Particularly since this Court has required a high threshold of intent in order to be deemed to be "purposefully availing" oneself of the benefits of doing business in the state, see Volkswagen, I agree that the media are sufficiently protected by the substantive protections extended in Sullivan and Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974).

yes

media is well protected

4. Keeton v. Hustler. Under these rules, the defendants in Keeton clearly were subject to personal jurisdiction in New Hampshire. They inserted into the stream of commerce an article that they intended to be read in New Hampshire. As noted,

yes

the circulation of the magazine is sufficient to find that they were purposefully conducting activities in the state. Two objections have been raised. First, it is said that the defendants could not have foreseen that the article, if libelous, would have an injurious effect in New Hampshire, because the subject of the article lives in New York. Second, CA1 found that even if there were an injury in New Hampshire the fact that New Hampshire would attempt to apply its statute of limitations to all damages arising out of the publication barred jurisdiction.

The first objection goes essentially to the substantive law of libel. Libel does not concern itself with where a plaintiff is known, but with the circulation of false and injurious information about the plaintiff anywhere. Reputation is not a necessary element of the cause of action. See Restatement (Second) of Torts §558 (1977); see also Christopher v. American News Co., 171 F.2d 275, 277 (CA7 1948) ("The plaintiff's fame or anonymity in the state of the forum is material only on the determination of damages or at best as an aid in ascertaining the effect of libelous words on the mind of an ordinary reader."). A defendant may introduce lack of reputation to show that the plaintiff's damages are mitigated, but, at least in theory, even the absence of any in-state reputation whatsoever will not prevent some damage from occurring in the state. A person with no reputation may be said to have suffered damage to the extent that he now has a bad one. CA1 recognized that injury may occur even in the absence of a pre-existing reputation, because the outsiders "may someday be hurt if they turn up in New Hampshire." Petn. App. in

Keeton v. Hustler at 15a. In any case, there is some reason to believe that plaintiff is known by at least some readers of men's magazines in New Hampshire because her name appears in the masthead of Penthouse magazine, and because she is closely associated with the rather well-known publisher of that magazine, Bob Guccione. Thus, the substantive law of libel would find that Keeton sustained an injury wherever Hustler is published.[1] Defendants can be held to know that law, and thus can be said to know that their publication of a libel would have an injurious effect wherever their magazine was circulated.

No one disputes that New Hampshire has jurisdiction to remedy injury occurring within the state. What CA1 rested its holding on was that under New Hampshire's single-publication rule, all the damages arising out of the defamation at issue here would be adjudicated in a single action, and New Hampshire would probably apply its long statute of limitations to that suit. Thus, New Hampshire would keep alive an action for injury sustained out of state far longer than the states in which the injury occurred. In light of New Hampshire's minimal interest in that out-of-state injury, this was deemed unfair.

The problem with CA1's analysis is that it confused the constitutional limitations on personal jurisdiction with the some-

[1] I admit to some unease about this fact. Nevertheless, the rule that a person can be injured even absent a pre-existing reputation appears to be a well-established part of the common law of defamation, and I would be reluctant to suggest changing it without a thorough briefing of the point.

what different constitutional limitations on choice of law. It may be that application of New Hampshire's statute of limitations to out-of-state damage contravenes those limitations. See generally Allstate Insurance Co. v. Hague, 449 U.S. 302, 310-311 (1981) (plurality op.) ("if a State has only an insignificant contact with the parties and the occurrence or transaction, application of its law is unconstitutional"); Martin, Constitutional Limitations on Choice of Law, 61 Cornell L. Rev. 185, 223 (1976) (when the factual connections between a case and the forum are tenuous or nonexistent, a state should not be permitted to apply a longer statute of limitations than would the forum in which the facts occurred). But to apply that rule to bar suit entirely is analytically unsound. The limitations on personal jurisdiction derive from the Due Process Clause while those on choice of law derive from that Clause as well as the Full Faith and Credit Clause. As a result, the federalism concerns and the interests of other states that appeared to motivate CA1's view play a substantially greater role in choice-of-law analysis than they do in personal-jurisdiction analysis.

CA1 appeared to think that the two analyses are similar because of the language in Volkswagen suggesting that a variety of interests, including the interstate judicial system's "interest in obtaining the most efficient resolution of controversies," should be considered in evaluating the reasonableness of an assertion of personal jurisdiction. 444 U.S., at 292. This language was dictum unnecessary to the decision of that case, since the Court in its consideration of the case then at bar discussed

only the lack of contacts between the defendants and Oklahoma. Even if the two analyses are similar, however, this Court has repeatedly emphasized that they must be kept distinct. See, e.g., Allstate, supra, at 317 n. 23 ("The Court has recognized that examination of a State's contacts may result in divergent conclusions for jurisdiction and choice-of-law purposes."); Kulko v. Superior Court, 436 U.S. 84, 98 (1978) ("the fact that California may be the 'center of gravity' for choice-of-law purposes does not mean that California has personal jurisdiction over the defendant"). Moreover, the Court since Volkswagen has substantially deemphasized the role federalism concerns play in personal-jurisdiction analysis. In Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702 n.10 (1982), Justice White (the author of Volkswagen) wrote for the Court:

> The restriction on state sovereign power described in World-Wide Volkswagen Corp. ... must be seen as ultimately a function of the individual liberty interest preserved by the Due Process Clause. That Clause is the only source of the personal jurisdiction requirement and the Clause itself makes no mention of federalism concerns.

In any case, the main flaw in CAl's approach is that it deprives an individual state's courts of power to regulate what goes on within its territorial borders simply because other injury occurs elsewhere. The better approach is to allow New Hampshire to hear the case in its courts, but not to allow it to apply its statute of limitations to the damage that occurs out of state. Thus, the state would have personal jurisdiction over the defendants in this case based on their contacts with the state

under the effects doctrine. Once jurisdiction was established, the court would inquire what law to apply. Whether application of New Hampshire's statute of limitations to the damage claims arising out of injury in other states is unfair, as CA1 found, Petn. App. at 18a, would enter into the constitutionality of New Hampshire's choice-of-law rules. If application of that statute were found unconstitutional, the court would still be able to adjudicate the injury within New Hampshire in which the state has expressed, through its long statute of limitations, a special interest.

4. Calder v. Jones. Calder presents the quite different problem of whether the effects doctrine should apply to make an individual reporter and editor subject to personal jurisdiction where the publication that employs them has substantial circulation in the forum state. My somewhat tentative answer is that the reporter and editor should be subject to the jurisdiction of the California courts in this case. They intentionally caused the article to be circulated in California knowing that if it were libelous it would cause injury there. The substantive law of libel would hold both of them liable for any damage caused by the defamation they authored or helped disseminate. See W. Prosser, Law of Torts §113, at 775 (1971). As a result, they both can reasonably anticipate being haled into court in California, or anywhere else the newspaper has substantial circulation, to answer for damage arising out of their libel. Should they wish to avoid liability, they can confine their writing to local publications.

The most powerful argument against this result is the one used by the TC in this case: the reporter and editor cannot be said to have purposefully availed themselves of the benefits of circulating their material in California. It is the publisher who balances the risks and rewards of expanding circulation and of setting a tone for the newspaper. As well might a welder in the Buckeye Boiler plant who dropped a wrench into a pressure tank be subject to jurisdiction in any state in which the tank ends up exploding. (Actually, the TC analyzed this question under its First Amendment analysis, which I have rejected supra; as the Buckeye hypothetical suggests, I believe the same questions can be raised in normal personal-jurisdiction analysis.)

One answer is that the test is not that the defendant must derive benefit from his activities in the state. The relevant language is that the defendant must have "'purposefully avail[ed] itself of the privilege of conducting activities within the forum State,'" Volkswagen, 444 U.S., at 297 (quoting Hanson v. Denckla, 357 U.S. 235, 253 (1958)), and the real test is whether it was part of the defendant's purpose to have his work circulated widely. This distinguishes the Buckeye Boiler welder: although the welder may know that the pressure tank he works on will be sent to many states, as a general rule that is not part of his purpose in the same way that it is part of a writer's. This may explain why the substantive law holds both the writer and editor liable. In any case, reporters, and to some extent editors, do derive substantial benefits from having their work widely read--this is why they sign their work and partly why Time magazine is usually

Calder + South rely on "fiduciary shield"

considered a more prestigious employer than my hometown paper. This too will distinguish the usual welder. Finally, it does not seem to me to be sound policy to allow the publisher to be sued and not the reporter and editor. In many cases, this will tend to immunize the persons who are primarily responsible and hold only the vicariously liable corporation. This is contrary to the policy expressed in the law of libel of holding liable all those with some measure of control over defamation.

Calder and South advance a quite different theory to immunize them from the effects doctrine. They argue that under the law of "fiduciary shield" doctrine, the fact that their conduct was solely as an employee of the corporation shields them from jurisdiction. As appellee points out, even if that doctrine should take on constitutional stature, it is properly applied only to avoid imputing to corporate officers and employees the contacts of their employer. Where an employee himself conducted activities in the forum state, the fact that it was done within the scope of his employment will not prevent jurisdiction from being asserted. See Sponsler, Jurisdiction Over the Corporate Agent: The Fiduciary Shield, 35 Wash. & Lee L. Rev. 349, 365 (1978). Here, the contact is placing an article into the stream of commerce with the purpose of having it reach the forum and be read there. Certain employees share that purpose. It seems to me clear that the reporter who wrote the article and the editor with overall control of editorial operations fall into that category, cf. id., at 363 (where defendant's interests are identical to corporation's and he controls day-to-day activities of it, in-

yes

cluding those giving rise to suit, corporation's contacts may be ascribed to individual).[2]

6. Appeal or Cert. There appear to be no cases addressing whether appeal jurisdiction may be invoked to review the application to "appellants" of a state statute that expressly incorporates federal law. Appellee's argument that the Court's jurisdiction should not depend on whether the losing parties uttered in the state court the "magic words" that the statute as proposed to be applied would be unconstitutional is not persuasive. As Stern & Gressman point out, this Court's jurisdiction commonly turns on this distinction. If a litigant fails to say that application of the statute to him would make it void under federal law, but instead argues "that his federal rights prevent application of the state statute to him," an adverse determination "amounts to a denial of his assertion of federal rights rather than a validation of the state statute," and only cert. is available. Stern & Gressman, Supreme Court Practice 163-164 (5th ed. 1978). While this case suggests that there is utterly noth-

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[2]Jurisdiction over the reporter South appears to be proper in any event because of his newsgathering activities in California. On this score, I do not think it crucial to decide whether the article in fact arose out of a visit or merely phone calls into the forum. Nor is it necessary to hold that telephone calls into the forum alone will suffice, although some courts have so held. Rather, it is clear that South made numerous newsgathering visits to California that produced a number of articles about Californians. During these visits, he developed contacts that unquestionably led to the story at issue here. It does not seem to me to stretch the "arising out of" concept too far to say that the article in question arose out of South's ongoing contacts with the state.

ing to this distinction, even Kulko, the case on which appellee relies, suggests that it is still adhered to; the determination that the appeal there was improper turned on the distinction. 436 U.S., at 90 n.4 ("Appellant did not argue below that this statute was unconstitutional, but instead argued that the Due Process Clause of the Fourteenth Amendment precluded the exercise of in personam jurisdiction."). Thus, under the Court's current practice, appeal jurisdiction is proper.

RECOMMENDATION: Reverse & remand in Keeton; affirm in Calder.

82-485 KEETON v. HUSTLER MAGAZINE

Argued 11/8/83

Grutman (Petr)

Hustler circulated in N.H. since 1975

The jurisdictional inquiry focuses on "contacts" w/in State. This has been the law since International Shoe..

There was purposeful conduct by Δ in N.H.

Relies on Volkswagen.

Record shows profits in N.H. of millions of dollars

The Δ created the "forum" by publishing in N.H. The TT was not - as CA1 said - forum shopping.

N.H. thought it had a state interest, evidenced by opening its courts under Long Arm statute. (There was a diversity suit in DC)?

CA1 conceded that harm occurred in N.H.

Complaint alleges injury.

Five issues of Hustler are at issue.

Grutman (cont.)

The DC ded'nt reach the Q whether all ~~of~~ named Δs could be ~~se~~ sued. It found no juris.

Shapiro (Rest.)

Argues that Const. guarantees a fair ~~forum~~ forum. i.e. no forum shopping.

Only Ohio would clearly have juris? ??

Refers to ~~re~~ Restatement as to proper forum in a multiple state libel case.

E Invites us to restrict damages to N.H. – but thinks N.H. stat would be an invalid ~~choice~~ choice of forum.

Argues forum non conveniens – but is this a Const. matter?

Ohio & N.Y. had paramount interest, & suit should have been brought there.

Argues for "single publication rule": all damages in the 50 states should be determined ~~in~~ there.

Rev 9-0

No. 82-485, Keeton v. Hustler Magazine Conf. 11/11/83

The Chief Justice Rev.

Each state has an interest when a libel is circulated w/in the state - whether the libelee is known or not.

St/lim argument is unpersuasive.

Jurors follow the publication.

What happens in other states is not before us.

Justice Brennan Rev.

Agree N. H. has an interest at least to extent of [redacted] injury in the state.

No const. prohibition vs forum shopping.

1st Amend. issue not relevant to juris issue.

(WJB read his statement)

Don't reach Q as to other states

Justice White Rev.

Agrees

Justice Marshall Rev.

Agree

Justice Blackmun Rev & Remand

CA1 collapsed juris & ~~choice~~ choice of law issues.

Jct. Shoe = contacts sufficient

Bauxite (?) (by BRW) is relevant.

Agree with others

Single publication rule is relevant

1st Amend not relevant.

~~to~~ DC could apply N.H.

Justice Powell Rev.

"Stream of Commerce" doctrine of products liability cases apply (World Wide Volkswagen). Hustler placed the libel in N.H (15000 copies) to make money. It chose the forum.

No reason why this doctrine should apply should not apply to libel cases to determine juris. Substantive defenses (N.Y.T, Gertz) are available. Damages can be limited

N.H. does have interest. Protect our citizens from falsehood.

Need not reach damages

Justice Rehnquist Rev.

Nothing to add

Justice Stevens Rev.

Agree

There is a Q as to other Δs but leave open to CA1 on remand

Ask John

Justice O'Connor Rev.

Agree

Tends — as I would — jurisdiction in N.H.
Also would Hold under "single publication rule" that Petr may seek damages nationwide + 10
(What about statewide S/L has run?)

LFP

The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: DEC 7 1983

Recirculated: _____

Renewed 12/7-8

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82–485

KATHY KEETON, PETITIONER *v.* HUSTLER MAGAZINE, INC. ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

[December ——, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioner Kathy Keeton sued respondent Hustler Magazine, Inc., and other defendants in the United States District Court for the District of New Hampshire, alleging jurisdiction over her libel complaint by reason of diversity of citizenship. The district court dismissed her suit because it believed that the Due Process Clause of the Fourteenth Amendment to the United States Constitution forbade the application of New Hampshire's long-arm statute in order to acquire personal jurisdiction over respondent. The Court of Appeals for the First Circuit affirmed, 682 F. 2d 33 (CA 1 1982), summarizing its concerns with the statement that "the New Hampshire tail is too small to wag so large an out-of-state dog." *Id.*, at 36. We granted certiorari, 51 U.S.L.W. 3552 (Jan. 24, 1983), and we now reverse.

Petitioner Keeton is a resident of New York. Her only connection with New Hampshire is the circulation there of copies of a magazine that she assists in producing. The magazine bears petitioner's name in several places crediting her with editorial and other work. Respondent Hustler Magazine, Inc., is an Ohio corporation, with its principal place of business in California. Respondent's contacts with New Hampshire consist of the sale of some 10 to 15,000 copies of *Hustler* magazine in that state each month. See J.A., at 81a–86a. Petitoner claims to have been libeled in five sepa-

See my letter of 12/8 to WJR on n 10

(He made suggested changes)

rate issues of respondent's magazine published between September, 1975, and May, 1976.[1]

The Court of Appeals, in its opinion affirming the District Court's dismissal of petitioner's complaint, held that petitioner's lack of contacts with New Hampshire rendered the State's interest in redressing the tort of libel to petitioner too attenuated for an assertion of personal jurisdiction over respondent. The Court of Appeals observed that the "single publication rule" ordinarily applicable in multistate libel cases would require it to award petitioner "damages caused in *all* states" should she prevail in her suit, even though the bulk of petitioner's alleged injuries had been sustained outside New Hampshire. 682 F. 2d, at 35.[2] The court also stressed New Hampshire's unusually long (6-year) limitations period for libel actions. New Hampshire was the only State where petitioner's suit would not have been time-barred when it was filed. Under these circumstances, the Court of Appeals concluded that it would be "unfair" to assert jurisdiction over respondent. New Hampshire has a minimal interest in applying its unusual statute of limitations to, and awarding damages for, injuries to a nonresident occurring outside the State, particularly since petitioner suffered such a small proportion of her total claimed injury within the State. *Id.*, at 35–36.

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[1] Initially, petitioner brought suit for libel and invasion of privacy in Ohio, where the magazine was published. Her libel claim, however, was dismissed as barred by the Ohio statute of limitations, and her invasion of privacy claim was dismissed as barred by the New York statute of limitations, which the Ohio court considered to be "migratory." Petitioner then filed the present action in October, 1980.

[2] The "single publication rule" has been summarized as follows:

"As to any single publication, (a) only one action for damages can be maintained; (b) all damages suffered in all jurisdictions can be recovered in the one action; and (c) a judgment for or against the plaintiff upon the merits of any action for damages bars any other action for damages between the same parties in all jurisdictions." Restatement (Second) of Torts § 577A(4) (1977).

We conclude that the Court of Appeals erred when it affirmed the dismissal of petitioner's suit for lack of personal jurisdiction. Respondent's regular circulation of magazines in the forum State is sufficient to support an assertion of jurisdiction in a libel action based on the contents of the magazine. This is so even if New Hampshire courts, and thus the District Court under *Klaxon Co.* v. *Stentor Co.*, 313 U. S. 450 (1941), would apply the so-called "single publication rule" to enable petitioner to recover in the New Hampshire action her damages from "publications" of the alleged libel throughout the United States.[3]

The district court found that "[t]he general course of conduct in circulating magazines throughout the state was purposefully directed at New Hampshire, and inevitably affected persons in the state." Pet., at 5a. Such regular monthly sales of thousands of magazines cannot by any stretch of the imagination be characterized as random, isolated, or fortuitous. It is, therefore, unquestionable that New Hampshire jurisdiction over a complaint based on those contacts would ordinarily satisfy the requirement of the Due Process Clause that a State's assertion of personal jurisdiction over a nonresident defendant be predicated on "minimum contacts" between the defendant and the State. See *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U. S. 286, 297–298 (1980); *International Shoe Corp.* v. *Washington*, 326 U. S. 310, 317 (1945). And, as the Court of Appeals acknowledged, New Hampshire has adopted a "long-arm" statute authorizing service of process on nonresident corporations whenever permitted by the Due Process Clause. 682 F. 2d, at 33.[4]

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[3] "It is the general rule that each communication of the same defamatory matter by the same defamer, whether to a new person or to the same person, is a separate and distinct publication, for which a separate cause of action arises." Restatement (Second) of Torts § 577A, Comment a (1971). The "single publication rule" is an exception to this general rule.

[4] Section 300:14 of the New Hampshire Revised Statutes Annotated (N.H.R.S.A.) provides in relevant part:

Thus, all the requisites for personal jurisdiction over Hustler Magazine, Inc., in New Hampshire are present.

We think that the three concerns advanced by the Court of Appeals, whether considered singly or together, are not sufficiently weighty to merit a different result. The "single publication rule," New Hampshire's unusually long statute of limitations, and plaintiff's lack of contacts with the forum State do not defeat jurisdiction otherwise proper under both New Hampshire law and the Due Process Clause.

In judging minimum contacts, the proper focus is on "the relationship among the defendant, the forum, and the litigation." *Shaffer* v. *Heitner*, 433 U. S. 186, 204 (1977). See also *Rush* v. *Savchuk*, 444 U. S. 320, 332 (1980). Thus, it is certainly relevant to the jurisdictional inquiry that petitioner is *seeking* to recover damages suffered in all States in this one suit. The contacts between respondent and the forum must be judged in the light of that claim, rather than a claim only for damages sustained in New Hampshire. That is, the contacts between respondent and New Hampshire must be such that it is "fair" to compel respondent to defend a multistate lawsuit in New Hampshire seeking nationwide damages for all copies of the five issues in question, even though only a small portion of those copies were distributed in New Hampshire.

The Court of Appeals expressed the view that New Hampshire's "interest" in asserting jurisdiction over plaintiff's mul-

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If a foreign corporation . . . commits a tort in whole or in part in New Hamsphire, such act[] shall be deemed to be doing business in New Hampshire by such foreign corporation and shall be deemed equivalent to the appointment by such foreign corporation of the secretary of the state of New Hampshire and his successors to be its true and lawful attorney upon whom may be served all lawful process in any actions or proceedings against such foreign corporation arising from or growing out of such . . . tort.

This statute has been construed in the New Hampshire courts to extend jurisdiction over nonresident corporations to the fullest extent permitted under the federal constitution. See, *e. g.*, *Roy* v. *North American Newspaper Alliance, Inc.*, 106 N. H. 92, 95, 205 A. 2d 844, 846 (1964).

tistate claim was minimal. We agree that the "fairness" of haling respondent into a New Hampshire court depends to some extent on whether respondent's activities relating to New Hampshire are such as to give that State a legitimate interest in holding respondent answerable on a claim related to those activities. See *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U. S. 286, 292 (1980); *McGee* v. *International Life Insurance Co.*, 355 U. S. 220, 223 (1957). But insofar as New Hampshire may be allowed to speak for herself as to her "interest" in adjudicating this claim, she has indicated a willingness to have her courts decide such cases. And insofar as the State's "interest" in adjudicating the dispute is a part of the Fourteenth Amendment due process equation, as a surrogate for some of the factors already mentioned, see *Insurance Corp.* v. *Compagnie des Bauxites*, 456 U. S. 694, 702–703 n. 10 (1982), we think the interest is sufficient.

The Court of Appeals acknowledged that petitioner was suing, at least in part, for damages suffered in New Hampshire. 682 F. 2d, at 34. And it is beyond dispute that New Hampshire has an overwhelming interest in redressing injuries that actually occur within the State.

> "'A state has an especial interest in exercising judicial jurisdiction over those who commit torts within its territory. This is because torts involve wrongful conduct which a state seeks to deter, and against which it attempts to afford protection, by providing that a tortfeasor shall be liable for damages which are the proximate result of his tort.'" *Leeper* v. *Leeper*, 114 N. H. 284, 298, 319 A. 2d 626, 629 (1974) (quoting Restatement (Second) of Conflict of Laws § 36, Comment c (1971)).

This interest extends to libel actions brought by nonresidents. False statements of fact harm both the subject of the falsehood *and* the readers of the statement. New Hampshire may rightly employ its libel laws to discourage the deception of its citizens. There is "no constitutional

value in false statements of fact." *Gertz* v. *Robert Welch, Inc.*, 418 U. S. 323, 340 (1974).

New Hampshire may also extend its concern to the injury that in-state libel causes within New Hampshire to a nonresident. The tort of libel is generally held to occur wherever the offending material is circulated. Restatement (Second) of Torts § 577A, Comment a (1977). The reputation of the libel victim may suffer harm even in a state in which he has hitherto been anonymous.[5] The communication of the libel may create a negative reputation among the residents of a jurisdiction where the plaintiff's previous reputation was, however small, at least unblemished.

New Hampshire has clearly expressed its interest in protecting such persons from libel, as well as in safeguarding its populace from falsehoods. Its criminal defamation statute bears no restriction to libels of which residents are the victim.[6] Moreover, in 1971 New Hampshire specifically deleted from its long-arm statute the requirement that a tort be committed "against a resident of New Hampshire."[7]

New Hampshire also has a substantial interest in cooperating with other States, through the "single publication rule," to provide a forum for efficiently litigating all issues and damage claims arising out of a libel in a unitary proceeding.[8] This rule reduces the potential serious drain of libel cases on judicial resources. It also serves to protect defendants from harassment resulting from multiple suits. Restatement (Second) of Torts, § 577A, comment f (1977). In sum, the

[5] We do not, therefore, rely for our holding on the fact that petitioner's name appears in fine print in several places in a magazine circulating in New Hampshire.

[6] N.H.R.S.A. 644:11(A) makes it a misdemeanor for anyone to "purposely communicate[] to *any person*, orally or in writing, any information which he knows to be false and knows will tend to expose any other living person to public hatred, contempt or ridicule." (Emphasis added).

[7] See N.H.R.S.A. 300:14, History.

[8] The great majority of the States now follow the "single publication rule." Restatement (Second) of Torts § 577A, Reporter's Note.

N H has an interest in cooperating in a class action for benefit of other states.

But what about varying S/L ?

combination of New Hampshire's interest in redressing injuries that occur within the State and its interest in cooperating with other States in the application of the "single publication rule" demonstrate the propriety of requiring respondent to answer to a multistate libel action in New Hampshire.[9]

The Court of Appeals also thought that there was an element of due process "unfairness" arising from the fact that the statutes of limitations in every jurisdiction except New Hampshire had run on the plaintiff's claim in this case.[10] Strictly speaking, however, any potential unfairness in applying New Hampshire's statute of limitations to all aspects of this nationwide suit has nothing to do with the jurisdiction of the Court to adjudicate the claims. "The issue is personal jurisdiction, not choice of law." *Hanson* v. *Denckla*, 357 U. S. 235, 254 (1958). The question of the applicability of New Hampshire's statute of limitations to claims for out-of-state damages presents itself in the course of litigation only after jurisdiction over respondent is established, and we do

[9] Of course, to conclude that petitioner may properly *seek* multistate damages in this New Hampshire suit is not to conclude that such damages should, in fact, be awarded if petitioner makes out her case for libel. The actual applicability of the "single publication rule" in the peculiar circumstances of this case is a matter of substantive law, not personal jurisdiction. We conclude only that the district court had jurisdiction to *entertain* petitioner's multistate libel suit.

[10] Under traditional choice of law principles, the law of the forum State governs on matters of procedure. See Restatement (Second) of Conflict of Laws §§ 122 (1971). In New Hampshire, statutes of limitations are considered procedural. *Gordon* v. *Gordon*, 118 N. H. 356, 360, 387 A. 2d 339, 342 (1978); *Barrett* v. *Boston & Maine R.R.*, 104 N. H. 70, 178 A. 2d 291 (1962). There has been considerable academic criticism of the rule that permits a forum State to apply its own statute of limitations regardless of the significance of contacts between the forum State and the litigation. See, *e. g.*, Weintraub, Commentary on the Conflict of Laws § 9.2B at 517 (2d ed. 1980); Martin, *Constitutional Limitations on Choice of Law*, 61 Cornell L. Rev. 185, 221 (1976); Lorenzen, *The State of Limitations and The Conflict of Laws*, 28 Yale L. J. 492, 496–497 (1919). But whether any arguable unfairness rises to the level of a due process violation is doubtful. Cf. *Allstate Ins. Co.* v. *Hague*, 449 U. S. 302 (1981) (plurality opinion).

not think that such choice of law concerns should complicate or distort the jurisdictional inquiry.

The chance duration of statutes of limitations in nonforum jurisidictions has nothing to do with the contacts between respondent, New Hampshire, and this multistate libel action. Whether Ohio's limitations period is 6 months or 6 years does not alter the jurisdictional calculus in New Hampshire. Petitioner's successful search for a State with a lengthy statute of limitations is no different from the litigation strategy of countless plaintiffs who seek a forum with favorable substantive or procedural rules or sympathetic local populations. Certainly Hustler Magazine, Inc., which chose to enter the New Hampshire market, can be charged with knowledge of its laws and no doubt would have claimed the benefit of them if it had a complaint against a subscriber, distributor, or other commercial partner.

Finally, implicit in the Court of Appeals' analysis of New Hampshire's interest is an emphasis on the extremely limited contacts of the *plaintiff* with New Hampshire. But we have not to date required a plaintiff to have "minimum contacts" with the forum State before permitting that State to assert personal jurisdiction over a nonresident defendant. On the contrary, we have upheld the assertion of jurisdiction where such contacts were entirely lacking. In *Perkins* v. *Benguet Mining Co.*, 342 U. S. 437 (1952), none of the parties were residents of the forum State; indeed, neither the plaintiff nor the subject-matter of his action had any relation to that State. Jurisdiction was based solely on the fact that the defendant corporation had been carrying on in the forum "a continuous and systematic, but limited, part of its general business." *Id.*, at 438. In the instant case, respondent's activities in the forum may not be so substantial as to support jurisdiction over a cause of action unrelated to those activities.[11] But respondent is carrying on a "part of its general

The D/P requirement of "minimum contacts" applies only to the Δ — not to a ℙ

[11] The defendant corporation's contacts with the forum State in *Perkins* were more substantial than those of respondent with New Hampshire in

business" in New Hampshire, and that is sufficient to support jurisdiction when the cause of action arises out of the very activity being conducted, in part, in New Hampshire.

The plaintiff's residence is not, of course, completely irrelevant to the jurisdictional inquiry. As noted, that inquiry focuses on the relations among the defendant, the forum and the litigation. Plaintiff's residence may well play an important role in determining the propriety of entertaining a suit against the defendant in the forum. That is, plaintiff's residence in the forum may, because of defendant's relationship with the plaintiff, enhance defendant's contacts with the forum. Plaintiff's residence may be the focus of the activities of the defendant out of which the suit arises. See *Calder* v. *Jones*, *post*; *McGee* v. *International Life Ins. Co.*, 355 U. S. 220 (1957). But plaintiff's residence in the forum State is not a separate requirement, and lack of residence will not defeat jurisdiction established on the basis of defendant's contacts.

It is undoubtedly true that the bulk of the harm done to petitioner occurred outside New Hampshire. But that will be true in almost every libel action brought somewhere other than the plaintiff's domicile. There is no justification for restricting libel actions to the plaintiff's home forum.[12] The

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this case. In *Perkins*, the corporation's mining operations, located in the Phillipine Islands, were completely halted during the Japanese occupation. The president, who was also general manager and principal stockholder of the company, returned to his home in Ohio where he carried on "a continuous and systematic supervision of the necessarily limited wartime activities of the company." 342 U. S., at 448. The company's files were kept in Ohio, several directors' meeting were held there, substantial accounts were maintained in Ohio banks, and all key business decisions were made in the State. *Ibid.* In those circumstances, Ohio was the corporation's principal, if temporary, place of business so that Ohio jurisdiction was proper even over a cause of action unrelated to the activities in the State.

[12] As noted in *Calder* v. *Jones*, *post*, we reject categorically the suggestion that invisible radiations from the First Amendment may defeat jurisdiction otherwise proper under the Due Process Clause.

victim of a libel, like the victim of any other tort, may choose to bring suit in any forum with which the defendant has "certain minimum contacts . . . such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' *Milliken* v. *Meyer*, 311 U. S. 457, 463." *International Shoe Co.* v. *Washington*, 326 U. S. 310, 316 (1945).

Where, as in this case, respondent Hustler Magazine, Inc., has continuously and deliberately exploited the New Hampshire market, it must reasonably anticipate being haled into court there in a libel action based on the contents of its magazine. *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U. S. 286, 297–298 (1980). And, since respondent can be charged with knowledge of the "single publication rule," it must anticipate that such a suit will seek nationwide damages. Respondent produces a national publication aimed at a nationwide audience. There is no unfairness in calling it to answer for the contents of that publication wherever a substantial number of copies are regularly sold and distributed.

The judgment of the Court of Appeals is reversed [13] and the cause is remanded for proceedings consistent with this opinion.

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[13] In addition to Hustler Magazine, Inc., Larry Flynt, the publisher, editor and owner of the magazine, and L. F. P., Inc., Hustler's holding company, were named as defendants in the District Court. It does not of course follow from the fact that jurisdiction may be asserted over Hustler Magazine, Inc., that jurisdiction may also be asserted over either of the other defendants. In *Calder* v. *Jones*, *post*, we today reject the suggestion that employees who act in their official capacity are somehow shielded from suit in their individual capacity. But jurisdiction over an employee does not automatically follow from jurisdiction over the corporation which employs him; nor does jurisdiction over a parent corporation automatically establish jurisdiction over a wholly owned subsidiary. *Consol. Textile Co.* v. *Gregory*, 289 U. S. 85, 88 (1933); *Peterson* v. *Chicago, R. I. & P. Railway Co.*, 205 U. S. 364, 391 (1907). Each defendant's contacts with the forum State must be assessed individually. See *Rush* v. *Savchuk*, 444 U. S. 320, 332 (1980) ("The requirements of *International Shoe* . . . must be met as to each defendant over whom a state court exercises jurisdic-

It is so ordered.

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tion.") Because the Court of Appeals concluded that jurisdiction could not be had even against Hustler Magazine, Inc., it did not inquire into the propriety of jurisdiction over the other defendants. Such inquiry is, of course, open upon remand.

December 8, 1983

82-485 Keeton v. Hustler Magazine

Dear Bill:

Note 10, in your otherwise fine opinion, gives me difficulty.

As the note implies, there could be considerable unfairness if the forum state applied its own statute of limitations nationwide regardless of limitation periods in other states and the significance of contacts.

I suggest omission of your final sentence that expresses doubt as to whether the unfairness could rise to the level of due process. It is unnecessary to go this far in this case, and in some situations this could be a question of large importance. My preference would be to replace the last sentence by a statement to the effect that we express no opinion on this question.

Sincerely,

Justice Rehnquist

lfp/ss

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 8, 1983

No. 82-485 Keeton v. Hustler Magazine

Dear Bill,

Please join me.

Sincerely,

Sandra

Justice Rehnquist

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

December 10, 1983

Re: 82-485 Keeton, Kathy v. Hustler Magazine, Et al.

Dear Bill:

I join.

Regards

WEB

Justice Rehnquist

Copies to the Conference

The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Stevens
Justice O'Connor

From: **Justice Rehnquist**

Circulated: _____

Recirculated: DEC 11 1983

STYLISTIC CHANGES THROUGHOUT

pp. 5, 7

Bill made the change requested in my letter of 12/8

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82–485

KATHY KEETON, PETITIONER *v.* HUSTLER MAGAZINE, INC. ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

[December ——, 1983]

JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioner Kathy Keeton sued respondent Hustler Magazine, Inc., and other defendants in the United States District Court for the District of New Hampshire, alleging jurisdiction over her libel complaint by reason of diversity of citizenship. The district court dismissed her suit because it believed that the Due Process Clause of the Fourteenth Amendment to the United States Constitution forbade the application of New Hampshire's long-arm statute in order to acquire personal jurisdiction over respondent. The Court of Appeals for the First Circuit affirmed, 682 F. 2d 33 (CA 1 1982), summarizing its concerns with the statement that "the New Hampshire tail is too small to wag so large an out-of-state dog." *Id.*, at 36. We granted certiorari, 51 U. S. L. W. 3552 (Jan. 24, 1983), and we now reverse.

Petitioner Keeton is a resident of New York. Her only connection with New Hampshire is the circulation there of copies of a magazine that she assists in producing. The magazine bears petitioner's name in several places crediting her with editorial and other work. Respondent Hustler Magazine, Inc., is an Ohio corporation, with its principal place of business in California. Respondent's contacts with New Hampshire consist of the sale of some 10 to 15,000 copies of *Hustler* magazine in that State each month. See J. A., at 81a–86a. Petitoner claims to have been libeled in five sepa-

rate issues of respondent's magazine published between September, 1975, and May, 1976.[1]

The Court of Appeals, in its opinion affirming the District Court's dismissal of petitioner's complaint, held that petitioner's lack of contacts with New Hampshire rendered the State's interest in redressing the tort of libel to petitioner too attenuated for an assertion of personal jurisdiction over respondent. The Court of Appeals observed that the "single publication rule" ordinarily applicable in multistate libel cases would require it to award petitioner "damages caused in *all* states" should she prevail in her suit, even though the bulk of petitioner's alleged injuries had been sustained outside New Hampshire. 682 F. 2d, at 35.[2] The court also stressed New Hampshire's unusually long (6-year) limitations period for libel actions. New Hampshire was the only State where petitioner's suit would not have been time-barred when it was filed. Under these circumstances, the Court of Appeals concluded that it would be "unfair" to assert jurisdiction over respondent. New Hampshire has a minimal interest in applying its unusual statute of limitations to, and awarding damages for, injuries to a nonresident occurring outside the State, particularly since petitioner suffered such a small proportion of her total claimed injury within the State. *Id.*, at 35–36.

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[1] Initially, petitioner brought suit for libel and invasion of privacy in Ohio, where the magazine was published. Her libel claim, however, was dismissed as barred by the Ohio statute of limitations, and her invasion of privacy claim was dismissed as barred by the New York statute of limitations, which the Ohio court considered to be "migratory." Petitioner then filed the present action in October, 1980.

[2] The "single publication rule" has been summarized as follows:

"As to any single publication, (a) only one action for damages can be maintained; (b) all damages suffered in all jurisdictions can be recovered in the one action; and (c) a judgment for or against the plaintiff upon the merits of any action for damages bars any other action for damages between the same parties in all jurisdictions." Restatement (Second) of Torts § 577A(4) (1977).

We conclude that the Court of Appeals erred when it affirmed the dismissal of petitioner's suit for lack of personal jurisdiction. Respondent's regular circulation of magazines in the forum State is sufficient to support an assertion of jurisdiction in a libel action based on the contents of the magazine. This is so even if New Hampshire courts, and thus the District Court under *Klaxon Co.* v. *Stentor Co.*, 313 U. S. 450 (1941), would apply the so-called "single publication rule" to enable petitioner to recover in the New Hampshire action her damages from "publications" of the alleged libel throughout the United States.[3]

The district court found that "[t]he general course of conduct in circulating magazines throughout the state was purposefully directed at New Hampshire, and inevitably affected persons in the state." Pet., at 5a. Such regular monthly sales of thousands of magazines cannot by any stretch of the imagination be characterized as random, isolated, or fortuitous. It is, therefore, unquestionable that New Hampshire jurisdiction over a complaint based on those contacts would ordinarily satisfy the requirement of the Due Process Clause that a State's assertion of personal jurisdiction over a nonresident defendant be predicated on "minimum contacts" between the defendant and the State. See *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U. S. 286, 297–298 (1980); *International Shoe Corp.* v. *Washington*, 326 U. S. 310, 317 (1945). And, as the Court of Appeals acknowledged, New Hampshire has adopted a "long-arm" statute authorizing service of process on nonresident corporations whenever permitted by the Due Process Clause. 682 F. 2d, at 33.[4]

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[3] "It is the general rule that each communication of the same defamatory matter by the same defamer, whether to a new person or to the same person, is a separate and distinct publication, for which a separate cause of action arises." Restatement (Second) of Torts § 577A, Comment a (1971). The "single publication rule" is an exception to this general rule.

[4] Section 300:14 of the New Hampshire Revised Statutes Annotated (N. H. R. S. A.) provides in relevant part:

Thus, all the requisites for personal jurisdiction over Hustler Magazine, Inc., in New Hampshire are present.

We think that the three concerns advanced by the Court of Appeals, whether considered singly or together, are not sufficiently weighty to merit a different result. The "single publication rule," New Hampshire's unusually long statute of limitations, and plaintiff's lack of contacts with the forum State do not defeat jurisdiction otherwise proper under both New Hampshire law and the Due Process Clause.

In judging minimum contacts, a court properly focuses on "the relationship among the defendant, the forum, and the litigation." *Shaffer* v. *Heitner*, 433 U. S. 186, 204 (1977). See also *Rush* v. *Savchuk*, 444 U. S. 320, 332 (1980). Thus, it is certainly relevant to the jurisdictional inquiry that petitioner is *seeking* to recover damages suffered in all States in this one suit. The contacts between respondent and the forum must be judged in the light of that claim, rather than a claim only for damages sustained in New Hampshire. That is, the contacts between respondent and New Hampshire must be such that it is "fair" to compel respondent to defend a multistate lawsuit in New Hampshire seeking nationwide damages for all copies of the five issues in question, even though only a small portion of those copies were distributed in New Hampshire.

The Court of Appeals expressed the view that New Hampshire's "interest" in asserting jurisdiction over plaintiff's mul-

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"If a foreign corporation . . . commits a tort in whole or in part in New Hamsphire, such act[] shall be deemed to be doing business in New Hampshire by such foreign corporation and shall be deemed equivalent to the appointment by such foreign corporation of the secretary of the state of New Hampshire and his successors to be its true and lawful attorney upon whom may be served all lawful process in any actions or proceedings against such foreign corporation arising from or growing out of such . . . tort."
This statute has been construed in the New Hampshire courts to extend jurisdiction over nonresident corporations to the fullest extent permitted under the federal constitution. See, *e. g.*, *Roy* v. *North American Newspaper Alliance, Inc.*, 106 N. H. 92, 95, 205 A. 2d 844, 846 (1964).

tistate claim was minimal. We agree that the "fairness" of haling respondent into a New Hampshire court depends to some extent on whether respondent's activities relating to New Hampshire are such as to give that State a legitimate interest in holding respondent answerable on a claim related to those activities. See *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U. S. 286, 292 (1980); *McGee* v. *International Life Insurance Co.*, 355 U. S. 220, 223 (1957). But insofar as the State's "interest" in adjudicating the dispute is a part of the Fourteenth Amendment due process equation, as a surrogate for some of the factors already mentioned, see *Insurance Corp.* v. *Compagnie des Bauxites*, 456 U. S. 694, 702–703 n. 10 (1982), we think the interest is sufficient.

The Court of Appeals acknowledged that petitioner was suing, at least in part, for damages suffered in New Hampshire. 682 F. 2d, at 34. And it is beyond dispute that New Hampshire has a significant interest in redressing injuries that actually occur within the State.

> "'A state has an especial interest in exercising judicial jurisdiction over those who commit torts within its territory. This is because torts involve wrongful conduct which a state seeks to deter, and against which it attempts to afford protection, by providing that a tortfeasor shall be liable for damages which are the proximate result of his tort.'" *Leeper* v. *Leeper*, 114 N. H. 284, 298, 319 A. 2d 626, 629 (1974) (quoting Restatement (Second) of Conflict of Laws § 36, Comment c (1971)).

This interest extends to libel actions brought by nonresidents. False statements of fact harm both the subject of the falsehood *and* the readers of the statement. New Hampshire may rightly employ its libel laws to discourage the deception of its citizens. There is "no constitutional value in false statements of fact." *Gertz* v. *Robert Welch, Inc.*, 418 U. S. 323, 340 (1974).

New Hampshire may also extend its concern to the injury that in-state libel causes within New Hampshire to a nonres-

ident. The tort of libel is generally held to occur wherever the offending material is circulated. Restatement (Second) of Torts § 577A, Comment a (1977). The reputation of the libel victim may suffer harm even in a state in which he has hitherto been anonymous.[5] The communication of the libel may create a negative reputation among the residents of a jurisdiction where the plaintiff's previous reputation was, however small, at least unblemished.

New Hampshire has clearly expressed its interest in protecting such persons from libel, as well as in safeguarding its populace from falsehoods. Its criminal defamation statute bears no restriction to libels of which residents are the victim.[6] Moreover, in 1971 New Hampshire specifically deleted from its long-arm statute the requirement that a tort be committed "against a resident of New Hampshire."[7]

New Hampshire also has a substantial interest in cooperating with other States, through the "single publication rule," to provide a forum for efficiently litigating all issues and damage claims arising out of a libel in a unitary proceeding.[8] This rule reduces the potential serious drain of libel cases on judicial resources. It also serves to protect defendants from harassment resulting from multiple suits. Restatement (Second) of Torts § 577A, comment f (1977). In sum, the combination of New Hampshire's interest in redressing injuries that occur within the State and its interest in cooperating with other States in the application of the "single publication

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[5] We do not, therefore, rely for our holding on the fact that petitioner's name appears in fine print in several places in a magazine circulating in New Hampshire.

[6] N. H. R. S. A. 644:11(A) makes it a misdemeanor for anyone to "purposely communicate[] to *any person*, orally or in writing, any information which he knows to be false and knows will tend to expose any other living person to public hatred, contempt or ridicule." (Emphasis added).

[7] See N. H. R. S. A. 300:14, History.

[8] The great majority of the States now follow the "single publication rule." Restatement (Second) of Torts § 577A, Reporter's Note.

rule" demonstrate the propriety of requiring respondent to answer to a multistate libel action in New Hampshire.[9]

The Court of Appeals also thought that there was an element of due process "unfairness" arising from the fact that the statutes of limitations in every jurisdiction except New Hampshire had run on the plaintiff's claim in this case.[10] Strictly speaking, however, any potential unfairness in applying New Hampshire's statute of limitations to all aspects of this nationwide suit has nothing to do with the jurisdiction of the Court to adjudicate the claims. "The issue is personal jurisdiction, not choice of law." *Hanson* v. *Denckla*, 357 U. S. 235, 254 (1958). The question of the applicability of New Hampshire's statute of limitations to claims for out-of-state damages presents itself in the course of litigation only after jurisdiction over respondent is established, and we do not think that such choice of law concerns should complicate or distort the jurisdictional inquiry.

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[9] Of course, to conclude that petitioner may properly *seek* multistate damages in this New Hampshire suit is not to conclude that such damages should, in fact, be awarded if petitioner makes out her case for libel. The actual applicability of the "single publication rule" in the peculiar circumstances of this case is a matter of substantive law, not personal jurisdiction. We conclude only that the district court had jurisdiction to *entertain* petitioner's multistate libel suit.

[10] Under traditional choice of law principles, the law of the forum State governs on matters of procedure. See Restatement (Second) of Conflict of Laws § 122 (1971). In New Hampshire, statutes of limitations are considered procedural. *Gordon* v. *Gordon*, 118 N. H. 356, 360, 387 A. 2d 339, 342 (1978); *Barrett* v. *Boston & Maine R.R.*, 104 N. H. 70, 178 A. 2d 291 (1962). There has been considerable academic criticism of the rule that permits a forum State to apply its own statute of limitations regardless of the significance of contacts between the forum State and the litigation. See, *e. g.*, Weintraub, Commentary on the Conflict of Laws § 9.2B at 517 (2d ed. 1980); Martin, *Constitutional Limitations on Choice of Law*, 61 Cornell L. Rev. 185, 221 (1976); Lorenzen, *The State of Limitations and The Conflict of Laws*, 28 Yale L. J. 492, 496–497 (1919). But we find it unnecessary to express an opinion at this time as to whether any arguable unfairness rises to the level of a due process violation.

The chance duration of statutes of limitations in nonforum jurisidictions has nothing to do with the contacts among respondent, New Hampshire, and this multistate libel action. Whether Ohio's limitations period is 6 months or 6 years does not alter the jurisdictional calculus in New Hampshire. Petitioner's successful search for a State with a lengthy statute of limitations is no different from the litigation strategy of countless plaintiffs who seek a forum with favorable substantive or procedural rules or sympathetic local populations. Certainly Hustler Magazine, Inc., which chose to enter the New Hampshire market, can be charged with knowledge of its laws and no doubt would have claimed the benefit of them if it had a complaint against a subscriber, distributor, or other commercial partner.

Finally, implicit in the Court of Appeals' analysis of New Hampshire's interest is an emphasis on the extremely limited contacts of the *plaintiff* with New Hampshire. But we have not to date required a plaintiff to have "minimum contacts" with the forum State before permitting that State to assert personal jurisdiction over a nonresident defendant. On the contrary, we have upheld the assertion of jurisdiction where such contacts were entirely lacking. In *Perkins* v. *Benguet Mining Co.*, 342 U. S. 437 (1952), none of the parties were residents of the forum State; indeed, neither the plaintiff nor the subject-matter of his action had any relation to that State. Jurisdiction was based solely on the fact that the defendant corporation had been carrying on in the forum "a continuous and systematic, but limited, part of its general business." *Id.*, at 438. In the instant case, respondent's activities in the forum may not be so substantial as to support jurisdiction over a cause of action unrelated to those activities.[11] But respondent is carrying on a "part of its general

[11] The defendant corporation's contacts with the forum State in *Perkins* were more substantial than those of respondent with New Hampshire in this case. In *Perkins*, the corporation's mining operations, located in the Phillipine Islands, were completely halted during the Japanese occupation.

business" in New Hampshire, and that is sufficient to support jurisdiction when the cause of action arises out of the very activity being conducted, in part, in New Hampshire.

The plaintiff's residence is not, of course, completely irrelevant to the jurisdictional inquiry. As noted, that inquiry focuses on the relations among the defendant, the forum and the litigation. Plaintiff's residence may well play an important role in determining the propriety of entertaining a suit against the defendant in the forum. That is, plaintiff's residence in the forum may, because of defendant's relationship with the plaintiff, enhance defendant's contacts with the forum. Plaintiff's residence may be the focus of the activities of the defendant out of which the suit arises. See *Calder* v. *Jones*, *post*, at 4–5; *McGee* v. *International Life Ins. Co.*, 355 U. S. 220 (1957). But plaintiff's residence in the forum State is not a separate requirement, and lack of residence will not defeat jurisdiction established on the basis of defendant's contacts.

It is undoubtedly true that the bulk of the harm done to petitioner occurred outside New Hampshire. But that will be true in almost every libel action brought somewhere other than the plaintiff's domicile. There is no justification for restricting libel actions to the plaintiff's home forum.[12] The victim of a libel, like the victim of any other tort, may choose to bring suit in any forum with which the defendant has "cer-

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The president, who was also general manager and principal stockholder of the company, returned to his home in Ohio where he carried on "a continuous and systematic supervision of the necessarily limited wartime activities of the company." 342 U. S., at 448. The company's files were kept in Ohio, several directors' meeting were held there, substantial accounts were maintained in Ohio banks, and all key business decisions were made in the State. *Ibid.* In those circumstances, Ohio was the corporation's principal, if temporary, place of business so that Ohio jurisdiction was proper even over a cause of action unrelated to the activities in the State.

[12] As noted in *Calder* v. *Jones*, *post*, at 7, we reject categorically the suggestion that invisible radiations from the First Amendment may defeat jurisdiction otherwise proper under the Due Process Clause.

tain minimum contacts . . . such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.' *Milliken* v. *Meyer*, 311 U. S. 457, 463." *International Shoe Co.* v. *Washington*, 326 U. S. 310, 316 (1945).

Where, as in this case, respondent Hustler Magazine, Inc., has continuously and deliberately exploited the New Hampshire market, it must reasonably anticipate being haled into court there in a libel action based on the contents of its magazine. *World-Wide Volkswagen Corp.* v. *Woodson*, 444 U. S. 286, 297–298 (1980). And, since respondent can be charged with knowledge of the "single publication rule," it must anticipate that such a suit will seek nationwide damages. Respondent produces a national publication aimed at a nationwide audience. There is no unfairness in calling it to answer for the contents of that publication wherever a substantial number of copies are regularly sold and distributed.

The judgment of the Court of Appeals is reversed [13] and the cause is remanded for proceedings consistent with this opinion.

It is so ordered.

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[13] In addition to Hustler Magazine, Inc., Larry Flynt, the publisher, editor and owner of the magazine, and L. F. P., Inc., Hustler's holding company, were named as defendants in the District Court. It does not of course follow from the fact that jurisdiction may be asserted over Hustler Magazine, Inc., that jurisdiction may also be asserted over either of the other defendants. In *Calder* v. *Jones*, *post*, at 6, we today reject the suggestion that employees who act in their official capacity are somehow shielded from suit in their individual capacity. But jurisdiction over an employee does not automatically follow from jurisdiction over the corporation which employs him; nor does jurisdiction over a parent corporation automatically establish jurisdiction over a wholly owned subsidiary. *Consol. Textile Co.* v. *Gregory*, 289 U. S. 85, 88 (1933); *Peterson* v. *Chicago, R. I. & P. Railway Co.*, 205 U. S. 364, 391 (1907). Each defendant's contacts with the forum State must be assessed individually. See *Rush* v.

Savchuk, 444 U. S. 320, 332 (1980) ("The requirements of *International Shoe* . . . must be met as to each defendant over whom a state court exercises jurisdiction.") Because the Court of Appeals concluded that jurisdiction could not be had even against Hustler Magazine, Inc., it did not inquire into the propriety of jurisdiction over the other defendants. Such inquiry is, of course, open upon remand.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 12, 1983

Re: 82-485 - Keeton v. Hustler Magazine

Dear Bill:

Please join me.

Respectfully,

JPS

Justice Rehnquist

Copies to the Conference

December 12, 1983

82-485 Keeton v. Hustler

Dear Bill:

Please join me.

Sincerely,

Justice Rehnquist

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 14, 1983

Re: No. 82-485 - Keeton v. Hustler Magazine, Inc.

Dear Bill:

Please join me.

I have some concern about some of the material on page 9 of the opinion and have referred to it in my joinder letter of this date concerning No. 82-1401, Calder v. Jones.

Sincerely,

Harry

Justice Rehnquist

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 19, 1983

Re: 82-485 - Keeton v. Hustler Magazine

Dear Bill,

Please join me.

Sincerely,

Byron

Justice Rehnquist

Copies to the Conference

cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 19, 1984

Re: NO. 82-485-Keeton v. Hustler

Dear Bill:

Please join me.

Sincerely,

T.M.

Justice Rehnquist

cc: The Conference

&82-485 Keeton v. Hustler Magazine (Joe)

WHR for the Court 11/14/83
1st draft 12/7/83
2nd draft 12/12/82
Joined by SOC 12/8/83
Joined by JPS 12/12/83
Joined by LFP 12/12/83
Joined by CJ 12/10/83
Joined by HAB 12/14/83
Joined by BRW 12/19/83

WJB concurring in the judgment
1st draft 3/16/84