

1 priety of prevailing mores in America as we commence the last  
2 quarter of this century. The professor's views do not, however,  
3 appear to be consonant with those of a substantial portion of the  
4 American public. Exhibit "E" to the Adelson affidavit, a Time  
5 Magazine article of July 30, 1973, reports:

6 "Playboy and Penthouse . . . alone account for an  
7 estimated 20% of U.S. Magazine newsstand sales. From  
8 college dormitory to army barracks, they are now a  
9 standard bit of Americana. . .

10 \* \* \*

11 Most importantly, both Hefner [of Playboy] and  
12 Guccione [of Penthouse] are hard-driving, ambitious  
13 men who have accumulated wealth by anticipating the  
14 taste of their times."

15 Another of the Adelson exhibits, an article in New York  
16 Magazine of November 27, 1972 (Ex. D) further notes:

17 "Our old national mass magazines have died or are  
18 ailing, but now we have new national mass magazines.  
19 Playboy is our new Life, Penthouse is our new Look".

20 Since its introduction into America in September,  
21 1969, Penthouse has sold in excess of One hundred fifty six mil-  
22 lion (156,000,000) copies, in every area of the nation. Neither  
23 its corporate publisher, defendant Penthouse International, Ltd.,  
24 nor its chief executive officer Robert C. Guccione have ever been  
25 a party to a proceeding in this country in which the magazine  
26 has been held obscene or in which either of them has ever been  
27 held to have violated any obscenity statute. If the plaintiffs  
28 and the professor take a contrary view, the best that may be  
29 said for it is that the Constitution allows them to express such  
30 an opinion. That opinion, however, is no evidence supporting  
31 liability in a libel case.

32 (b) The professor further asserts that some adverse

1 inference should be drawn from Penthouse's publication of a series  
2 of extracts from a book entitled "The Last Testament of Lucky  
3 Luciano" and from a statement in defendant Gerth's June 1974  
4 article concerning which the professor claims to have knowledge  
5 superior to that set forth by The New York Times in an article  
6 by Denny Walsh (Blakey Affid. pp. 8-9). Neither assertion bears  
7 any relationship to the plaintiffs in this case or any of the  
8 statements in the La Costa Article. The general thrust of these  
9 criticisms by the professor is an effort at raising some presump-  
10 tion that Penthouse's exercise of its First Amendment rights is  
11 somehow suspect. It suffices to say that such a posture is con-  
12 stitutionally irresponsible.

13           Moreover, he asserts that the public questioning of the  
14 validity of some of the contents of the Luciano book first emerged  
15 in The New York Times in December, 1974; but Penthouse had complet-  
16 publication of its extracts from the book two months before. Such  
17 revelations cannot, then, have any bearing upon the La Costa  
18 Article.

19           (c) The professor next claims that the reputations of  
20 the authors as investigative reporters did not make their way to  
21 his ivory tower at Ithaca and disclaims acquaintance "with any-  
22 thing these two gentlemen have ever published in any of the more  
23 substantial newspapers or magazines" (Blakey Affid. p. 9). Our  
24 research has failed to reveal anything that professor Blakey has  
25 ever published in a substantial newspaper or magazine, but the  
26 presence or absence of such publication could not conceivably  
27 disqualify him from the exercise of his First Amendment rights,  
28 any more than it disqualifies defendants.

29           (d) The professor next delivers himself of the conclu-  
30 sions that the Penthouse Article charges plaintiffs with "involvement"  
31 in the Watergate coverup, the failure of the United States  
32 National Bank and the Baptist Foundation of America securities

1 fraud (Affid. ¶¶ 4, 5, 6, pp. 10-12). He asserts that the Article  
2 fails to connect plaintiffs with each such charge. The professor  
3 omits, however, to enlighten the court through identification of  
4 the language in the Article alleged to constitute such "involvement"  
5 in each instance; to specify the nature or extent of the  
6 claimed involvement in any such instance or to identify the plaintiff  
7 involved. (Was it Dalitz, the Community Antenna System or  
8 the defunct La Costa Management Company or plaintiff Paradise  
9 Homes, Inc., which held a building contractor's license?)

10 Totally omitted from the expression of these "expert" opinions  
11 is any discussion of the record, the authors' investigations or  
12 of the facts and documents they had before them as predicates for  
13 including these references in the Article. In the absence of any  
14 such references by the professor, the expression of his opinion  
15 is merely worthless.

16 (e) The professor attacks what he divines to be 'the  
17 central thesis of the La Costa Article . . . that La Costa is an  
18 organized crime headquarters'". (Affid. p. 12, L. 10-11). He proceeds  
19 by detailing a number of statements he claims which were  
20 made in the Article and continues:

21 "If the allegations are true, none will regret the  
22 harm. If they are false, the victims have an obviously  
23 strong claim to judicial protection and redress (p. 13,  
24 l. 19-22).

25 This admission that plaintiffs' so-called "expert" is unable to  
26 attest to the alleged falsity of any statement in the Article  
27 totally disqualifies him from expressing any valid opinion on  
28 the issue of malice which itself is a total function first of  
29 the falsity of a defamatory statement and second of the consciousness  
30 of its publisher of such falsity. The professor having confessed  
31 that he lacks the fundamental information necessary for  
32 the expression of an opinion, his judgment must be disposed of

1 accordingly.

2 (f) The professor then shifts his attack from the  
 3 authors to Penthouse criticizing articles from The New York Times  
 4 The Los Angeles Times and three law enforcement reports which  
 5 were among the many documents reviewed by Penthouse's outside  
 6 counsel. He first asserts that a New York Times article identify-  
 7 ing La Costa as "developed by organized crime figures", and a Los  
 8 Angeles Times article describing La Costa as "the West Coast  
 9 watering hold for all sorts of hoods and gangsters" were elabor-  
 10 ated upon by the authors who used them to falsely picture such  
 11 plaintiffs as Adelson "as purported leaders of organized crime",  
 12 and cites this as an example of implication by association"  
 13 (Blakey affid. p. 18, l. 12-14). He omits to mention that  
 14 Adelson himself reached precisely that conclusion from reading  
 15 the New York Times piece (Tr. 441).

16 Further, he ignores the virtual avalanche of recorded  
 17 references to the responsible authorities which firmly established  
 18 plaintiffs' connection with organized crime (See, for example,  
 19 Bergman Moving affid. pp. 15-29).

20 The professor further asserts that the authors esca-  
 21 lated these sources into charging plaintiffs with responsibility  
 22 for such misdeeds as the Watergate coverup (Blakey affid. p. 23,  
 23 l. 2-3), an assertion made solely on the authority of his own  
 24 assertion without reference to any language in the Article claimed  
 25 to support it, and, more importantly, without dealing with the  
 26 ample documentation in the record of the absolute truth of the  
 27 Article's Watergate recitals and the propriety of including them  
 28 in the piece (See Bergman Reply affid. pp. 20-25).

29 (g) The professor then complains that Penthouse did  
 30 not convene a panel of experts to authenticate the Article as  
 31 Life Magazine had done in the Cerrito case, 302 F. Supp. 1071,  
 32 as though the omission to do so was evidence of a substantial

1 departure from minimal standards of reporting (Blakey affid. p. 1  
2 l. 18-32). He omits to reveal, however, that the Court in Corrit  
3 v. Time, Inc., 302 F. Supp. 1071 (N.D. Cal. 1969), aff'd 449 F.2d  
4 306 (9th Cir. 1971), specifically noted that such a panel "went  
5 beyond the normal editorial review" (Id. at p. 1074);

6 (h) the professor complains that three law enforcement  
7 reports were not authenticated (Blakey affid. p. 18, l. 21). He  
8 omits to note that author Bergman confirmed the authenticity of  
9 the Corporations Commission Report (Ex. 45B) by interviewing its  
10 author (Tr. 640).

11 As to the FBI report (Ex. 4A), he states that "It is  
12 possible that it originated with [an] official agenc[y]" and "It  
13 is written in the style of and may well be an internal memorandum  
14 prepared by a Bureau agent" (Blakey affid. pp. 19-20). Presumably  
15 then, even if Penthouse and the authors had checked with organiza-  
16 crime "expert" Blakey, he could not have told them the documents  
17 did not issue from the FBI as author Bergman was told and believed  
18 (Tr. Vol. IV, p. 578) as he testified. As evidence of "malice"  
19 his cavil is useless.

20 In addition, he asserts that the FBI report's different  
21 tion between La Cosa Nostra and plaintiffs whom it styles as the  
22 "Jewish crowd", is evidence that they have no affiliation with the  
23 underworld. (Blakey affid. p. 21, l. 2-14). Highly credible  
24 authority, such as Nicholas Gage, described by Blakey as "one of  
25 our nation's serious investigative reporters" (affid. p. 8, l. 8  
26 cites the Cleveland Syndicate and Dalitz as a "recognized" under-  
27 world figure (The Mafia is Not an Equal Opportunity Employer, p.  
28 65).

29 Former FBI agent Richard F. Gliebe, head of the Organi-  
30 Crime Division of the Illinois Bureau of Investigation confirms  
31 accommodation in the underworld of its Jewish and Italian branch  
32 describing Dalitz as "an organized crime figure" (Ex. 4R, pp. 181

1 194).

2 The CII report concurs (Ex. 13I, p. 15), while Legacy  
3 of Doubt, referring to Dalitz and Lansky, stated:

4 "Although both men are Jewish, the Italian branch  
5 of the Mafia family considers both Dalitz and Lansky to  
6 be the 'royalty' of the organized underworld and treats  
7 them with great respect."

8 7. In short, the record itself provides the most com-  
9 pelling demonstration of why the Blakey affidavit provides no com-  
10 petent proof whatever, and must be disregarded.

11 B. THE ABSENCE OF EVIDENCE SUPPORTING CLAIMS BY  
12 THE CORPORATE PLAINTIFFS

13 8. The sole reference to the claims of the corporate  
14 plaintiffs in the papers opposing this motion is a reference in  
15 their memorandum of law to the abstract proposition that a cor-  
16 poration can be libeled. They do not dispute the showing of its  
17 moving papers that several of the corporate entities were defunct  
18 at the time the Article was published and thus do not have the  
19 capacity to maintain an action for libel.

20 Plaintiffs' affidavits do not make so much as a pretense  
21 of demonstrating how any single identified one of their number can  
22 be said to have been libeled by any particular statement in the  
23 Article; nor do they attempt to demonstrate any manner in which any  
24 of its contents disparage them as incompetent in the respective  
25 trades or businesses. Whether reference is had to the CATV System,  
26 to land holding entities, to a corporation holding a building con-  
27 tractors license or even to Rancho La Costa, Inc., whose spa is the  
28 subject of highly complimentary observation in the Article, plain-  
29 tiffs have totally failed in their burden of demonstrating the  
30 basic proposition that any of these plaintiffs were defamed.

31 9. Moreover, no affidavits are submitted by any of them  
32 containing evidence of the falsity of any charges against them or