

1 or its owners are responsible for the misdeeds of its guests
2 solely on the basis that they were staying at the hotel when the
3 misdeeds were planned. Neither is there any showing that any of
4 the La Costa principals were sufficiently close to any of Mr.
5 Nixon's staff (or even barely acquainted with them except as
6 hotel patrons) to make it credible that they would have been
7 admitted to the meetings of the Nixon staff or that their counsel
8 would have been sought by the President. It cannot fairly or
9 realistically be assumed that the authors and publishers genuinely
10 believed this charge to be true. Any reasonable person would
11 have to feel serious doubt.

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13 (5) The article similarly charges La Costa with
14 involvement in the failure of C. Arnholt Smith and the United
15 States National Bank and "a plague of security frauds that have
16 been estimated to cost Americans fifty billion dollars" without
17 presenting any supporting evidence. All that is shown is that
18 La Costa had a borrowing relationship with the United States
19 National Bank. The article proceeds to catalog the problems of
20 C. Arnholt Smith and persons associated with him although La
21 Costa is not shown to have had any part in their affairs. The
22 allegation concerning purported responsibility for "a plague of
23 security frauds that have been estimated to cost Americans
24 fifty billion dollars" is dropped and is not explained. In
25 this way, the article brings "Watergate", Arnholt Smith, his
26 bank failure and a fifty billion dollar securities fraud into
27 an essay on La Costa and organized crime completely without
28 any connecting link. Charges of misconduct on such a mammoth
29 scale could not have been made with genuine conviction on the
30 basis of no evidence whatever. It is nothing more than guilt
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by association. This is recklessness in the classic sense.

(6) A further illustration is the introduction into the article of the story of the "Baptist Foundation of America security fraud". After referring to this matter the article (p. 112) drops it without showing any connection between it and La Costa. The motion papers are also unenlightening. It appears that there was no basis at all for adding this additional burden of purported criminality to the La Costa piece.

The central thesis of the La Costa article, however, is that La Costa is an organized crime "headquarters". This point is driven home in a variety of forceful ways. The caption on the cover of the March 1975 issue read "La Costa: Syndicate in the Sun". The inside title was "La Costa - The Hundred-Million-Dollar Resort with Criminal Clientele". The lead-in quotations of the article include a reference to the prospect of La Costa's being another "Apalachin". The article says that the resort "was established and is frequented by mobsters" and that the "primary founders of La Costa were syndicate 'bluebloods'". It specifies that the founders were "the Moe Dalitz mob - which includes Dalitz, Allard Roen, Merv Adelson and Irwin Molasky" that "Dalitz has been a prime mover in transforming organized crime into a financial powerhouse" and that "At seventy-five, he is a senior mentor among the criminal aristocracy". The article further states that "The La Costa operation is an extension of services the crime syndicate people provide in their Las Vegas casinos". The article contains such captions as "BIG CRIME IS BIG BUSINESS". It speaks of the "La Costa gang". There is the further statement that "Most observers of the La Costa phenomenon and organized crime agree that the DRAM group selected San Diego - and par-

1 particularly its undeveloped northern area - because there was no
2 established syndicate sphere of influence". The article speaks of
3 gatherings of "organized crime figures" at La Costa. There is the
4 allegation that Meyer Lansky "the dark eminence of organized
5 crime" was actually a concealed founder of the resort. The
6 article clearly leaves the impression that La Costa was financed
7 by organized crime money, when it observes that "legal and il-
8 legal profits of the mob's worldwide operations needed more
9 outlets. ... Five years later, La Costa Country Club opened its
10 doors." (p. 111) The article also states that "La Costa's image
11 as a posh resort camouflages its strategic importance to big
12 crime". It concludes with the comment: "Alliances between crime
13 and wealth are an American tradition. With so much crime at the
14 top, it is hardly surprising that many people see corruption as
15 our dominant characteristic. The La Costa playground is a power
16 center for the organization and proliferation of that corruption.
17

18 This is obviously destructive publicity for a fashion-
19 able resort. If the allegations are true, none will regret the
20 harm. If they are false, the victims have an obviously strong
21 claim to judicial protection and redress.
22

23 The charges are based principally on suspicions
24 directed against Moe Dalitz, one of the La Costa founders. (I
25 add, too, that whatever the allegations against Dalitz, it is
26 grossly unfair to tar the other plaintiffs with the same brush
27 without a careful analysis of each's situation.) Dalitz, of
28 course, is known in law enforcement circles to have been engaged
29 in bootlegging in the Prohibition era and in gambling thereafter.
30 In his own testimony before the Kefauver Committee in 1951, he
31 did not deny such activities, although he did deny more lurid
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1 charges. In the 1950's, he moved from Cleveland to Las Vegas,
2 where he was a principal of the Desert Inn and Stardust Hotels.
3 Federal authorities believed, and so stated publicly, that much
4 of the Las Vegas gambling scene at that time was controlled by
5 true organized crime figures. Dalitz was one point of suspicion,
6 but nothing was, in fact, proved against him in a court of law,
7 and no action has ever been taken against him by the relevant
8 Nevada gambling control authorities.
9

10 In the early 1960's, according to the evidence, Dalitz
11 disposed of his Las Vegas gambling interests, and transferred his
12 primary interest to the La Costa resort in Southern California.
13 Despite the disposition of his gambling interests, rumors of a
14 Dalitz crime involvement persisted into the 1970's, fed primarily
15 by suspicions directed against the Teamsters Union, which is the
16 primary La Costa lender. There is simply no evidence in this
17 record to support the allegation that organized crime money was
18 invested in La Costa. Indeed, all the evidence is that the
19 money was obtained in adequate amounts from the Teamsters. The
20 Teamsters have an equity interest in La Costa and use it as a
21 convention center. Some Teamsters executives have purchased homes
22 there. News media discussions of the Teamsters have sometimes
23 pointed to the Union's association with Dalitz as one indication
24 of an alleged crime link. References to Dalitz have pointed to
25 his association with the Teamsters as a supposed indication of
26 his alleged crime link. The propriety of this repetitive ricochet
27 of guilt by association and not evidence is one of the issues
28 presented to this Court.
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32 The defendants have based their allegations in large
part on selections from the vast popular literature of organized

1 crime. That literature is often fascinating and sometimes useful,
2 but it is too often so wholly imaginative that no responsible
3 publisher should accept it at face value. There is no validity
4 in the proposition that if a "fact" has been asserted in one of
5 these books it must be true. Penthouse learned that lesson when
6 it published the Luciano book.
7

8 The defendants' affidavits indicate that the supporting
9 evidence actually reviewed by Penthouse, through its libel
10 attorney, consisted of three citations from the New York Times,
11 one from the Los Angeles Times, and three purportedly "official"
12 reports. Other supporting evidence is alleged, but none is
13 specified as having been reviewed prior to publication.
14

15 The New York Times articles (dated April 29, 1973,
16 September 10, 1973 and March 1, 1974) are all by Denny Walsh.
17 The article of April 29, 1973 is the one I mentioned previously,
18 in which Walsh erroneously reported that the Teamsters had
19 succeeded in killing a Justice Department wiretap surveillance.
20 The article contained two references to conversations between
21 Teamsters' president, Frank Fitzsimmons and an alleged "envoy" of
22 the "Chicago crime syndicate". The conversations were reported to
23 have taken place at La Costa, which was referred to as "a plush
24 resort and health spa", but La Costa was not implicated. The
25 article supports none of the Penthouse charges. (See Exhibit
26 hereto.)
27

28 The second Walsh article, September 10, 1973, dealt
29 with an investigation of C. Arnholt Smith. The article stated
30 that Smith was represented by attorney John A. Donnelley and
31 reviewed Donnelley's background, stating among other things that
32 he had also been counsel to "former Cleveland racketeer, Morris

1 Barney Dalitz". The article referred to Dalitz's former interest
 2 in the Desert Inn, FBI wiretaps at the Desert Inn in the 1960's,
 3 and noted that Donnelley "has also assisted Dalitz and his
 4 colleagues in establishing a plush resort community in northern
 5 San Diego County known as La Costa". This article still contains
 6 no allegation of a current criminal involvement by Dalitz or the
 7 La Costa resort, although it accuses Dalitz of being a "former"
 8 racketeer in Cleveland many years before. (See Exhibit C hereto)

9
 10 The third Walsh article, March 1, 1974 (Exhibit D
 11 hereto) dealt with the indictment of Teamsters executive Alan
 12 Dorfman. It contained the statement "After the indictment, Mr.
 13 Dorfman was spotted by Government agents at La Costa, the resort
 14 community in northern San Diego County developed by organized
 15 crime figures using teamsters' pension fund money". Note there
 16 is no allegation that it was developed by organized crime money.
 17 Walsh, moreover, did not show the basis for this characterization
 18 in the third article and did not specify the "figures" referred
 19 to. One might assume Dalitz is intended, but Walsh did not say.
 20 The article itself does not deal with La Costa or with Dalitz.
 21 No facts are given in support.

22
 23 The Los Angeles Times article of September 6, 1974,
 24 entitled "San Diego -- It's a New Mother Lode to Mafia Bosses",
 25 reported an unidentified member of the San Diego District Attorney
 26 staff as speculating "Hell, what's to keep La Costa from becoming
 27 the site of a 1974 Apalachin convention?" The unidentified
 28 individual is further quoted, "There wouldn't be much law en-
 29 forcement could do about it. They'd just land at the little
 30 airport at La Costa in the middle of the night, use some
 31 limousines to shuttle people back and forth so there'd be no cars
 32

1 to indicate a crowd, and meet in a private home. In fact, they
2 could hold a two-or-three-day meeting and we'd never know the
3 damn thing was going on". The article identified La Costa as a
4 multimillion dollar development financed in part by Teamster loans.
5 Note again there is no allegation that La Costa was financed by
6 organized crime money. It stated that former Pension Fund execu-
7 tive Alan Dorfman had a home there, and mentioned his conviction
8 (in connection with a kickback on a loan to a North Carolina
9 manufacturer) and recent release from prison. It stated further:
10 "La Costa is described by federal authorities as 'the West Coast
11 watering hole for all sorts of hoods and gangsters' and Dorfman's
12 home as one of the suspected meeting places". The "federal
13 authorities" making this statement were not identified. (See
14 Exhibit E hereto.)
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16
17 Denny Walsh's 1974 New York Times reference to La
18 Costa as a resort community "developed by organized crime figures"
19 and the Los Angeles Times article later in the year stating that
20 "federal authorities" had described La Costa as "the West Coast"
21 watering hole for all sorts of hoods and gangsters" were apparent-
22 ly the basic foundation stories of the Penthouse article, which
23 escalated the references, used even more extravagant language,
24 and added the "Watergate" cover-up, Meyer Lansky, all of the
25 Teamsters' problems, Arnholt Smith's bank failure, a "fifty
26 billion dollar security fraud", and a Baptist Foundation swindle,
27 as if they were all attributable to La Costa, although none of
28 these allegations were made against La Costa in any of the arti-
29 cles in either the New York Times or the Los Angeles Times.

30
31 Denny Walsh did say in his 1974 article that La Costa was
32 developed by "organized crime figures" but he gave no facts,