clar•i•ty \ 'klar-i-të \ n [ME clarite, fr. L claritatem, fr. clarus]: the quality or state of being clear.

In *New York Times v. Sullivan*,¹ the U.S. Supreme Court set forth the standard of proof required of a public official in a defamation action. Actual malice, the Court stated, must be demonstrated with “convincing clarity.” Ten years later, in *Gertz v. Robert Welch, Inc.*,² the Court described the same standard, but with slightly different terminology—recovery by a public official would be permitted only on a showing of “clear and convincing proof” of malice.

During the past dozen years many courts—state and federal—have applied the *New York Times* and *Gertz* standard (some even noting that “clear and convincing” and “convincing clarity” are essentially interchangeable terms), but two courts—the Vermont and Hawaii Supreme Courts—have synthesized the variant descriptions into a remarkably redundant hybrid. Actual malice, both courts have declared, must be proved with “clear and convincing clarity.”³

Again during the last term the Supreme Court reviewed the *Times/Gertz* standard. In *Anderson v. Liberty Lobby, Inc.*,⁴ it indicated that “clear and convincing” and “convincing clarity” were one and the same. And once again another court took the next step.

Recently, in *Ashby v. Hustler Magazine, Inc.*,⁵ a federal appellate court confronted the “actual malice” standard and revived the Vermont/Hawaii synthesis. Judge Krupansky cited *Anderson v. Liberty Lobby* for the principle that “the trial court must determine if the plaintiff has produced sufficient evidence from which a reasonable jury could find that the plaintiff had demonstrated actual malice with clear and convincing clarity.”

By now it should be clearly and unambiguously clear: proof of malice with muddy, murky or turbid clarity is insufficient. The re-

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⁴  106 S. Ct. 2505, 2512 (1986).
⁵  802 F.2d 856, 860 (6th Cir. 1986).
requirement of proof by "clear clarity" is—according to the Sixth Circuit—the law of the land.

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