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# REPORT REPORT



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Reed Irvine, Editor

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## WESTMORELAND IS WINNING

**"The president of CBS News, Edward M. Joyce, told a Rotary Club gathering in Maine on Tuesday (November 20) that he expected the network would lose Gen. William C. Westmoreland's \$120 million libel suit at the jury level but would win on appeal." That report was carried in The New York Times on November 22. The exact quote attributed to Mr. Joyce was: "If you follow libel trials in this country, you know that juries tend to award cases to the plaintiff, and in equal proportions they are overturned either by the judge or in the appeal process. We feel very confident that will be the outcome of the Westmoreland case."**

It turned out that was something Mr. Joyce was willing to say to the Rotary Club in Ellsworth, Maine, but he was not happy to make it known to the whole world via The New York Times. Mr. Joyce told a Times reporter, Peter Kaplan, that his remarks in Ellsworth were not intended to convey the impression that CBS would lose the case at the jury level. He said he was "just speaking in general about libel," but a veteran reporter who was present, Richard Dudman, former Washington bureau chief of the St. Louis Post-Dispatch, said that the impression left by Mr. Joyce was that CBS would lose at the jury level.

**That impression has been generated by the testimony presented since the trial opened on October 9 in federal district court in New York City. To be sure, so far it has been Gen. Westmoreland's turn at bat, but his side has put up some heavy hitters who have already done a lot of damage to CBS News. They have come through cross examination relatively unscathed. The worst is yet to come for CBS—the appearance of Ira Klein, the film editor for the 90-minute documentary that gave rise to Westmoreland's suit. Klein is a rare individual—a whistleblower inside a big media organization. He was so distressed by the unethical practices that were followed in the production of "The Uncounted Enemy: A Vietnam Deception," that he provided information to Don Kowet and Sally Bedell that enabled them to write an article for TV Guide magazine called "The Anatomy of a Smear: How CBS Broke the Rules and 'Got' Gen. Westmoreland."**

It was Klein's action that made the Westmoreland suit possible, since his information provided the pole that could enable Westmoreland to vault over the Sullivan rule. That is the requirement that a "public figure" who seeks redress for libel must prove that the party accused of the defamation uttered it knowing that it was wrong or with reckless disregard of the truth. Klein's testimony is expected to show that George Crile, the producer of the CBS documentary, set out to prove that Gen. Westmoreland was guilty of a conspiracy to understate enemy strength in Vietnam for political reasons and that he deliberately disregarded or suppressed important information that showed this was untrue.

### Suppress the Evidence

CBS's lawyers are currently trying to keep the jury from being told about the Benjamin Report, the report of an investigation of the Westmoreland documentary made in June 1982 by senior executive producer Burton Benjamin. Benjamin was asked to investigate the TV Guide charges after their publication sent shock waves through a meeting of the heads of CBS affiliate stations. Benjamin's report sent shock waves throughout the management of CBS. It was considered too hot to make public.

Van Gordon Sauter, who was then president of CBS News, had said when announcing the investigative assignment given to Burton Benjamin: "We will find what we will find and then go right to the public to say this is what we found." When he saw what Benjamin had found, Sauter quickly changed his mind about making the report public. Instead, he put out a 1300-word memorandum that was supposed to have been a summary of the report. It wasn't. As was revealed when the Benjamin Report was made public nine months later under a court order, the Sauter memo failed to report some of Benjamin's important findings and even reached conclusions on some points that differed from Benjamin's conclusions.

Just as CBS tried to keep the Benjamin findings from the public, its lawyers are now trying to keep them from the