

# ISTHMUS

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OF MADISON

Ursula's Valentines  
See p. 12.



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## Pete Hardin's Lonely Fight



Photo by Glenn Trudel

**Charging libel, a giant dairy co-op sued the local  
mag publisher for \$20.5 million. Hardin won —  
but victory was expensive.**

by David Dishneau

On Thursday, July 30, 1981, Pete Hardin's work was interrupted by a knock on the door of his apartment. It was the mailman with two bulky, oversized pieces of registered mail, one for Hardin and one for the Milkweed, a monthly dairy marketing newspaper with a national circulation of 1,300 that Hardin writes, edits and publishes out of his home in Oregon, 10 miles south of Madison. Each of the hefty packages bore the same ominous return address: U.S. Department of Justice, Western Division of Wisconsin, U.S. Marshall Service.

"It looks like they got you this time," the mailman chuckled as Hardin signed for the packages.

Whatever they contained, Hardin knew it couldn't be good. He had been threatened frequently with lawsuits by officials of the Eastern Milk Producers Cooperative, a Syracuse, N.Y., dairy marketing organization, for a series of investigative articles he had published about the co-op's operations. He set the envelopes aside, unopened, until the following Monday. "I didn't want to ruin my weekend," he recalled.

On Monday morning, Hardin's fears were confirmed. The envelopes contained legal documents notifying him that Eastern Milk Producers had filed a \$20.5-million libel suit in federal court in New York against him and the Milkweed. The basis for the 11-point complaint was a story Hardin had published in May 1981, which detailed the co-op's unsuccessful attempt to secure a federal loan guarantee in order to buy two mozzarella cheese plants from a company with alleged Mafia connections.

The 80-inch story, which was based mainly on government documents Hardin had obtained through Freedom of Information requests, traced the cheese-plant deal from its beginnings in 1978 to the Farmers Home Administration's (FmHA) approval of the \$20-million loan guarantee in the last days of the Carter administration, to the suspension of the loan guarantee several days later, after the U.S. Attorney's office in Syracuse advised the FmHA of a criminal investigation of the parties involved in the deal. Eastern's attorneys contended the story was defamatory.

Hardin's first reaction was to reach out to the people closest to him.

"I called my girlfriend, called my mother, called a couple of close friends, and the consensus was that I'd better find a lawyer," Hardin said. He hired John Ben Carroll, an attorney he'd met while living in Syracuse in 1972 and 1973, who "liked to take unpopular causes in the dairy industry."

Carroll's strategy was to seek a summary judgment—pre-trial dismissal of the suit on the grounds that it had no basis. Winning at that level would depend on convincing the judge that Hardin's story was accurate and that trying the case would be a waste of the court's time.

Hardin spent about half his time during the next eight months preparing his defense. He photocopied some 700 pages of documents, spent hours on the telephone and days on the road or in the air between Madison and Syracuse. On one particularly grueling day in February 1982, he got up at 2 a.m. and drove through a blizzard to Chicago to catch a 6 a.m. flight to Syracuse, where he sat in a chair in Carroll's office for 10 hours answering questions.

Carroll's motion for summary judgment was heard in March 1982. On July 14, 1982, nearly one year after the suit had been filed, Judge Neal P. McCurn ruled in Hardin's favor on all 11 points of the complaint and threw the case out. He called the Milkweed article a "fair and true" account of the facts.

### Expensive Victory

It was an expensive victory. Hardin figures it cost him \$22,000 in legal fees, travel expenses, telephone calls and photocopying charges. That's a lot of money for a business with an annual gross income of \$30,000, and Hardin still hasn't paid all the bills. Furthermore, it's impossible to put a price on the countless hours he spent away from work to prepare his defense, or on the depression and psychological stress the suit caused him, or on the discomfort he must endure this winter because he can't afford to get the heater fixed in his 1972 Ford Maverick.

Yet, the Milkweed carries on. Working out of the bedroom-turned-office of his five-room apartment, the 34-year-old publisher continues to do what he calls "this hard-ass investigative stuff." He wields his pen on behalf of dairy farmers, who he says are too busy running their farms to keep an eye on unscrupulous co-op officers and the intricacies of complicated government programs.

And he continues to prod Eastern Milk Producers Cooperative, which he considers to be one of the industry's worst offenders.

Hardin and Carroll filed a half-million-dollar countersuit against Eastern for "commencing an action without reasonable grounds." Eastern, meanwhile, began an appeal of the dismissal. Both sides eventually agreed to drop their suits.

"The way the thing ended was that after the appeal was filed they said, 'We'll drop our appeal if you'll drop your claim,'" Hardin said. "And my lawyer said, 'If you don't have the money, if we can't settle up now and have more money available to fight the appeal, forget it. You're talking 10 to 15 [thousand dollars] just to go on with it.' It was just gonna keep piling up."

### Squelching Criticism

The Milkweed case has been widely cited by journalists as an example of a "nuisance suit"—a lawsuit filed mainly to harass someone. Some journalists, like Jack Anderson, who wrote about the case in the September 1983 issue of Penthouse magazine, believe there's a growing trend of huge libel suits being filed by large corporations and wealthy individuals to squelch criticism by small, feisty publishers. Hardin often refers to his case as "just part of a phenomenon that's going on in this country."

While there are no statistics available to support the view that big companies are specifically gunning for small publishers, there is evidence of a trend toward more and larger libel awards in cases that go to trial.

The Libel Defense Resource Center, a New York-based information clearinghouse funded by leading media organizations, recently reported a dramatic upsurge in multimillion-dollar trial awards against the media. From 1976 to 1980, only one libel case out of 23 that went to trial resulted in a million-dollar judgment, and from 1980 to 1982, nine of 54. But during the first six months of 1983, seven of eight cases that went to trial resulted in judgments well over a million dollars. Six of the eight included punitive damage awards—fines that are levied purely to punish offenders—totaling over \$47 million.

However, Henry R. Kaufman, the LDRC general counsel, pointed out in a telephone interview that "media defendants continue to prevail in the great majority of cases" either through dismissal in the pre-trial stage or on appeal after a guilty verdict.

Some publishers settle out of court to avoid the high costs of litigation. Hardin said he never considered that route: "No way. Giving in on a law suit is the visible sign of

**The worst damage that  
libel suits do to small  
publishers is the fear  
they produce,  
says Nat Hentoff.**

accession to them. It's being afraid to print the tough stories—that's the invisible response by the news media. Either way the free press suffers."

Indeed, the cost of a libel suit has caused some publishers to back away from investigative journalism and has forced others out of business altogether. So even complainants who lose wind up winning by effectively silencing their critics.

Nat Hentoff, a free-speech advocate who writes for the Village Voice in New York, met Hardin after lecturing at the University of Wisconsin last October. In a telephone interview, Hentoff said the worst damage libel suits do to small publishers—and to the free press in general—is the fear they produce.

"The fear is that even if you win the case it costs so much money that next time you

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community's business leaders who've benefited from all the hoopla surrounding private partnership" should also be held accountable. Has the public received produced the jobs and expanded tax base they've promised? Entities whose activity should be scrutinized are the Downtown Madison Corp., the Madison Capital Corp., the Madison Development Corp., Search, the new business "incubator" facilities and the several neighborhood groups.

Sensenbrenner's policy is that he and Miller may be promising more than and may inadvertently touch off a left-right confrontation. Take note that repeated statement that Madison can encourage development without a liability shield draws a loud guffaw from business leader Fred Mohs, and city rules on affirmative action, land-development practices and relations as impediments to a healthy economic climate. Meanwhile, grumbling among liberals on the city council over shifting federal aid from service groups to business recipients. Yet liberals and seem unusually willing to pull together, so Sensenbrenner may

pic, one of the sad truths of Wisconsin politics is that state Republicans are a lot. Not all, but most of them are, particularly the leadership. The philosophy but simply opposing whatever the Democratic governor says is "good morning."

He feels a vigorous two-party system would benefit the state, this realization as a shock. Apparently, Anne Curley, the business news editor of the Journal, has had her eyes opened in such fashion. In an unusually blunt way, she all but called Assembly Minority Leader Tommy Thompson a

Thompson," she wrote, "once again chose high-decibel, low-IQ language last week at the annual legislative conference of the Wisconsin Manufacturers and Commerce. His bellicose partisan attacks on Gov. Earl Warren were too corny to be taken seriously by any but the most visceral of his crude style had to be an embarrassment to many of the business leaders he seeks approval."

Curley, too. Curley went on to remark that the caliber of Republican reporting on the state is "It's no fun reporting on a battle of wits when one side is winning," she observed. Considering that her section is frequently a public sentiment, her comments must have been a real blow to the

A postscript to the column of two weeks ago which described the firing of Glenn Miller, the State Journal sports editor, gave UW-Madison a chain over the Milwaukee Journal's breaking the story on the restructuring of the Department. The State Journal's peculiar relationship to the

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## First Amendment Hero

Continued from Page 1

have to worry about how you're going to afford it," Hentoff said. "It's a cliché to talk about a chilling effect, but that's just what it is—a chill."

Some publications, including the freewheeling Village Voice, have bundled up against the chill by hiring lawyers who check controversial stories for potential trouble spots prior to printing. This "lawyering" of articles may be well worth the cost for those who can afford it, but for Hardin, who barely makes enough from the Milkweed to survive, it's out of the question. His only insurance against another libel suit, he said, is accuracy.

"There's so much going on in the dairy industry right now that I don't have time to worry about another libel suit," he explained. "I'm just trying to do my best and to be accurate. If you're careful and you're true to the facts, there are a lot of tough stories that are gonna get people mad if you print 'em. But they can't argue with the facts—and win."

### What Recourse?

But, as the Milkweed case demonstrated, they can certainly argue with the facts and cause financial damage. The only recourse available to people who have been wrongfully sued is to countersue in hopes of forcing the original plaintiffs to pay for the damage they cause. But a countersuit is expensive and risky—what if you lose?

Libel laws vary from state to state. Lawmakers in nine states have attempted to deal with excessive libel judgments by outlawing punitive damages or limiting the circum-

stances under which punitive damages may be awarded.

The American Civil Liberties Union has taken the position that "the First Amendment prohibits, or should prohibit, the right to sue for libel in matters of public concern," which covers just about everything published. Eunice Edgar, executive director of the Wisconsin ACLU, said the organization's state chapters can provide legal services for libel defendants, but that "we are an organization with limited resources."

Hentoff said libel laws of any kind contradict the First Amendment guarantee of a free press. "I believe there should be no law of libel," Hentoff said. "You don't punish people for exercising their right to free speech." He said that libel suits are usually filed by large corporations or powerful individuals who have enough wealth and clout to use their own free speech to "tear apart" any published article that offends them, and that in his view the public is wise enough to sort out the lies from the truth. Hardin disagreed.

"You need libel laws," he said. "Libel is the means for keeping the press responsible. The way I understand Hentoff's position, we would depend on the free market to keep the media honest. But there are some pretty irresponsible players in the free market. The libel laws are important. They protect both sides."

But Hardin agreed that measures are necessary to protect honest journalists from expensive nuisance suits. The remedy he espouses—and one that has proven effective in reducing the number of libel suits in England—is to require plaintiffs who lose libel suits to pay the defendants' legal fees.

"In my instance, I couldn't even get my money back for an 11-out-of-11 clean victory," Hardin said. "There ought to be a way for those people [who are wrongfully sued] to get some recompense from the people who brought the suit."

Hardin would also like to see the establishment of a "journalistic superfund," funded by journalists and large news organizations, that would be used to finance countersuits "and to overwhelm the litigants" who file libel actions that are clearly intended to harass.

Hardin's libel victory has made him a First Amendment hero. He has twice been invited to speak to groups of journalists, and the Milkweed case has been cited in the New York Times, the Wall Street Journal, the Columbia Journalism Review and in Penthouse, where Jack Anderson painted Hardin as a freedom-of-the-press crusader who successfully defended every citizen's right "to set up a printing press and begin to assail the powers that govern him."

### Still 'Pete'

Yet, to his readers, most of whom are dairy farmers in the New England states, Hardin is still "Pete." That's how he answers his telephone and how he signs the personal notes to friends that sometimes appear on the Milkweed's pages.

Hardin was born and raised in the hilly dairy country of northern New Jersey, an area he says is rapidly turning into "suburbia." His uncle runs a farm that has been in the Hardin family since 1748, and milk seems to flow in his veins. Hardin, who loves the independence of publishing his own paper, said if he couldn't write about the dairy industry, he probably wouldn't write at all.

"Dairy farmers are such hard-working

people that if they were dishonestly inclined, they'd probably be doing something else," Hardin said. "Already they have to know the weather, the soil, have veterinary skills, mechanical skills, husbandry skills, and beyond that they have to make decisions about what kind of cooperative to join and what companies [the co-ops] to sell their milk to. These are all major economic decisions."

"I know many people who are dairy farmers who are my friends," he said, "and when I see their well-being threatened by the lack of honesty in the dairy industry, that bothers me. They've got to have someone out there looking out for them, because they're too busy to do it themselves."

Hardin, who holds a master's degree in agriculture journalism from the UW, has been publishing the Milkweed since June 1979, but his battles with Eastern Milk Producers Cooperative and his belief that dairy farmers need someone to keep an eye on co-op managers goes back more than 10 years. In 1972 he worked for Eastern as a public relations officer, and later worked for a Syracuse advertising agency where he handled Eastern's account.

"I've observed them over a long time," he said. "I got to know them intimately, got to know their inner politics, got disgusted by seeing that after a while and left."

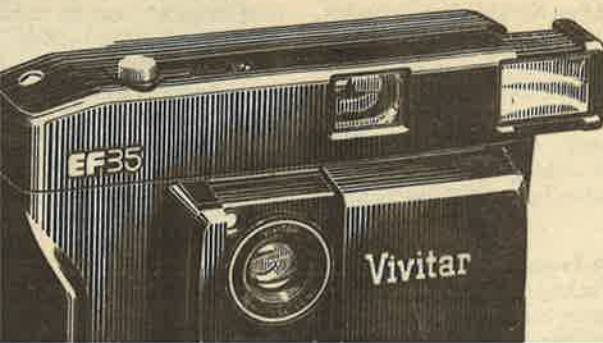
Since then, Hardin has been a constant annoyance to Eastern officials. He has freelanced stories about the cooperative for national publications in addition to his frequent investigative pieces in the Milkweed.

"I suppose I figured if I kept it up, I'd get sued, but I was naive enough to think that I would be sued if I was in serious error as a journalist as opposed to getting sued for telling the truth," Hardin said. "In retrospect, that was my naivete."

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