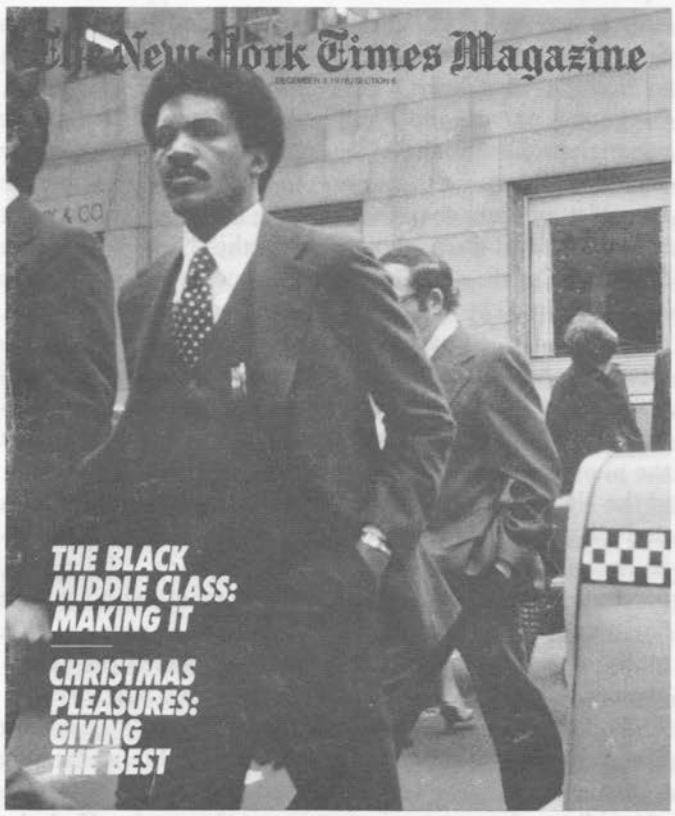
The Fateful Photograph

TIM MALYON

On December 3, 1978, *The New York Times Magazine* published a controversial cover story by William Brashler entitled "The Black Middle Class: Making It." In the article, Brashler contended that an increasing number of blacks were achieving success in American society, and that this newly affluent black middle class was turning its back on the black lower class. "It is not a total economic transformation, to be sure," Brashler wrote, "and the troubling problems of the ghetto and the black underclass have not suddenly gone away, but a strong, mobile black middle class is carving a distinct identity for itself. In the process, it is drifting more and more distant from its less fortunate brothers."

The piece was criticized for some of its characterizations of middle-class blacks and its conclusions. At one point, for instance, Brashler considers the plight of "the well-meaning black guy with a job and middle-class aspirations. On the one hand, he is called a pig if he whips his woman into line, and on the other hand, he is hooted for being something less than a man if he doesn't." Summarizing the changes that have occurred in the black community, Brashler wrote, "'Black power' has come to mean 'green power.'"

The cover picture by Italian photographer Gianfranco Gorgoni illustrating this article depicted a good-looking, well-dressed black man named Clarence Arrington, who was working at the time as a financial analyst for General Motors. He is now with the Ford Foundation. Arrington was not named, nor was he quoted in the article. When the *Times* hit the streets, Arrington was enjoying a quiet Sunday morning in bed at home. Telephoned by a friend and informed of his newfound fame, he immediately picked up a copy. "I had no knowledge that my picture was taken at all," Arrington says today, "so I was quite frankly shocked, and even more so once I had the opportunity to read the article. My reaction was one of dismay." During the next few days, he found himself fending off questions from friends and business colleagues who, he says, were appalled by the article and curious to know if Arrington was moonlighting as a model. As a result, Arrington contacted the *Times* through his lawyer, Herve Gouraige. He asked for a printed apology and financial compensation. The *Times* refused. Arrington sued: the *Times*; the photographer; the photographer's agency, Contact Press Images, Inc.; and the agency's president, Robert Pledge, for a total of $1,150,000.



According to *Times* attorney, George Freeman, "The *Times* does not settle cases like this that involve First Amendment rights for money." If Arrington had simply asked for a printed apology, might the *Times* have conceded that? "It's conceivable," according to Freeman. But Arrington did sue, with the result that, three and a half years after its publication, this one photograph seems to be threatening the livelihood of freelance photographers, photographic agencies, and all the media outlets that depend on them.

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The New York Times Magazine art director at the time, Ruth Ansel, commissioned Gorgoni to shoot the pictures. She hadn't read the article, but had enough information to ask Gorgoni to photograph well-dressed black people on the street to represent the middle class. "I don't usually, or typically, have the article when I have to commission a photograph," Ansel said. "The editor-in-chief tells us what direction he wants us to go in on any given photographic assignment. We did not feel that anybody on the street, photojournalistically, was having his privacy invaded. I think on that premise, we believed we were within our rights. I can be sympathetic on one level with Arrington, but on another level I find this legal decision a little outrageous. I don't think there was any intent to classify him in any denigrating manner. As a matter of fact, I thought it was a good photographic image."

The decision referred to by Ansel was handed down in April by the New York State Court of Appeals, whose rulings can only be overturned by the United States Supreme Court. The Court of Appeals was addressing a motion by the defendants — *The New York Times*, Gorgoni, Contact, and Pledge — to dismiss Arrington's complaint and was, therefore, only ruling on *how* the law should be interpreted, not on the facts of the case or the allocation of damages, if any. Those latter questions must be determined in a civil trial in the New York State Supreme Court, which, despite the name, is the state's lowest court. The Court of Appeals' reading of the law, however, is of paramount importance to freelance photographers. That court dismissed Arrington's complaints based on concepts of common law and constitutional rights of privacy, but upheld his complaint against the photographer and agency based on sections 50 and 51 of the New York State Civil Rights Law. Section 50 states that "a person, firm, or corporation that uses for advertising purposes, or for purposes of trade, the name, portrait, or picture of any living person, without first having obtained the written consent of such persons... is guilty of a misdemeanor." Section 51 makes the transgressor liable to damages claimed in a civil suit.

The Court of Appeals ruled in Arrington's case that *The New York Times* could not be held liable under this law, since his picture had been used to illustrate an article of public and common interest, not for trade. Had the *Times* used a staff photographer to take the picture, the matter apparently would have ended there. But having been commissioned as a freelancer by the *Times*, the photographer and his agency were found to be subject to liability because they had, in the words of the Court, "'commercialized the photograph' in 'furtherance of trade'" in selling it to *The New York Times*.

The decision has sent shivers through the media industry. The consequences of this expanded definition of "trade" under the law are potentially enormous. In the majority of previous cases involving published "news" photographs, the agency and photographer have not even been mentioned; when they have been sued, they have been granted the same First Amendment rights as the publisher and generally been treated in a similar fashion. Ironically, it is irrelevant to the decision that Gorgoni's picture is flattering. Arrington himself has said, "I have no problems with the picture itself." His argument is really with the *Times* for the way in which the picture was used.

Following the New York State Court of Appeals' April decision, one further legal remedy remained open. The same court could be persuaded to change its opinion via "reargument." All parties to the case, defendants and plaintiff, submitted thick legal briefs expressing grave reservations about the decision, and pleading with the Court of Appeals to change its mind. On July 2, the Court of Appeals responded: The decision would stand as stated. No further explanation was offered.

The ruling seems to satisfy nobody. Arrington is not content; he had wanted the Court of Appeals to reconsider on the basis that the photographer was *The New York Times*' agent, acting on its explicit instructions. He feels the publication should be held responsible for Gorgoni's actions and commented: "To some extent it's synonymous to a situation where one receives stolen goods. The individual who receives the goods is not let off the hook." He also objects to the *Times* being absolved of liability for publishing a photograph that had no direct connection with the article beyond representing a man they assumed to be a member of the black middle class. He feels his permission should have been sought and that he should have been afforded the opportunity to review the article before being associated with it. Herve Gouraige summed up the case: "All we are saying is that the individual who is walking across the street should not have to do so at the risk of having his photograph taken and his person associated with any article of public interest with which a picture editor chooses to associate that person."

The Court of Appeals rejected this claim that "no real relationship" existed between Arrington and the article when it let the *Times* off the hook. The judges asserted that since Arrington did resemble in outward appearance a member of the black middle class, this lack of "real relationship" boiled down to his disagreement with the contents of the article, an area of dispute with which the court did not wish to become involved.

From the photographer and his agent's side, the fact that the picture was sold to a newspaper to illustrate a matter of public interest was no defense, according to the Court of Appeals. Because it did not distinguish between freelance photographers who sell to newspapers and those who sell to advertising agencies, the ruling would appear to effectively exclude freelancers and photographic agencies from the news-gathering process. Magnum, the agency founded by Henri Cartier-Bresson, David Seymour, and Robert Capa — which has some three million photographs on file — has been informed by its lawyers

that according to a strict reading of the decision, they "could be liable to a subject if they sell a photograph for publication in any form of media, if the subject did not give his or her consent, even if the photograph was taken in a public place and even if it is an accurate or flattering image of the subject." Thus, Magnum has been legally advised not to sell pictures of identifiable subjects unless the subject has given consent, or unless the purchaser will indemnify the agent and photographer against all putative costs and damages stemming from a lawsuit by the subject. Agencies are considering adding such a clause to their standard sales contract that demands such an indemnity. As for photographers, while some freelancers may be aware of the need to obtain written subject releases, they also know that actually obtaining them for the majority of candid shots taken in public will be, in fact, virtually impossible.

Lawyer Tennyson Schad represents Gorgoni, Contact, and Pledge. A lawyer for eight years with Time Inc. and founder/owner of New York's Light Gallery, he sees the wider implications of this case. He wanted the Court of Appeals to reverse its decision on the basis that photographers and agents have been and should always be protected by the same First Amendment rights as publications. If the court was correct in dismissing the case against *The New York Times*, and he feels it was, by the same reasoning it should have dismissed the case against his clients. Schad was originally optimistic about the chances that the Court of Appeals would change its mind. "Reargument has happened twice in four years, and here we have a unanimous decision. On the other hand, I don't think the court has goofed to this extent in the last four years, so I'm pretty sanguine about the chances for a modification of that opinion."

After the Court denied reargument, he commented: "We're all just totally in shock." He believes, as do several other lawyers, that the court had sympathy with Arrington's position and wanted to give him something, but did not think through the implications of the decision. Schad is, in fact, now concerned about the prospects for fine art photography. "If you read the court's opinion literally," he commented, "Garry Winogrand could not photograph anyone out in the street, in a parade, or in Central Park, without getting a release. If he uses a photograph, if he sells it to a gallery or publishes it in a book, he is potentially exposed to liability."

According to Schad, four basic situations existed in the past under which publishers and photographers could be sued for the editorial use of a photograph: when a photograph was taken in a private place without the permission of the subject; when a photograph was so embarrassing to the subject that it offended public taste without having overriding news value; when the subject was being harassed by the photographer, as in the Jackie Onassis/Ron Galella situation; and finally, when a subject was wrongly identified, as in an article on unwed mothers, for instance, in which a pregnant woman was labeled unwed when she was, in fact, married. Now, however, Schad believes that the most innocuous photographs of people in public places could become liable.

He depicts a scenario that is indeed frightening, and one that goes beyond the restrictions on freelance photography already mentioned. "Technically, if Malyon writes a story about me, or if you just happen to use my name and I was not a source, and you sell that story to *The New York Times*, are you not using my name for commercial purposes? Is it any different? But that's scary. If this decision applied to photography, it sure as hell has to apply to writing. It would knock everybody out: We'd have no more freelance writers, and we'd have no more freelance photographers. Obviously, the Court of Appeals didn't mean that....All we're doing is chipping away, chipping away, chipping away at press freedom."

> "...the individual who is walking across the street should not have to ... risk having his photograph taken and his person associated with any article of public interest..."

Cornell Capa, Director of the International Center of Photography (ICP) in New York, is appalled by the prospects. He sympathizes with Arrington's position, but compares the consequences to a car accident on a wet road involving bad drivers. Should one such occurrence stop all car driving? "Are they going to legislate against taste next? This is a matter of opinion, of taste. Photography deals with life. If you can't photograph life without a picture release, it's a monstrous notion. It would kill what we now know as photography."

The extent of concern in the publishing industry over this decision can be gauged from the legal briefs submitted in support of Gorgoni and Contact's unsuccessful reargument motion. Many of the major photo agencies, including The Associated Press, submitted such briefs as *amici curiae* (friends of the court). In addition, Time Inc., Newsweek, Inc., NBC, CBS (the decision would involve independent television camera crews to the same extent as still photographers), Gannett Co., and many publishers' associations have grouped together in support. In sum, they asserted that freelancers are "a vital source of supply" for the media, and that restrictions on the freedom of freelancers to gather and sell news photographs would cause publishers "a drastic curtailment in their sources of supply or the prospect of financial ruin."

As a dramatic example, included in one legal brief is a copy of *Time* dated April 12, 1982, in which only one

editorial photograph, aside from advertisements, was taken by a *Time* staffer. In the future, all photographs of recognizable subjects taken by freelancers could give rise to legal action, including, according to the brief, "pictures of a president being shot, a politician making a speech, citizens chasing a mugger, an athlete participating in his sport, or a public official accepting a bribe."

New York Civil Liberties attorney Steve Shapiro also criticizes the Court of Appeals' ruling: "Our position is that the decision makes very little sense, that the freelance photographer must be entitled to precisely the same constitutional protection as *The New York Times* if the system of free expression is to function effectively. The court's effort to cut the baby in half doesn't make constitutional sense."

While this decision directly involves only New York State law, its implications and influence could spread far beyond state borders. A picture taken in Bangor, Maine, for example, if sold through a New York-based agency, such as The Associated Press, and published by Time Inc. or broadcast by CBS, which are both based in New York, could well attract liability. What is more, New York is home to more magazines, photographers, agencies, and publishers than any other state. Because of New York's prominent position in publishing, other state courts often look to its courts for precedents in matters of publishing law. Some states, such as Massachusetts, have privacy laws framed along similar lines as New York's. Sharp lawyers outside of New York may well pick up the scent and start advising clients to sue freelancers and agencies in other states.

The Arrington case may be in the courts for another year or longer. The case against Gorgoni, Contact, and Pledge can now proceed in the New York State Supreme Court. The amount of damages will depend on how adversely the jury deems Arrington to have been affected by the publication of the photograph. The possibility also exists that Arrington, through his lawyer, might seek a United States Supreme Court review of the case, either before or after any suit for damages. While the judicial process runs its slow and expensive course, a move is being contemplated to persuade the New York State legislature to amend Sections 50 and 51 of the New York State Civil Rights Law so as to afford agencies and freelancers the same protection that publications enjoy.

Despite ramifications that could affect the entire media industry, it's the freelance photographer who is most immediately endangered. I sought the reactions of three professional freelancers: Burk Uzzle, who specializes in annual report and current affairs photography for magazines and books; Larry Fink, more involved in the fine arts field; and Gianfranco Gorgoni, the man who almost unwittingly finds himself in the middle of this mess.

Burk Uzzle has been a freelance photojournalist for 25 years and is a former member of Magnum. His pictures have appeared on the pages of *Life, Paris Match, Stern, Geo, Fortune,* and *Sports Illustrated*, as well as in books and annual reports. Candid coverage of the crowd atmosphere at the famous Woodstock Music Festival in 1969 helped make his reputation, as well as landing him in his one and only lawsuit. A skinny-dipper whom he had photographed after asking permission sued when her photograph was published on the album cover, but the matter was settled out of court. This year a powerful picture of a young child, by Uzzle, appeared on the cover of *Newsweek*'s April issue on poverty, with parental permission.

"The *Newsweek* photograph was very quiet, very intimate," he said. "There has to be a chemical, personal collaboration between photographer and subject to achieve that kind of photograph, which involves not only asking permission, but a meeting of personalities. That's quite different from doing street photography. You can't really ask permission to do the quick, candid things on the street. If an editor had asked me to go into the mainstream of American society and photograph what generically symbolizes the middle class, the visual imperatives upon a scene like that would have to do with the flow of people up and down a sidewalk, how quickly they want to cross an intersection, how the light strikes them. There's a sense of energy, motion and electricity about the street and about the people themselves. All these considerations speak to candid photography, photography done very quickly in response to things moving. It would be quite impossible to stop people and ask for releases. But it's a serious responsibility for a photographer to take upon himself, to select a subject at random and offer that subject up in his photograph as symbolic of something that the subject may not feel is representative. It's a very presumptuous thing to do. And the only way I think you can live with that presumption is to feel that you understand the theme of the story you are illustrating in a broad way, that the theme is something you can agree with, something with which you can feel at peace."

Uzzle is strongly opposed to any obligation to obtain releases for candid photography in public. "In the public domain it's fair game. People are doing what they are doing openly and for everyone to see. I'm one of the many spectators; I simply happen to use a camera." How could this court decision affect him? "Sharp, hungry, unemployed young lawyers will view it as a license to steal. The decision doesn't really speak about the responsibility of journalism, which is one of the big problems with it...it leaves us wondering what our rights are, how we should be working, or whether we should be working, or whether we should work at all in areas in which we have always worked. And if we aren't able to work in those areas, it's a pity, because that's where not only the best, but I think some of the most responsible photographic work is done."

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The Corporate Stumble

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No matter how wise an executive is, he still must face the vagaries of the real world. The Greek philosopher Heraclitus compared life to a river, and declared, "You can never step in the same river twice." It is true for business as well. The marketplace is in constant flux; the only certainty is change. In the past thirty years, supermarkets have replaced groceries, discount stores have replaced "five-and-dimes," shopping malls have replaced downtowns, fast-food outlets have replaced diners, jet planes have replaced ocean liners and railroads, television has replaced network radio (after network radio replaced vaudeville), Xeroxing has replaced mimeographing, 33's have replaced 78's, stereos have replaced phonographs, calculators have replaced slide rules, ball-point pens have replaced fountain pens, and computers have replaced a good number of people.

In their heyday, the railroads seemed omnipotent; network radio, everlasting. And today we still assume that our largest and most powerful corporations are somehow beyond change, beyond failure.

Yet size is no guarantee at all. In 1917 *Forbes* magazine began covering American business. It introduced an annual tally of the country's one hundred largest industrial corporations (utilities and financial institutions excluded), in which *Forbes* ranked the companies by their assets — the total wealth that the companies controlled.

Sixty-five years later, *Forbes* has proved hardier than most of America's major corporations. The number one company in 1917, for example, was U.S. Steel, almost five times the size of the number two company, Exxon (then called Standard Oil of New Jersey). U.S. Steel was also, by far, the most profitable company in the world. But by 1982, it ranked seventeenth in assets among industrials and, as we've seen, was struggling to find a new line of business.

Industrial number three was Bethlehem Steel, which by 1982 was no longer in the top fifty.

Number four was Armour, the meat packer. By 1982 it was a middling division of the Greyhound Corporation, having been purchased in the 1960's when it was in dire financial straits.

Number five was Swift, another meat packer. It became the foundation of the Esmark conglomerate, but in 1980, Esmark sold Swift because it had become a major drag on Esmark's profitability.

Number six was International Harvester, which was on the rocks and flirting with bankruptcy by 1982.

Number seven was DuPont, which by 1980 had dropped to twentieth place, but then rose to sixth place by merging with an oil company (Conoco).

Number eight was Midvale Steel & Ordnance, which was acquired by Bethlehem Steel in 1923.

Number nine was U.S. Rubber, now Uniroyal, which by 1982 was not even in the top two hundred in assets.

Number ten was General Electric, which by 1982 was still number ten.

These were the blue-chip stocks of their generation — the long-term investments that Americans have always been exhorted to make. Their performance, however, suggests that an investor might be better off with a shorter time horizon — and a keen understanding of the indeterminancy of modern business. □

The Fateful Photograph

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Larry Fink spent 11 years working as a freelance magazine photographer, publishing in such places as *Paris Match, Stern,* and the *Saturday Evening Post*. Around 1970 he began to concentrate on fine arts photography, often photographing people in candid situations where he had permission to be present, such as debutante balls, art openings, or with friends near his Pennsylvania home. Collections of his work are to be found in major museums. A *New York Times Magazine* cover picture that he shot during Columbia University's student uprisings in the 1960's demonstrates how versatile picture interpretation can be. A policeman and hippie were portrayed arguing. Radical students loved the picture because, they told Fink, it exposed the cop as a "fascist pig." The Patrolmen's Benevolent Association called it "a great picture for democracy."

"I was a street photographer all the way down the line," Fink says. "Morally, it's ethical to photograph people who are unaware because what you are doing is universalizing their soul and leaving it behind for others to see. But it's painful for the practitioner, at least it was for me, because I don't want to mess anybody up or make them uncomfortable. After 11 years in the magazine business, it wasn't that lucrative, and I didn't have the satisfaction that I would have liked. It was just too frenetic. Also, you had no control over what was done with your pictures. They bought them and they were entitled to them."

Fink is critical of the role of *The New York Times* in the Arrington case. "They didn't have to take street photographs, I'm sure, of some anonymous black gentleman and never find him or identify him, then go ahead and run it. That's just bad editorial discretion. They could have sent a photographer to the key clubs

or some debutante ball or any number of occasions, examples of the sort of middle-class things they were talking about. They could have let everybody know the photographer was there, but it would have been the kind of occasion where he wouldn't be posing anybody, just ambling around taking pictures, part of the general ambiance."

What should Gorgoni have done when given this assignment? "The photographer is really the innocent dupe," answered Fink. "He's been made to put his foot in his mouth without even stepping out. I could say he should have hassled the editors, gotten the script. But you know what would have happened there? He wouldn't have worked again for the next nine months. You know how they work in the editorial world. They're always doing things at the last minute. Someone's always getting a heart attack down the next hall. It's always hysteria, deadlines past. That's what you work with. I don't have a hell of a lot of good words to say about all this."

Gianfranco Gorgoni is a popular New York-based freelance photographer who has worked on assignment internationally for many publications, including *Time, Newsweek, The New York Times*, and — during the Pope's visit to England this past spring — London's *Sunday Times*. Gorgoni's comments concerning his fateful photograph of Arrington were disarmingly frank: "I didn't know the article at all. The *Times* just told me they wanted pictures of black, elegantly dressed, executive-looking people. In our work, you don't have control of these things. They just assign you, use the pictures, and write whatever they want. Otherwise, everyone would like to have control: the people who are in the picutres, the photographer who takes the pictures, maybe the agency, the art director. So they just simplify that: They use whatever they like, the way they like. I feel I am for Arrington, in a way, because of the contents of the article. But this has nothing to do with the picture. This is

THE CASE HISTORY

DECEMBER 3, 1978

The New York Times Magazine publishes a cover story by William Brashler entitled "The Black Middle Class: Making It." A photograph of Clarence Arrington taken on assignment for *The New York Times Magazine* by freelancer Gianfranco Gorgoni appears on the cover.

JUNE 26, 1979

Arrington sues the New York Times Company, photographer Gianfranco Gorgoni, Contact Press Images, Inc. — the agency that actually sold the photograph to *The New York Times Magazine* — and Robert Pledge, president of Contact Press Images, Inc. Arrington charges that in publishing his picture, the defendants conspired to violate his common law and constitutional rights of privacy, and sections 50 and 51 of the New York State Civil Rights Law, which states in part that "a person, firm, or corporation that uses for advertising purposes, or purposes of trade, the name, portrait, or picture of any living person without first having obtained the written consent of such persons...is guilty of a misdemeanor." The suit is brought in the New York State Supreme Court, the lowest state court.

SEPTEMBER 1979

The defendants move to dismiss Arrington's complaint for failure to state a cause of action, a legal expression that means there are no legal grounds for suing.

MARCH 7, 1980

The Special Term branch of the New York State Supreme Court, which rules on procedural motions, dismisses the charges against all the defendants, basing its decision on two premises: 1) that sections 50 and 51 of the New York State Civil Rights Law do not allow a lawsuit when a photograph is published in connection with an article of general interest, and 2) that it was *The New York Times*, and not the three co-defendants, that was responsible for the publication of the picture. In light of the latter consideration, the court grants Arrington permission to amend his complaint against the New York Times Company, but not the other defendants, and only on grounds other than those set out in sections 50 and 51 of the New York State Civil Rights Law.

APRIL 1980

Arrington and the New York Times Company each appeal the decision of the Special Term Court to the New York State Appellate Court, the second tier of the state judicial system.

NOVEMBER 25, 1980

The Appellate Court denies Arrington's appeal and grants the New York Times Company's appeal that the permission given Arrington to amend his complaint with respect to the New York Times Company be rescinded. At this point, all defendants seem to be in the clear.

JANUARY 5, 1981

Arrington appeals to the New York State Court of Appeals, the state's highest court.

APRIL 7, 1982

The Court of Appeals hands down a two-pronged opinion in which it upholds the Appellate Court's dismissal of Arrington's complaint against the New York Times Company, but finds that Arrington does have a cause of action against the three co-defendants — Gorgoni, Pledge, and Contact Press Images, Inc.

The Court exonerates the New York Times Company for several reasons. The paper did not violate sections 50 and 51 of the state Civil Rights Law as

Arrington alleges because it used his picture for an editorial, not a commercial purpose. Sections 50 and 51 "were drafted narrowly to encompass only the commercial use of an individual's name or likeness and no more."

The Court also cites a recent decision in which the New York State Court of Appeals held that "a picture illustrating an article on a matter of public interest is not considered used for the purposes of trade or advertising within the prohibition of the statute... unless it has no real relationship to the article...." Arrington's photograph, the Court concludes, bears a real relationship to the article in that it depicts a person who may "be perceived to be a member of 'the black middle class.'"

The Court denies Arrington's claim to a common-law right of privacy, citing several cases in which New York State courts have explicitly held that no common-law right of privacy exists in the state.

Finally, the Court writes that although Arrington's preference that his photograph not have been used on the cover of *The New York Times Magazine* is understandable, its publication "may be part of the price every person must be prepared to pay for a society in which information and opinion flow freely."

In the same decision, however, the Court finds that Gorgoni, Pledge, and Contact Press Images, Inc. are subject to a suit by Arrington. "Were the plaintiff to establish the truth of his allegations," the Court states, "the acts in which one or more of these defendants will have been proved to have engaged will, plainly and simply, have included that of a nonconsensual selling of the photograph," which it finds to be subject to sections 50 and 51 of the New York State Civil Rights Law. "That the sale was to a publisher of news and articles on matters of public interest would not, in and of itself, have clothed these defendants with the publisher's immunity from the reach of sections 50 and 51."

MAY 7, 1982

Contact Press Images, Inc., Robert Pledge, and Gianfranco Gorgoni move for reargument, in effect asking the New York State Court of Appeals to change its mind regarding their liability under sections 50 and 51 of the Civil Rights Law. Some 20 organizations — photo agencies, publishers, and television networks — file *amici curiae* (friends of the court) briefs in support of the motion for reargument.

MAY 10, 1982

Arrington files a motion for reargument with the New York State Court of Appeals, in which he asks the court to reverse itself on its exoneration of the New York Times Company from liability.

JULY 2, 1982

The Court of Appeals refuses to read any of the *amicus* briefs and denies both Arrington's and the three defendants' motions for reargument, thereby upholding its decision of April 7, 1982. No explanation for the denial is given.

THE FUTURE

Now that the Court of Appeals has established who may be liable, Arrington can continue his suit against Gorgoni, Pledge, and Contact Press Images, Inc., for damages in the New York State Supreme Court. Whether the court rules in favor of Arrington or the defendants, the decision can be appealed through the state court system once again. Both Arrington and the defendants can also seek a review of the recent Court of Appeals' decision by the United States Supreme Court, whose reading of the law could have profound implications for photography. At the same time, the New York State legislature could be persuaded to amend sections 50 and 51 of the New York State Civil Rights Law, which would change the calculus of the case once again and, possibly, its implications for photographers.

the editor's fault, the people in power at the magazine."

Despite such sympathy with Arrington's position, Gorgoni does not agree with his decision to take the matter to court. "If he really wanted to take a political stand, that's not the way to have done it. If he wanted to be political about the article, what's written about black people, he should have written something or held a press conference with the media. I don't know what ideal he started this with, if he wanted to take a political point of view or just an economic one. There's all this money being spent, and it's not doing anyone any good in the end, just making the lawyers richer. If it had been me, I would have gone and punched the writer.

"For this picture, I think I got $350 for the cover," Gorgoni continued. "Out of that, 40 percent goes to the agency. So Arrington can have a part of it if he wants. People always think that if there's an agency involved, you make millions of dollars out of a picture. But it's not advertising, you know. Even if it's a big magazine, they really pay nothing, they pay peanuts. If he wins, and *The New York Times* wins, and I don't win, then he can come and get some of the money I got for that cover. I have a family. I don't think they'll take my tables and my flat. It's really a little pathetic."

Despite Arrington's claim that he did not see his photograph being taken, Gorgoni insists that he did see it, and that if he had objected, he could have stopped the photograph from being used. "I'm not a paparazzo, you know, shoot and run away. One day I'd like to meet Arrington and take a sitting portrait of him, a real one."

Gorgoni concluded with a strange anecdote about his crucial photograph: "Someone who is in that same picture, not right in the front, died. A good friend of his called me to find out if he could have a copy. That picture — just a simple, stupid picture — it came out to be so full of human interest." □