

CINEMA DOWN MEMORY LANE



Suchitra Sen as Paro left, and Dilip Kumar as Devdas in the 1955 version of the film 'Devdas', directed by Bimal Roy. 'Devdas', the immortal novel of Sarat Chandra Chatterjee written in 1917 has had an immense impact on Indian cinema. — PAGE 16

51ST ANNUAL GRAMMY AWARDS



From left, Jay-Z, Lil Wayne, Kanye West and M.I.A. perform at the 51st annual Grammy Awards on February 8. (Photo: Reuters) South Asia connection at the Grammy's; one win and four nominations. Nine-month pregnant M.I.A. on stage on her due date. — PAGE 15

News India Times

All About Issues and Achievements

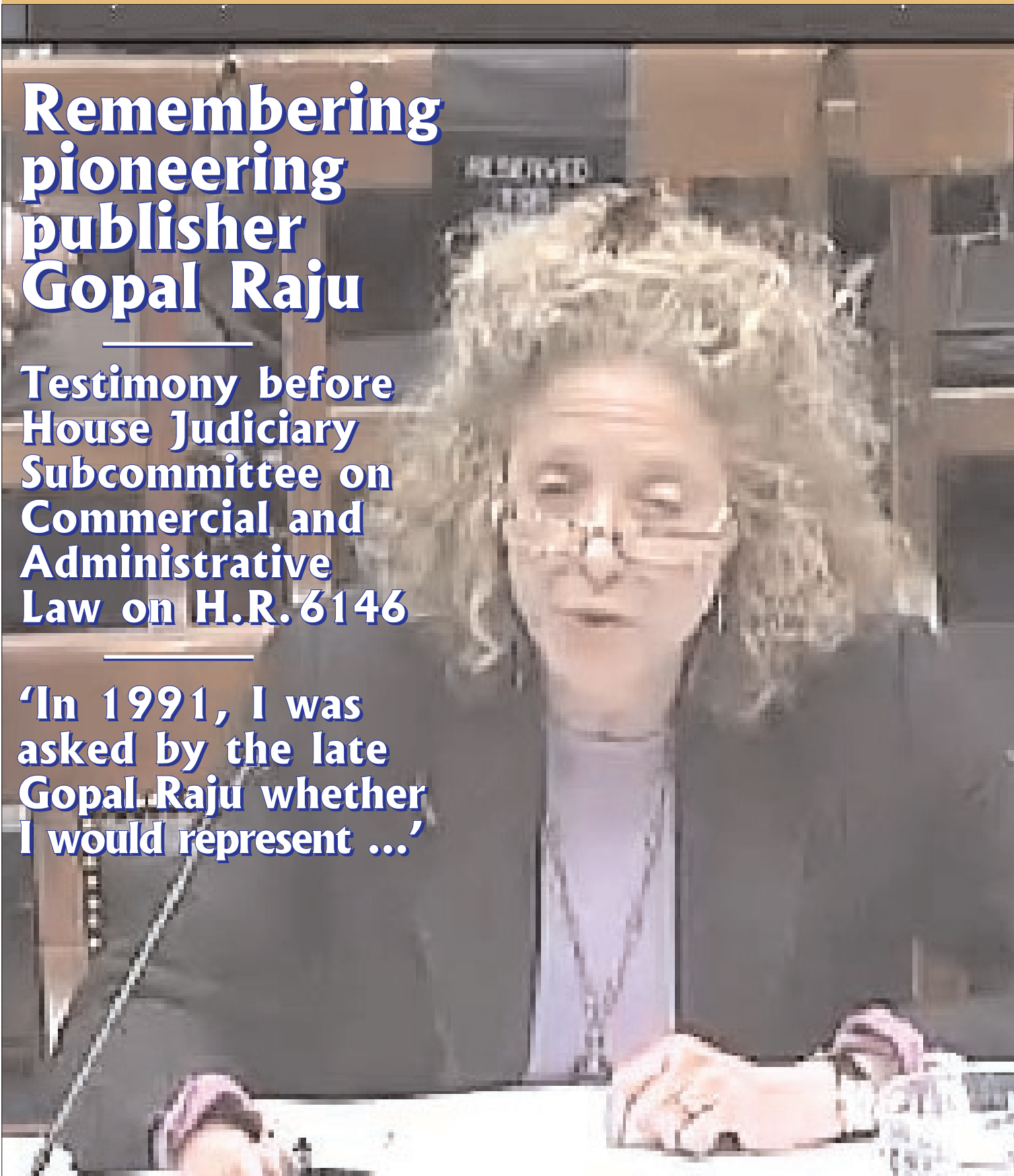
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ON THE HILL

Remembering pioneering publisher Gopal Raju

Testimony before House Judiciary Subcommittee on Commercial and Administrative Law on H.R. 6146

'In 1991, I was asked by the late Gopal Raju whether I would represent ...'



Laura Handman testifying on February 12 before the House Judiciary Subcommittee on Commercial and Administrative Law: (Photo: Videograb from the testimony) — Page 4

SPECIALS

Grants & Scholarships

■ Fulbright fellowships for 2010 - 2011; application deadline, October 20.

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Giving

■ The Asian University for Women, located in Chittagong, Bangladesh aims to educate women from diverse cultures and socio-economic backgrounds.

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Pakistan

■ Pakistan admitted for the first time on February 12 that part of the conspiracy in November's Mumbai attack was hatched on its soil.

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On the Hill

■ Rep. John Lewis (D-GA), along with 5 other Democrats, introduced H.Res. 134 in the House on February 4, 'Recognizing the 50th Anniversary of Reverend Martin Luther King, Jr.'s visit to India' and the positive influence the teachings of Mahatma Gandhi had on Dr. King's work during the civil rights movement'.

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Newsmakers

■ Priya Singh appointed Press Assistant at the White House Press Office.

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■ Louisiana Governor Bobby Jindal is to deliver the Republican response to President Obama's first speech to a joint session of the Congress on February 24.

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■ Testimony before House Judiciary Subcommittee on Commercial and Administrative Law on H.R. 6146 H.R.6146 , a bill 'to amend title 28, United States Code, to prohibit recognition and enforcement of foreign defamation judgments', was introduced in the 110th Congress on May 22, 2008 by Rep. Steve Cohen (D-TN), then member of the Subcommittee. Now he is the Chairman of the Subcommittee and has taken up reconsideration of the bill, which addresses the problem of 'Libel Tourism,' the practice of suing U.S. defendants for libel in plaintiff-friendly foreign courts, such as Britain's.

'I was asked by the late Gopal Raju whether I would represent...'

'Thank you, Chairman Cohen, Ranking Member Franks and Members of the Subcommittee for inviting me to speak about an issue that has been a passion of mine for nearly 20 years.

[I am Laura R. Handman, a partner in the law firm of Davis Wright Tremaine LLP, working out of the firm's offices in New York and the District of Columbia. I am truly honored to appear before you today about an issue on which I have been on the front lines for nearly 20 years.] (Taken from her written testimony submitted to the House Judiciary Subcommittee on Commercial and Administrative Law on Feb. 12.)

I applaud the heroic determination of Rachel Ehrenfeld and the efforts of this Committee in addressing the growing problem of libel tourism. My support is coupled with the greatest respect for the international comity concerns that Prof. Silberman will undoubtedly raise. I also have the greatest respect for the British common law which is the very foundation and genius of our legal system.

But I have had the dubious honor of being introduced by my British counterparts to English judges as the American lawyer who got "our libel law declared repugnant." I garnered that reputation because I was counsel in the only two decisions so far where American courts have refused to enforce British libel judgments.

Bachchan explains better than any other case — the profound differences between America and U.K. libel.

In 1991, I was asked by the late Gopal Raju whether I would represent *India Abroad*, a newspaper and wire service based in Manhattan which served an audience of Indians living primarily in the U.S. He had just been hit with a judgment from a London court in a libel action brought by Ajitabh Bachchan, a member of one of India's most prominent families. To give you a sense of just how big a deal this family was, if you have seen the film *Slumdog Millionaire*, you will remember when the Bollywood star comes via helicopter to the slums and Jameel, locked in a latrine by his brother, dives into the hole in the floor so he can escape and get the star's autograph. That star, Amitabh Bachchan, was the brother of the plaintiff in this case.

Both Bachchan brothers were intimates of Rajiv Gandhi, then India's Prime Minister. The story in *India Abroad* reported that the leading Swedish daily newspaper, *Dagens Nyheter*, had reported a new development in the widely publicized scandal involving alleged kickbacks by a Swedish munitions company to obtain Indian government contracts. *India Abroad* reported that *Dagens Nyheter* had reported that a Swiss bank account belonging to plaintiff had now been frozen by Swiss authorities. Bachchan, an Indian national, sued both *Dagens Nyheter* and *India Abroad* in London where he claimed residence. The Swedish paper immediately issued a retraction and settled. *India Abroad* reported *Dagens Nyheter's* retraction but refused itself to settle.

Since *India Abroad's* sole source said it had made a mistake, *India Abroad* had no defense under English law. In the U.S. the plaintiff would have had to prove the charges false. In the U.K., *India Abroad* had the burden of proving the truth — an burden made virtually

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Laura Handman testifying on February 12 before the House Judiciary Subcommittee on Commercial and Administrative Law: (Photo: Videograb from the testimony)



Also testifying before the House Judiciary Subcommittee on Commercial and Administrative Law on Feb. 12 were, from left, author Rachel Ehrenfeld, New York University School of Law Professor Linda Silberman and attorney Bruce D. Brown of Baker & Hostetler LLP. (Photos: Videograbs from the testimony)

impossible in view of *Dagens Nyheter's* retraction. It did not matter that the plaintiff was a quintessential public figure or the subject matter was quintessentially of public concern, involving a political scandal reaching up to the Prime Minister at that time facing re-election. It did not matter that all *India Abroad* did was publish an accurate story about what a highly respected newspaper had reported. In the U.S., plaintiff could not possibly establish that *India Abroad* published with fault — any kind of

fault, even negligence, much less actual malice, since reliance on the reporting of a reputable news organization is what all news organizations do and should do and what small papers like *India Abroad* must do. In England, particularly under the law at that time, a mistake is a mistake, news organizations are essentially guarantors of accuracy and *Dagens Nyheter* had to pay. These are not minor differences between our two bodies of law. These go to the core protections, the "breathing space," ensured

by *New York Times v. Sullivan* for political speech.

A New York State trial judge named Shirley Fingerhood refused to enforce the judgment. She recognized that "England and the United States share many common law principles of law," nevertheless a "significant difference between the two jurisdictions lies in England's lack of an equivalent to the First Amendment to the United States Constitution." As a result, she refused "entry of a foreign libel judgment granted pursuant to a standard deemed appropriate in England but considered antithetical to the protections afforded by the U.S. Constitution."

Justice Fingerhood's trailblazing decision was echoed by Maryland's highest court 5 years later in *Telnikoff v. Matusevitch*. Vladimir Matusevitch, a U.S. citizen living in London, working for Radio Free Europe, wrote a letter to the editor criticizing Telnikoff for "spreading of racist views" in an op-ed column Telnikoff had published in London's *Daily Telegraph*. By a vote of 6-1, the Court held that "The importance of that free flow of ideas and opinions on matters of public concern preclude Maryland's recognition of Telnikoff's English libel judgment."

Since these cases, the pilgrimage of libel plaintiffs, be it Britney Spears, Russian oligarch Boris Berezovsky or Sheik Khalid bin Mahfouz, they all have flocked to London. Virtually every demand letter we receive these days from a U.S. lawyer is now accompanied by one from a British solicitor. Libel tourism has only grown as the Internet permits even a newspaper like *The Washington Times* which sold zero hard copies in the U.K., to be sued in London by an international businessman based on several dozen hits in the U.K. on its Internet website for a story about a Pentagon Report. In part, because of the Bachchan and Matusevitch decisions, the British courts have moved a step away from strict liability and a step closer to a fault standard, albeit one that is a far far cry from the protection afforded to the press by *New York Times v. Sullivan*. With the increasing economic pressures, fewer and fewer media companies, much less individual authors like Ms. Ehrenfeld, can afford the risk of a more than likely judgment against them in a British courtroom. In the case of *Forbes*, that could be three judgments since they are being sued simultaneously in Ireland, Northern Ireland and England for the same story by the same lawyer. That risk is further compounded by the English rule that makes the loser pay the winner's legal fees as well as their own, with British solicitors charging rates as high as £1,300 per hour per lawyer. The result is predictable: U.S. media agreeing to outsized settlements for cases that would have had no chance of success in the U.S. and self-censoring by either not writing about public figures known to be litigious, not engaging in investigative reporting, or not publishing in the U.K. at all. No one — not the audience in the U.S. or overseas — is well served by such a regime.

I think HR. 6146 is an important step, making mandatory on the federal level the Bachchan decision. I have suggested in my written testimony ways to enhance its remedial impact.

I thank you for your time. I look forward to your questions.

(— Compiled by Ela Dutt)

■ A conversation with attorney Laura Handman

Laura Handman, a partner in the New York law firm Davis Wright Tremaine LLP, successfully defended Gopal Raju, late publisher of *India Abroad* (and *News India-Times* and *Desi Talk*), in a U.S. court in the case of *Bachchan v India Abroad Publications, Inc.* (1992), where numerous high profile media such as *The New York Times* and *The Washington Post* submitted amicus briefs. The case set a precedent for Americans who were sued in U.K. courts on libel. The judge ruled that the fine on Raju's publication was against the First Amendment of the U.S. Constitution, that protects among other rights, that of Freedom of the Press and Freedom of Expression. She spoke to *News India-Times* after delivering her testimony on February 12, before the House Judiciary Subcommittee on Commercial and Administrative Law, on the issue of 'Libel Tourism' — the practice of suing U.S. defendants for libel in plaintiff-friendly foreign courts, such as Britain's.

'He had a quiet dignity that was very steadfast in the face of this'

By Ela Dutt

Q. What are your memories of our late publisher Gopal Raju when he asked you to represent him in the case?

My memory of him is that he had a quiet dignity that was very steadfast in the face of this. And he felt strongly the easy way out would have been to just cave in.

But he wanted to take a stand and even though it would cost him money he wanted to take a stand and I think he was very proud of the result. I feel honored to have honored his memory today.

Q. What was the stand that he took?

The stand was that this was a story that was so important to not just India but Indians in the rest of the world because it was an international scandal affecting the ruling party at the time of the elections.

What his newspaper did is what every newspaper does. They report what another leading newspaper reveals an important piece of information.

And in this case particularly, where you have a small paper, and the Swedish paper writes about a Swedish company and action taken by the Swiss authorities, the small paper is never going to be able to have enough resources to cover every newspaper in the world and they have to rely on reporting by other reputable news organizations which is exactly what Raju did.

And in this country that would never result in any kind of judgment against the news organization that did that. That is considered to be exactly what they are supposed to do.

Q. What exactly did the judge rule in this case? Was it the first such victory?

It was. It was precedent setting. No other court in the U.S. had held at that time that a British libel judgment was 'repugnant' - which is a language of the statute to our public policy, and therefore not enforceable.

And this judge found that the fact that Britain, as good as their common law is, they don't have a written Constitution with the First Amendment in it, and that that makes a big difference as that has been interpreted in our courts in the U.S. And so she said, it was antithetical to the U.S. Constitution and she would not enforce it.

Q. So why did it succeed other than that there was one single judge that it depended upon? Is it so dependent on the judge?

Well, they didn't take an appeal. This

Handman has received numerous accolades for her work - one of 'America's Leading Business Lawyer' in National First Amendment Litigation, 2007-2008; 'Top 50 Female Super Lawyers' and 'Top First Amendment/Media/ Advertising Super Lawyers'; 'Washington, D.C. Super Lawyers, 2008'; one of the 'Best Lawyers in America' in First Amendment Law by Woodward/White, 1995-2008 to name a few.



The late Gopal Raju

judge was willing to do it. But then, the next case that came up, ultimately, six Maryland judges from the highest court in Maryland voted that that British libel judgment should not be enforced. That was in the *Telnikoff v. Metusevitch* case.

But in making that case they discussed the Raju case extensively. It was a trailblazer that then led to the next precedent which was the *Metusevitch* case.

Q. From the concerns raised in the Judiciary Committee case today, it seems that what is called 'Libel Tourism' has become worse. Could you describe what Libel Tourism is?

What has become worse are two things: People with very little connection to the U.K. seeking it out as a jurisdiction because the law favors plaintiffs. So that has continued with little rejection by U.K. courts, the famous case being of Boris Bejofski, the Russian oligarch who had minimal contacts to the U.K., but was able to sue the U.S. magazine, the *Forbes* magazine, in the U.K.

And the court in London said that he had enough contacts that he had a reputation in London and he can sue there. It hasn't



Laura Handman

taken much for U.S. or other foreign people to seek out London as a jurisdiction.

The other thing that has happened is the Internet. That means that even a publication that has no circulation or very little circulation in U.K. can find themselves sued there.

Because the way English law interprets 'publication' - any download off the Internet constitutes publication.

So if someone sitting in their garage in the suburbs of London downloads from a website which has otherwise no other publication in England, then that one download can still constitute a jurisdiction from their point of view.

Q. So why wouldn't everyone who is subjected to this resort to the method that Mr. Raju did?

Because of exactly what Rachel Ehrenfeld was describing today (at the Judiciary hearing. She wrote a book which was not published in the U.K. but because of Amazon, some 20 odd people were able to buy it in the U.K. Sheikh Khalid Ben Mahfouz sued her in the U.K.

He got a judgment but he never both-

ered to come to the U.S. to enforce it. So there was never an opportunity for a court to say, No, this judgment is not enforceable. So he never tried to get the money that he has obtained. He just used the judgment as a way to scare people off from writing about him.

So, one thing the Senate is contemplating for instance, is giving people who are the victims of such judgments but who are, like in Rachel E's case, nobody is coming to collect and enforce the judgment, they would be able to have declaratory judgment action that they would be able to bring to have it declared unenforceable.

And the Senate goes even further and says and also to have damages remedy against the person who brought that lawsuit.

Q. You are proposing some amendments to the existing law. Could you tell us about that?

Right. I thought that it would be helpful if in addition to the language that is in the current House Bill which basically codifies law that Raju made -which says that if someone comes to enforce a judgment in the U.S., if it is not consistent with the First Amendment, and it involves a public figure and a matter of public concern, then the court must not enforce it.

They can only enforce it if the judge decides it is consistent. That's basically the judgment in the Raju case.

What I suggested that perhaps you could also have a declaratory judgment remedy so that that person, if nobody comes to the U.S. to enforce a judgment, you could still be able to have the judgment declared unenforceable. So you would have some ruling on the merits of the judgment.

The second part of my suggestion which the Chairman seemed to be interested in was to add an attorney's fees provision, so that even if someone did come to enforce the judgment and they were unsuccessful and the court held it was inconsistent with the First Amendment, the party resisting the enforcement could get attorney's fees.

Q. How much of the recommendations that you have recommended in the law draw from the Raju case?

The law itself draws from the Raju case. The law that has already been proposed really draws from that. The experiences since and the experience in that case. Because it would have been wonderful if Mr. Raju did not have to pay our legal fees. And that's what this amendment would have accomplished.