IV

We conclude that the Court of Appeals applied an incorrect standard to the evidence in this case. The correct standard is that there must be evidence that tends to exclude the possibility of independent action by the manufacturer and distributor. That is, there must be direct or circumstantial evidence that reasonably tends to prove that the manufacturer and others had a conscious commitment to a common scheme designed to achieve an unlawful objective. Under this standard, the evidence in this case created a jury issue as to whether Spray-Rite was terminated pursuant to a price-fixing conspiracy between Monsanto and its distributors.[14] The judgment of the court below is affirmed.

It is so ordered.

[769]Justice WHITE took no part in the consideration or decision of this case.

Justice BRENNAN, concurring.

As the Court notes, the Solicitor General has filed a brief in this Court for the United States as *amicus curiae* urging us to overrule the Court's decision in *Dr. Miles Medical Co. v. John D. Park & Sons Co.*, 220 U.S. 373, 31 S.Ct. 376, 55 L.Ed. 502 (1911). That decision has stood for 73 years, and Congress has certainly been aware of its existence throughout that time. Yet Congress has never enacted legislation to overrule the interpretation of the Sherman Act adopted in that case. Under these circumstances, I see no reason for us to depart from our longstanding interpretation of the Act. Because the Court adheres to that rule and, in my view, properly applies *Dr. Miles* to this case, I join the opinion and judgment of the Court.

14. Monsanto's contrary evidence has force, but we agree with the courts below that it was insufficient to take the issue from the jury. It is true that there was no testimony of any complaints about Spray-Rite's pricing for the 15 months prior to termination. But it was permissible for the jury to conclude that there were complaints during that period from the evidence that they continued after 1968 and from the testimony that they were mentioned at Spray-Rite's post-termination meeting with Monsanto. There is also evidence that resale prices in fact did not stabilize after 1968. On the other hand, the former Monsanto salesman testified that prices were more stable in 1969–1970 than in his earlier stint in 1965–1966. *Id.*, at 217. And, given the evidence that Monsanto took active measures to stabilize prices, it may be that distributors did not assent in sufficient numbers, or broke their promises. In any event, we cannot say that the courts below erred in finding that Spray-Rite produced substantial evidence of the concerted action required by § 1 of the Sherman Act, and that—despite the sharp conflict in evidence—the case properly was submitted to the jury.

465 U.S. 770, 79 L.Ed.2d 790

[770]**Kathy KEETON, Petitioner,**

v.

HUSTLER MAGAZINE, INC., et al.

No. 82–485.

Argued Nov. 8, 1983.

Decided March 20, 1984.

New York resident brought action against magazine publisher and others alleging libel. The United States District Court for the District of New Hampshire dismissed the action, and the Court of Appeals, First Circuit, affirmed, 682 F.2d 33. The Supreme Court granted certiorari. The Supreme Court, Justice Rehnquist, held that: (1) publisher's regular circulation of magazines in forum state was sufficient to support assertion of jurisdiction in action based on contents of the magazine, and same was true even if court of the forum and thus of the United States District Court would apply so-called "single publication rule" to enable petitioner to recover in the state for damages from "publications" of alleged libel throughout the United States; (2) that statutes of limitations in every jurisdiction except New Hampshire had run on plaintiff's claim had nothing to do with the jurisdiction of court

within New Hampshire to adjudicate the claims, and question of applicability of New Hampshire's statute of limitations to claims for out-of-state damages would present itself in course of litigation only after jurisdiction was established; and (3) it is not required that plaintiff have "minimum contacts" with forum state before permitting state to assert personal jurisdiction over nonresident defendant.

Judgment of Court of Appeals reversed and case remanded.

Justice Brennan filed opinion concurring in the judgment.

1. Federal Courts ⇐84

Publisher's regular circulation of magazines in forum state was sufficient to support assertion of jurisdiction in libel action based on contents of the magazine, and same was true even if court of the forum and thus of the United States District Court would apply so-called "single publication rule" to enable petitioner to recover in action in the state for damages from "publications" of alleged libel throughout the United States. U.S.C.A. Const.Amend. 14; RSA 300:11.

2. Action ⇐38(4)

The "single publication rule" is exception to general rule that each communication of same defamatory matter by same defamer, whether to new person or to same person, is separate and distinct publication, for which separate cause of action arises.

3. Constitutional Law ⇐305(6)

Where publisher's general course of conduct in circulating magazine throughout state was purposefully directed at New Hampshire and inevitably affected persons in the state, New Hampshire jurisdiction over complaint based on such contacts would ordinarily satisfy International Shoe Corporation due process requirement and thus would also satisfy requirement of New Hampshire's "long-arm" statute authorizing service of process on nonresident corporations whenever permitted by due process clause. U.S.C.A. Const.Amend. 14; RSA 300.11.

4. Constitutional Law ⇐305(5)
Federal Courts ⇐75

The "single publication rule," New Hampshire's unusually long statutory period of limitations and plaintiff's lack of contacts with forum state did not defeat jurisdiction otherwise proper under both New Hampshire law and due process clause. U.S.C.A. Const.Amend. 14; RSA 300:11.

5. Federal Courts ⇐79, 84

In judging minimum contacts, court properly focuses on relationship among defendant, forum and litigation, and it was relevant that petitioner was seeking to recover libel damages suffered in all states in one suit and thus contacts between defendant and forum had to be judged in light of that claim, rather than claim only for damages sustained in the one state, so that issue was whether contacts between defendant and the state were such that it would be "fair" to compel defendant to defend multistate lawsuit in the one state seeking nationwide damages for all copies of issues in question even though only small portion of those copies were distributed in the one state. U.S.C.A. Const. Amend. 14; RSA 300:11.

6. Federal Courts ⇐76.25

State has significant interest in redressing injuries that actually occur within the state, and such interest extends to libel actions brought by nonresidents for false statements of fact which harm both subject of falsehood and readers of the statement, since state may rightly employ its libel laws to discourage deception of its citizens.

7. Constitutional Law ⇐90.1(5)

There is no constitutional value in false statements of fact. U.S.C.A. Const. Amend. 1.

8. Federal Courts ⇐76.25

Tort of libel is generally held to occur wherever offending material is circulated, and since reputation of libel victim may suffer harm even in state in which he has

[10] New Hampshire also has a substantial interest in cooperating with other States, through the "single publication rule," to provide a forum for efficiently litigating all issues and damages claims arising out of a libel in a unitary proceeding.[8] This rule reduces the potential serious drain of libel cases on judicial resources. It also serves to protect defendants from harassment resulting from multiple suits. Restatement (Second) of Torts § 577A, Comment *f* (1977). In sum, the combination of New Hampshire's interest in redressing injuries that occur within the State and its interest in cooperating[778] with other States in the application of the "single publication rule" demonstrate, the propriety of requiring respondent to answer to a multistate libel action in New Hampshire.[9]

[11, 12] The Court of Appeals also thought that there was an element of due process "unfairness" arising from the fact that the statutes of limitations in every jurisdiction except New Hampshire had run on the plaintiff's claim in this case.[10] Strictly speaking, however, any potential unfairness in applying New Hampshire's statute of limitations to all aspects of this nationwide suit has nothing to do with the jurisdiction of the court to adjudicate the claims. "The issue is personal jurisdiction, not choice-of-law." *Hanson v. Denckla,* 357 U.S. 235, 254, 78 S.Ct. 1228, 1240, 2 L.Ed.2d 1283 (1958). The question of the applicability of New Hampshire's statute of limitations to claims for out-of-state damages presents itself in the course of litigation only after jurisdiction over respondent is established, and we do not think that such choice of law concerns should complicate or distort the jurisdictional inquiry.

[779]The chance duration of statutes of limitations in nonforum jurisdictions has nothing to do with the contacts among respondent, New Hampshire, and this multistate libel action. Whether Ohio's limitations period is six months or six years does not alter the jurisdictional calculus in New Hampshire. Petitioner's successful search for a State with a lengthy statute of limitations is no different from the litigation strategy of countless plaintiffs who seek a forum with favorable substantive or procedural rules or sympathetic local populations. Certainly Hustler Magazine, Inc., which chose to enter the New Hampshire market, can be charged with knowledge of its laws and no doubt would have claimed the benefit of them if it had a complaint against a subscriber, distributor, or other commercial partner.

[13] Finally, implicit in the Court of Appeals' analysis of New Hampshire's interest is an emphasis on the extremely limited contacts of the *plaintiff* with New Hampshire. But we have not to date required a plaintiff to have "minimum contacts" with

8. The great majority of the States now follow the "single publication rule." Restatement (Second) of Torts § 577A, Appendix, Reporter's Note (1977).

9. Of course, to conclude that petitioner may properly *seek* multistate damages in this New Hampshire suit is not to conclude that such damages should, in fact, be awarded if petitioner makes out her case for libel. The actual applicability of the "single publication rule" in the peculiar circumstances of this case is a matter of substantive law, not personal jurisdiction. We conclude only that the District Court has jurisdiction to *entertain* petitioner's multistate libel suit.

10. Under traditional choice-of-law principles, the law of the forum State governs on matters of procedure. See Restatement (Second) of Conflict of Laws § 122 (1971). In New Hampshire, statutes of limitations are considered procedural. *Gordon v. Gordon,* 118 N.H. 356, 360, 387 A.2d 339, 342 (1978); *Barrett v. Boston & Maine R. Co.,* 104 N.H. 70, 178 A.2d 291 (1962). There has been considerable academic criticism of the rule that permits a forum State to apply its own statute of limitations regardless of the significance of contacts between the forum State and the litigation. See, *e.g.,* R. Weintraub, Commentary on the Conflict of Laws § 9.2B, p. 517 (2d ed. 1980); Martin, Constitutional Limitations on Choice of Law, 61 Cornell L.Rev. 185, 221 (1976); Lorenzen, Comment, The Statute of Limitations and the Conflict of Laws, 28 Yale L.J. 492, 496–497 (1919). But we find it unnecessary to express an opinion at this time as to whether any arguable unfairness rises to the level of a due process violation.

the forum State before permitting that State to assert personal jurisdiction over a nonresident defendant. On the contrary, we have upheld the assertion of jurisdiction where such contacts were entirely lacking. In *Perkins v. Benguet Mining Co.*, 342 U.S. 437, 72 S.Ct. 413, 96 L.Ed. 485 (1952), none of the parties was a resident of the forum State; indeed, neither the plaintiff nor the subject matter of his action had any relation to that State. Jurisdiction was based solely on the fact that the defendant corporation had been carrying on in the forum "a continuous and systematic, but limited, part of its general business." *Id.*, at 438, 72 S.Ct., at 414. In the instant case, respondent's activities in the forum may not be so substantial as to support jurisdiction over a cause of action unrelated to those activities.[11] But [780]respondent is carrying on a "part of its general business" in New Hampshire, and that is sufficient to support jurisdiction when the cause of action arises out of the very activity being conducted, in part, in New Hampshire.

[14] The plaintiff's residence is not, of course, completely irrelevant to the jurisdictional inquiry. As noted, that inquiry focuses on the relations among the defendant, the forum, and the litigation. Plaintiff's residence may well play an important role in determining the propriety of entertaining a suit against the defendant in the forum. That is, plaintiff's residence in the forum may, because of defendant's relationship with the plaintiff, enhance defendant's contacts with the forum. Plaintiff's residence may be the focus of the activities of the defendant out of which the suit arises. See *Calder v. Jones*, 465 U.S. 783, 788–789, 104 S.Ct. 1482, 1486–1487, 79 L.Ed.2d 804; *McGee v. International Life Ins. Co.*, 355 U.S. 220, 78 S.Ct. 199, 2 L.Ed.2d 223 (1957). But plaintiff's residence in the forum State is not a separate requirement, and lack of residence will not defeat jurisdiction established on the basis of defendant's contacts.

[15, 16] It is undoubtedly true that the bulk of the harm done to petitioner occurred outside New Hampshire. But that will be true in almost every libel action brought somewhere other than the plaintiff's domicile. There is no justification for restricting libel actions to the plaintiff's home forum.[12] The victim of a libel, like the victim of any other tort, may choose to bring suit in any forum with which the defendant has "certain minimum contacts ... such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial[781] justice.' *Milliken v. Meyer*, 311 U.S. 457, 463 [61 S.Ct. 339, 343, 85 L.Ed. 278 (1940)]." *International Shoe Co. v. Washington*, 326 U.S., at 316, 66 S.Ct., at 158.

[17] Where, as in this case, respondent Hustler Magazine, Inc., has continuously and deliberately exploited the New Hampshire market, it must reasonably anticipate being haled into court there in a libel action based on the contents of its magazine. *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S., at 297–298, 100 S.Ct., at 567. And, since respondent can be charged with knowledge of the "single publication rule,"

11. The defendant corporation's contacts with the forum State in *Perkins* were more substantial than those of respondent with New Hampshire in this case. In *Perkins*, the corporation's mining operations, located in the Philippine Islands, were completely halted during the Japanese occupation. The president, who was also general manager and principal stockholder of the company, returned to his home in Ohio where he carried on "a continuous and systematic supervision of the necessarily limited wartime activities of the company." 342 U.S., at 448, 72 S.Ct., at 419. The company's files were kept in Ohio, several directors' meetings were held there, substantial accounts were maintained in Ohio banks, and all key business decisions were made in the State. *Ibid.* In those circumstances, Ohio was the corporation's principal, if temporary, place of business so that Ohio jurisdiction was proper even over a cause of action unrelated to the activities in the State.

12. As noted in *Calder v. Jones*, 465 U.S., at 790–791, 104 S.Ct., at 1487, we reject categorically the suggestion that invisible radiations from the First Amendment may defeat jurisdiction otherwise proper under the Due Process Clause.