

GENERAL GUIDELINES ON FREEDOM OF THE PRESS AND RESPONSIBILITY TO AVOID LIBEL OR INVASION OF PRIVACY

One of the most challenging and interesting aspects of your job is your obligation to make sure your publication serves the needs of the members; to be informed about important issues and current events. Because issues and events are frequently controversial however, you will face the question whether articles in your publication might expose you or your union to liability for defamation or invasion of privacy. We urge you to be careful because even unwarranted lawsuits are expensive to defend; and juries have sometimes imposed heavy liabilities on unions.

Volumes have been written about, and law school courses have been devoted to, the subject of freedom of the press and the law of defamation or invasion of privacy. One of the most noted law professors has said about the law of defamation that:

It must be confessed at the beginning that there is a great deal of the law of defamation which makes no sense. It contains anomalies and absurdities for which no legal writer ever has had a kind word and it is a curious compound of strict liability imposed upon innocent defendants, as rigid and extreme as anything found in the law, with a blind and almost perverse refusal to compensate the plaintiff for real and very serious harm. 1

From this, you can conclude readily that you will never be an expert on the law of libel. Fortunately, you do not have to be a lawyer, or an expert on libel, to do your job; but you do need to be familiar with a few basic principles.

Before we turn to a discussion of basic principles though, one further caution is necessary: Although principles of federal labor law may be important in some libel cases involving labor relations issues, libel is ordinarily a matter of state law. Only law professors even try to master the libel law of every state. You should take only general guidance from the following discussion. If a question of libel comes up, you should consult a lawyer familiar with the law of your state. You should also make sure the lawyer you consult is aware that certain principles of federal labor law may be involved.

What Is Libel?

Libel is a written or printed communication that tends to expose a person to hatred, contempt or ridicule or to cause the person to be shunned or avoided. It can take the form of a written article or it may be the publication of a photograph or a cartoon. If such printed materials cause readers to alter their feelings toward a person in an unfavorable way or damage the person's reputation, you may be committing libel.

Some statements are obviously defamatory and there is no question that such statements tend to damage the person's reputation or cause people to view them in an unfavorable way.

Examples of defamatory statements are:

- a. Accusations of a criminal offense;
- b. Attacks on a person's fitness, capacity or competence in their trade, profession or business;
- c. Allegations that the person is a victim of a loathsome disease and
- d. Improper sexual behavior.

Statements or other printed materials which depict individuals in this way are defamatory (they defame the individual) and they may become the subject of a libel action.

There are other ways in which a person may be defamed, resulting in a libel action but a lengthy technical explanation is not necessary for you to know how to protect yourself. As a basic rule, you should recognize that articles which attack individuals or organizations by alleging one of the four types of things listed above must be carefully and cautiously reviewed before publication to determine whether they expose you or your union to a libel action.

Are You Defaming a Person?

Bearing in mind the four types of statements which are almost always defamatory, you should also use good, sound common sense in whatever you publish. If an article contains information or allegations that will tend to damage someone's reputation, you should understand that an issue of libel may arise.

A frequently asked question is whether reporting facts without identifying the person who may be defamed avoids libel. The answer is again, that common sense and reasonableness must be your guide. If the identity of a person is readily determinable, even if the person is not named, then they may be defamed. Similarly, if someone makes libelous statements about a group of persons, each person in the group may be defamed, depending upon the size of the group and the nature of the statements. As one Supreme Court justice noted in a leading case:

It is one thing to say that lawyers are shysters and that doctors are quacks, but it is quite another matter—indeed, it is libelous *per se*—to publish that lawyer Jones is a shyster or that Dr. Smith is a quack. 2

Similarly, if you were to make a highly derogatory remark about all postal supervisors, no individual supervisor could be understood to be defamed. But if you make a defamatory remark about supervisors in an installation where there are only a few supervisors, the article may be understood to mean that identifiable individuals are guilty of the offense alleged and there may be defamation.

In general, if the context of the article is such that the reader may be expected to understand it to point to identifiable individuals, defamatory statements in the article will be libelous.

Is Truth a Defense?

Not entirely. It is frequently said that truth is a defense to a libel action. But, if you publish defamatory statements, you should still have a justifiable reason why the statements were published. In some states, if the truth is published for no good reason and with an intention to damage someone, you may still be held liable. In some states, truth may be a defense in a libel action but there may be a separate right of action for invasion of privacy if there is no justification for the publication.

Federal Labor Relations Justification

The U.S. Supreme Court has held that principles of federal labor law must be applied to libel cases that involve labor relations. The Court held that defamatory statements made in labor disputes are protected from suit—unless they are false and the person who makes the statements knows they are false or makes them with a "reckless disregard" for the truth.

The Court held that this privilege, this important protection for free speech in the labor relations context is necessary to carry out the intent of Congress when it enacted the National Labor Relations Act. The Court stated that:

This freewheeling use of the written and spoken word. . . has been expressly fostered by Congress and approved by the NLRB. Thus. . . there was a congressional intent to encourage free debate on issues dividing labor and management. . . The Board has given frequent consideration to the type of statements circulated during labor controversies and it has allowed wide latitude to the competing parties. 3

By the standard, truth is a defense if the statement in question is made as part of a labor dispute. Even a false statement made in a labor dispute will be privileged, if the person who makes the statement did not know it was false or act with reckless disregard of whether it was true or not. Again, common sense is important. If you do not know whether a statement is true and it could possibly be a defamatory statement, you must use caution and seek to verify the truth of the statement.

You may not abuse the privilege of free speech in labor disputes by maliciously publishing defamatory statements. The privilege is intended to protect freewheeling debate, not malicious attacks. If a story or a statement is motivated by desire to inflict punishment on the subject of the story, rather than to pursue a labor relations issue, the publication may lose the benefit of the labor relations privilege. Similarly, if a defamatory statement about matters unrelated to labor relations is included in an article concerning a labor dispute, it will not be within the privilege because it does not concern the labor dispute.

Invasion of Privacy

Virtually all states recognize a right of privacy which may be protected by suit. Although laws vary from state to state, most states recognize a right of privacy that permits people to sue if someone publicly discloses private facts about a matter that a reasonable person would consider to be offensive and objectionable. A suit for invasion of privacy may also be brought if someone's privacy is invaded through, for example eavesdropping on private conversations by means of wiretapping or microphones. Another type of invasion of privacy is using a person's photograph without their consent, unless they are a public figure.

Once again, common sense is your best guide in this area. If the information to be published is important and pertinent to a labor dispute, it may not be "private" in the sense that will create a right to sue for its publication. On the other hand, if you publish private facts of a damaging nature for no good reason, there may be a right to sue for invasion of privacy.

The challenge for the editor of a labor publication is to be aggressive but fair; to be courageous in advocating the position of the union, while giving proper respect to the rights of individuals; to fulfill your duty to publish all that is fit to print without permitting your publication to be used as a vehicle for personal attacks.

1 W. Prosser, *Law of Torts*, at 737 (4th ed. 1971).

2 *Letter Carriers v. Austin*, 86 LRRM 2740, 2752 (U.S.S. Ct. 1974) (Powell, J. Dissenting).

3 *Letter Carriers v. Austin*, *supra*, 2742 (citations omitted).

Additional PPA Guidelines

The issues of libel and invasion of privacy are not to be taken lightly. Depending on the circumstances you as the editor can be sued, your union can be sued and possibly even the national union, collectively and individually.

The material presented here is not intended to inhibit you as an editor nor to inhibit your contributors. It is offered only as an educational tool and to bring you greater awareness of your responsibilities. With this in mind, the APWU National Postal Press Association suggests the following guidelines:

1. Verify your facts first. Do not misstate or overstate. Be full, fair and accurate and above all, be truthful.

2. Think about your motive for publishing this information. Never publish an article to punish or attack a person. Ask yourself if the article presents a balanced view. Have you presented the reader with both sides in an effort to allow the reader to make the determination-- or have you attempted to make the determination for them? All of these questions must be answered by you.

3. Use common sense. Do not let your personal views interfere with your responsibilities as an objective reporter.

4. No one expects you to be a lawyer. If material is questionable seek the advice of your local editorial policy review committee. If there is no such committee in your local, consult with your executive board or possibly even legal counsel. Take advantage of our PPA confidential review of any material you might find to be questionable. Send a copy of the article to the PPA president for review before you print.

5. Publishing of questionable material may often require written authorization to use someone's name or photo, before you go to press.

The APWU National Postal Press Association has no legal authority over what is published in local and state affiliated publications. But, it is our policy that material should be constructive and present a balanced view. Please call upon us if we can be of assistance.

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