What can you say and how should you say it—legally

Basics of Libel Law

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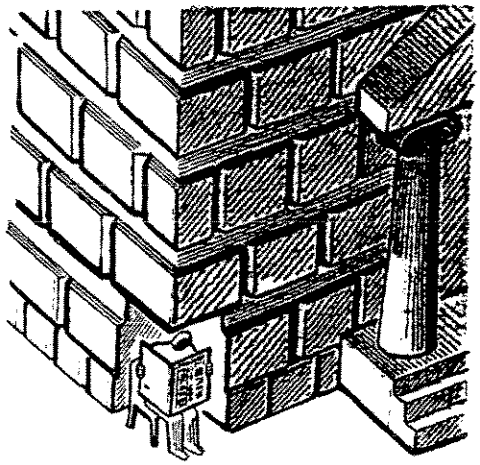
Libel Law: Good Intentions Gone Awry

Reputation, of all human possessions, is perhaps the least tangible yet the most zealously guarded. To be known for integrity and honor, most people willingly labor a lifetime. Even a rogue may cherish the mistaken notion that he enjoys the respect of his community. As Shakespeare's foulest villain, Iago, puts it in *Othello*, "Good name in man and woman is the immediate jewel of their souls." That is why the concepts of slander and libel, and of the right of the aggrieved to seek redress for defamation, were introduced into English common law during the Middle Ages and why those ideas survive in U.S. law today.

But ever since the founding of this nation, lawmakers and courts have also recognized a vital competing right: for society to have free and open discussion of public issues and the performance of public officials, so that an informed people can govern themselves. To further that goal, the First Amendment guarantee of freedom was written on behalf of a press that was far more noisy, brawling and partisan than the much maligned journalism of today. As a California judge noted in his opinion in a 1979 libel case, George Washington was called a murderer, Thomas Jefferson a blackguard and a knave, Henry Clay a pimp, Andrew Johnson and Ulysses Grant drunkards, Abraham Lincoln was termed a half-witted usurper, a baboon, a gorilla and a ghoul. Yet none of the nation's early leaders even attempted to sue, although some may have shared Benjamin Franklin's professed desire to balance "the liberty of the press" with "the liberty of the cudgel."



These statesmen forbore going to court in part because they doubted the courts would, or should, be open to them. The Federalists, the party of Alexander Hamilton and John Adams, enacted in 1798 a Sedition Act that imposed criminal penalties for "false, scandalous and malicious writing" about the Government, Congress or the President. The law proved so unpopular that it contributed to the Federalists' defeat in 1800 and later disappearance; the statute expired in 1801, and has been regarded as unconstitutional.

The electorate did not mean to make some perverse endorsement of malice or falsehoods. Rather, voters realized that the motive of legislation like the Sedition Act was to silence the critics of those in power, and trusted that in time truth would conquer error. Occasionally, Government tested the principle anew. When the New York *World* and Indianapolis *News* alleged corruption in the development of the Panama Canal in 1908, President Theodore Roosevelt ordered his Attorney General to sue. The courts quashed both cases before they could come to trial.

While such cases determined that the Government could not sue for libel, the question remained whether public officials who claimed injury as individuals were entitled to seek redress. That issue was at the heart of the defining case for modern American libel law, *New York Times vs. Sullivan*. The dispute involved a political advertisement, critical of Alabama law enforcement and containing inconsequential errors of fact, that appeared in the *Times* during the black struggle for civil rights. Several officials, who were mentioned in the ad by function although not by name, sued, ostensibly to recoup their reputations. In fact, the *Times*' daily circulation in Alabama was then some 400 copies, out of a total circulation of 650,000, and the suits were clearly intended to discourage the national news media from covering the turmoil in the South. In a unanimous 1964 ruling, the Supreme Court wrote of the paramount importance of "uninhibited, robust, and wide-open" discussion, praised the unique role of the press in fostering free debate, and threw out an earlier state court verdict won by an Alabama plaintiff.

Three of the nine Justices wanted to ban outright all libel suits by public officials against critics of their performance. The full court went almost as far: it held that journalists should not be liable for the results of honest error about public matters, regardless of how false or injurious the report. Said Justice William Brennan in the majority opinion: "Raising as it does the possibility that a good-faith critic of government will be penalized for his criticism, the proposition relied on by the Alabama courts [that an attack on government performance is a personal attack on government officials] strikes at the very center of the constitutionally protected area of free expression." The court believed that without such protection, the press would feel a "chilling effect." Said Justice Brennan: "A rule compelling the critic of official conduct to guarantee the truth of all his factual assertions—and to do so on pain of libel judgments virtually unlimited in amount—leads to a comparable 'self-censorship.' "

Thus the court adopted a new, higher standard of proof that public officials would have to meet as plaintiffs: they would have to prove "actual malice" on the part of the journalist. That meant something far more sweeping than political opposition or personal ill will; malice was defined as, at minimum, publishing a story despite having substantial doubt beforehand that it was true. At the time, this distinction was considered effective immunity for any responsible news organization. The actual malice standard, it appeared, simply left the door open a crack for suits by public officials against scandal sheets or the willful lies of opponents. Even so, Justices Hugo Black and William O. Douglas thought that the malice standard could let in undesirable suits. Wrote Black, in a concurring opinion to the majority: "The requirement that malice be proved provides at best an evanescent protection for the right critically to discuss public affairs and certainly does not measure up to the sturdy safeguard embodied in the First Amendment."

Not everyone hailed the *Sullivan* decision. Many targets of press inquiry thought it amounted to giving journalists a gun and a license to kill. In retrospect, some editors think they responded to their new legal protection by relaxing their standards of research and caution. Says Chicago *Tribune* Editor James Squires: "*Sullivan* helped make us less conscientious and considered. It also made us overconfident and cocky." Nevertheless, the Supreme Court during the next few years continued to broaden press protection to include coverage of "public figures"—people who did not hold an official position but who had voluntarily made themselves newsworthy by involvement in public matters.

Then, in the wake of Watergate, at about the time the press was riding highest, the pendulum started to swing back. Courts began to narrow the definition of public figures. Chief Justice Warren Burger told trial judges, in a footnote to a 1979 opinion, that too many libel cases were being summarily dismissed—that is, rejected before going to trial. For journalists, the most nettle-

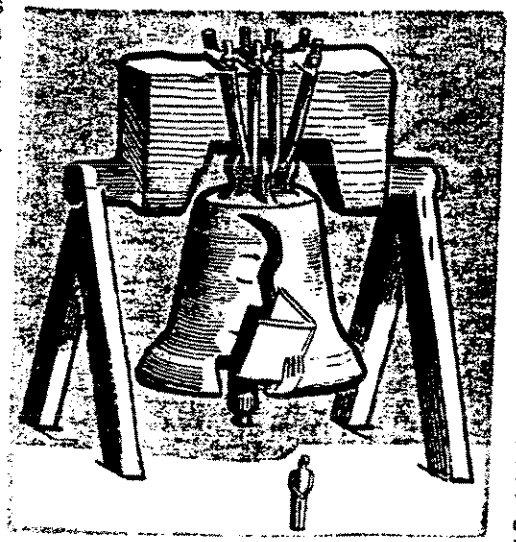
Time, March 4, 1985

Essay

some result of the court's shift in mood came in a ruling during the pretrial discovery phase of a suit brought by retired Army Lieut. Colonel Anthony Herbert, a former field officer in Viet Nam, against the producers of a report about him on the CBS News show *60 Minutes*. The Supreme Court ruled in 1979 that Herbert was entitled to rummage through the journalists' research notes, paper work and the unused outtakes of raw film footage from which they assembled the broadcast, to gauge their "state of mind" while preparing the story.

This ruling, which was soon extended to other libel cases, left journalists nearly as vulnerable for what they did *not* say as for what they did. It opened to question their judgments and private opinions as much as their public assertions of fact. It also created a bizarre situation in which the more careful a journalist is, the more vulnerable he becomes to charges of malice: a reporter whose extensive research leads him to conclude that one side is right in a dispute can be accused of malice for discounting the evidence on the other side, while a writer who prints a tip without checking it can argue that he is immune from malice charges because he had no doubt about the item's veracity. The provision for examining the journalist's state of mind ensured that libel suits would grow longer and costlier: the *Herbert* case, brought in 1974, has yet to go before a jury.

In effect, the *Sullivan* decision has resulted in the very thing it was written to avoid. What it produced has been aptly called Malice in Wonderland. One survey by the Libel Defense Resource Center of cases that resulted in large jury awards for damages shows that four of the ten biggest were brought by public officials, and dozens of suits are pending, at least 18 in Philadelphia alone. These plaintiffs may be responding to a perceived shift in public opinion against the news media, or to a general litigious impulse in our society, or to the publicity given to strikingly high jury damage awards. In part, the press has itself to blame: the multimillion-dollar awards in recent cases have commanded headlines, but the reversals or drastic reductions in damages typically have rated a paragraph back among the want ads.



In fact, when news organizations have the money, stamina and self-confidence to wait out suits by public officials, they usually prevail. According to the Libel Defense Resource Center, of 25 libel suits brought by officials during the past five years, 18 were won by the plaintiff in jury trials, but, at most, four monetary awards have been affirmed on appeal. Yet any libel suit can be costly to defend. There are subtler penalties as well. News organizations will understandably grow gun-shy about controversy. Although Dan Rather was found by a jury not to have slandered a California doctor during a *60 Minutes* segment, the CBS anchorman wondered if any network would remain willing to undertake investigative stories. A federal trial judge in 1983 overturned a jury's finding that the Washington *Post* had libeled William Tavoulareas, president of Mobil Corp. "That case cost us $1,085,000 in legal fees," says Executive Editor Ben Bradlee. "The next reporter who tells me he's got a hell of a story that's going to cost me that much money had better have something more than a guy helping his son in business."

Less well-heeled publications may drop investigative reporting, as the Alton (Ill.) *Telegraph* (circ. 38,000) did after settling a suit out of court for $1.4 million. Libel insurers may on occasion stipulate the nature of the editorial content they are willing to underwrite. The advice of attorneys that the subject of a story may sue has prompted editors to drop or radically alter an article, even though it could have been proved true in court. Says Philadelphia *Inquirer* Editor Gene Roberts: "A reporter has come in with an investigative project and I have caught myself asking whether he will make a good witness."

The time has come for the Supreme Court to recognize that the reasoning in *Sullivan* was right, but that subsequent decisions have reversed its intended effect. The most sweeping remedy would be to ban libel suits by public officials. A strong case can be made for that idea, but the public is skeptical enough about the press these days to make less extreme correctives seem more salable. New York *Times* Columnist Anthony Lewis, a Harvard Law School lecturer and Pulitzer prizewinner for his coverage of the law, urges other changes. He would limit compensatory damages to proven financial loss plus some modest, symbolic sum for mental anguish. He would entirely eliminate punitive damages, which are sums awarded by juries to punish bad conduct and thereby theoretically discourage any repetition; punitive damages often are vastly disproportionate to the actual injury.

Other scholars would encourage judges to strengthen their efforts at negotiating pretrial settlements. Some even propose diverting libel cases out of the court system to arbitration, where the emphasis would be on retractions or other statements to correct the record. Some reformers suggest adopting the rule employed in Britain, where the loser in a libel case can be ordered to pay the winner's legal fees, to discourage the filing of suits that are essentially harassing. But perhaps the greatest need is for the court to speak forcefully on the inevitable imperfections of journalism, and to redefine the malice standard in a way that would sharply restrict the plausibility of any suits brought by public officials.

Aggrieved targets of journalism should reflect on the observations of New York City Mayor Edward Koch, who boasts that he has "never resorted to libel suits. I hope I never will." Says Koch: "When I think I have been wronged, I speak out. In other words, I give as good as I get. If a reporter or editorial writer makes a factual error—or gets the facts right but then draws what I believe to be an erroneous conclusion—I reach for my pen." Indeed, the mayor writes regular columns himself for three daily newspapers.

Not every libel plaintiff wants to write a column or call a press conference. But as the Supreme Court noted in *Sullivan*, most public officials at every level enjoy a legal privilege in replying to critics: they are immune from libel or slander suits for comments made in the conduct of their duties, and thus have ample opportunity to protect their reputations. Moreover, said the court, officials enter into public service voluntarily, and they know that scrutiny and criticism are a healthy part of the process.

Many libel plaintiffs concede that they are not simply trying to get their side told. As New York Attorney Martin Garbus points out in the Feb. 16 issue of the *Nation*, "[Former Israeli Defense Minister Ariel] Sharon's suit [against Time], that of General William Westmoreland against CBS and all the other actions brought by public officials are not attempts by individuals to win restitution for personal wrongs. They are attempts to vindicate their political positions and their conduct in office—to rewrite history." Some libel plaintiffs have admitted they hope to have a "chilling effect" on what they see as bad journalism. Westmoreland's attorney Dan Burt predicted at one stage that the internal uproar at CBS over its documentary on General Westmoreland would bring about "the dismantling of a major news network." That image expressed the real danger of libel suits brought by public officials: the disheartening of all opposition. Journalists have a responsibility to be as accurate as possible. The proper response to wrong or misleading reportage, however, is more debate, not less. Reasonable as the anguished claims of a public figure may sound, when it comes to discussion of vital public issues, a timid silence by the press is a price that no free society can afford to pay.

—By William A. Henry III

YOU CAN BE SUED!

YOU CAN BE SUED—AN INFORMATIONAL GUIDE ON THE SUBJECTS OF LIBEL, INVASION OF PRIVACY AND COPYRIGHT.

LIBEL

You can be sued for damages on a charge of civil libel if you print a false, defamatory statement tending to injure the reputation of a living person so as to expose them to public hatred, contempt or ridicule. This includes the publication of a photo or cartoon.

Even if yo do not print the name so long as enough descriptive data is given to make the person identifiable, you are guilty of libel. Mistaken identity or similiarity of name is no excuse.

A story that injures a person's standing in his occupation also is grounds for a civil libel suit.

IF YOU ARE SUED,the three major lines of defense are truth, privilege and fair comment.

TRUTH...If the defamatory matter is true, there must be a justifiable reason why it should be published. If the justification is upheld, the individual cannot recover damages as a result of his reputation being hurt. Note: Libel laws differ in many states. In some states, justification may not be an acceptable defense.

The truth is NO DEFENSE if you maliciously or capriciously give circulation to defamatory facts which serve no public purpose. For example: Your neighbor may be addicted to standing on his head in the nude while in the privacy of his home and you have irrefutable evidence to prove it. But you can be sued for holding your neighbor up to public ridicule and contempt, unless you can successfully relate this "idiosyncracy" to his qualifications for union or public office of show that this activity adversely affects others.

Important: A defense based on truth must be supported by proof. You cannot merely demonstrate that you accurately quoted your source. This will not do. And you are not covered by using the terms "allegedly," "reportedly," etc. While they can be used in a story, they are no defense.

PRIVILEGE

Legislators, judges, attorneys, witnesses and parties to litigation have what is known as absolute privilege. They cannot be sued for libel.

But editors have only conditional privilege. (Don't forget the writers in your publication - as editor, you are required to edit all material.) Conditional privilege covers fair and impartial reports of judicial, legislative or other public and official proceedings published in good faith and without malice.

Thus you can report the proceedings of Congress, state legislatures, courts and certain government bodies. But you must remember that information from all governmental agencies is not privileged.

Statements made at a convention (or meeting) are not privileged. If a speaker makes a defamatory statement about some individual, BE CAREFUL how you report it. You are just as libel if you repeat a libelous statement, just as if you originated it.

The many postal union publications which bear the editorial statement that what the individual writer expresses, is strictly his own opinion and not necessarily the opinion of the editor of the paper or the union sponsoring the paper is NO GOOD. The editor and the union IS RESPONSIBLE for everything published in that paper. The reason many union as well as other publications print this statement is in order to inform the reader that the individual writer is entitled to his or her opinion but it is not necessarily in agreement with the editor or the union.

While the above statement should be continued to be printed, it is NO DEFENSE if the writer should be sued for libel. The editor and the union will find themselves parties to this suit.

FAIR COMMENT

You have the right to comment fairly, reasonably and in good faith on public matters. The International Labor Press writes in its primer on "Libel" that this is no defense if:

- The story is grossly inaccurate.
- The motive for running the story is spite or a desire for revenge.
- You have included additional material that is not germane to the subject.
- The story fails to include both sides.
- The story is about private matters or the private life of public personalities.

In other words, use some COMMON SENSE

when writing or editing an article for your postal union publication. You know when you are being spiteful or malicious and you can usually tell when a writer contributes an article, if his or her material falls into this category. When in doubt - DON'T PRINT. Submit the article to your executive board. As a postal union editor, you are required to uphold the integrity of the entire membership.

PRIVACY

The law on privacy differs from state to state. As a postal union editor, you should become familiar with the laws of your state.

The New York statute created a civil right to sue for damages for invasion of privacy, and made it a misdemeanor to use a person's name, portrait or picture for advertising purposes without that person's permission.

But courts differ on the definition of invasion of privacy. Thus you can use a photo taken at a public of semi-public place, but a newspaper that published the photo of a sun-bathing movie star, taken from a nearby skyscraper with a telephoto lens, lost a suit. I'm sure you get the message.

If there is any doubt, the wisest thing is to get a release from the person involved.

Here are the most common defenses against such a suit: If the person took part in some public action, or is a public figure, or consented to have his or her name or picture published, or if the name or picture was not used for advertising purposes, or if the name or picture is not that of a living person.

We hate to keep repeating ourselves, but when in doubt, don't print. Use your common sense and consult with your executive board.

COPYRIGHT

You spot a good feature or column (cartoon, etc.) in another paper or magazine and decide to lift it. Even if you run a credit line, you risk being sued for damages.

You may be guilty of infringement of copyright. If the entire issue is copyrighted, every article in it is covered. Otherwise you can lift an item that is not specifically copyrighted. BE SURE.

In order to reprint copyrighted material you must first write and request permission of the publisher, editor, or author. They do not have to grant you permission, but you must request, and receive, permission prior to reprinting the item. Many editors gamble that they won't be caught. You are entitled to quote passages from a long article in your review or analysis of it - provided that article does not state that no part can be copied or reproduced.

The copyright notice can read "Copyright" (or the letter C in a circle) followed by the name of the owner of the copyright and the year of publication. To get a copyright you fill out the necessary forms, put the copyright notice on the published item and then file copies, after the item is run, with the Library of Congress, which administers the statute.

CONCLUSION

We have tried to answer most of the questions that may come up during the course of editing your postal union publication.

We hope this information will be of some assistance to you.

Hank Greenberg,
President

OUTLINE ON LIBEL AND PRIVACY FOR THE LABOR PRESS

I. WHAT IS LIBEL?

A. In libel the threat is from an individual who feels a published report has damaged his or her reputation.

B. While reporting, the following questions on the libel checklist should be answered.

1. Are the words written CAPABLE of conveying a defamatory meaning?

a. Charging someone with a crime is the easiest and most obvious way to write a story that is capable of being libelous.

b) Libel is defined as bringing someone into hatred, contempt or ridicule to a substantial and respectable group.

c. If the words are capable of a defamatory meaning, a legal action is possible, and the second step on the checklist follows:

2. How would a jury UNDERSTAND the words written?

a. Could the words be understood in a double meaning, that is, in a humorous or affectionate manner?

b. If you are certain an attorney could convince a jury the words could have two meanings and the meaning was humorous or affectionate, you may not have to face the next steps—the defenses.

3. Was the story (or statement) true?

a. Truth is the best defense to a libel suit for a professional journalist.

b. Truth is the basis of good reporting and careful editing.

c. In establishing truth, however, remember it is difficult to prove facts in a courtroom.

4. Was the occasion being reported privileged?

a. Legislators and certain executives and judicial personnel are immune from legal actions while performing their official duties.

b. The press is conditionally privileged to report these events as long as the report is full, fair and accurate.

5. Was the occasion a public offering that required comment and criticism?

a. Journalists have the right, if not duty, of publishing fair and reasonable comment upon anything that is of public interest.

b. Misstatement of facts will bring loss of this privilege.

6. Was the situation socially important enough to privilege the report?

a. The idea is that in certain situations, in order to safeguard personal or pecuniary interests, a conditional privilege arises.

b. Labor is in a special category, see Bereman v. Power Publishing Co., 93 Colo. 581, 27 P.2d 749 (1929).

7. Was the individual a public official?

a. A public official, to recover damages for a defamatory falsehood relating to his official conduct must prove the statement was made with "actual malice."

b. Actual malice means "with knowledge that it was false, or reckless disregard of whether it was false or not."

c. "Public official" applies "at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs."

8. Was the individual a public figure?

a. "Public figures" are those who have "general fame or notoriety in the community, and pervasive involvement in the affairs of society," or

b. "More commonly, those classed as public figures have thrust themselves to the forefront of particular public controversies.

9. Was the person seeking libel damages a private individual?

a. Here the standard of liability adopted by **your state** becomes important.

b. Some states have maintained the actual malice standard even for private individuals.

c. About a dozen states have adopted the negligence standard.

II. RIGHT OF PRIVACY.

A. In right of privacy the threat is from an individual who feels a publication invaded his right to be let alone.

B. Consent (preferably written) must be given if a person's name or picture is used for purposes of trade (such as in an advertisement).

C. A person does not have a right of privacy if his or her name or picture is used because of becoming a participant, unwilling or otherwise, in a newsworthy event of legitimate interest to the public.

1. These public figures, by their own acts, achievements or mode of life, invite public interest and must accept even unwelcome publicity.

2. This could be a victim, villian or even a hero of an event — just so long as the event is newsworthy.

D. There are four versions of the tort of privacy.

1. The **appropriation** of one's name or photograph.

2. A physical or other intangible **intrusion** into a private area.

3. A publication of otherwise private information that is also false although perhaps not defamatory. (False light.)

4. Unwanted publicity about private affairs, which although wholly true, would be **offensive to** a person of **ordinary sensibilities.**

E. In an important privacy case in 1975 the Supreme Court added an area of protection for the press when it said:

1. The press will not face liability "for truthfully publishing information released to the public in official court records."

(Source: University of Missouri School of Journalism.)

SUMMARY OF IOWA LIBEL LAW

DEFINITION:

"Libel" is a malicious publication, expressed either in printing or writing, or by signs and pictures, tending to injure the reputation of another or expose them to public hatred, contempt or ridicule, or to injure them in the maintenance of their business.

KINDS OF LIBEL:

"Per se" libel--on its face, the plaintiff is degraded, rendered odious, subjected to public hatred, contempt or ridicule, injured in trade or business, or exposed to contempt and the deprivation of the benefits of public confidence.

"Per quod" libel--it is necessary to refer to facts and circumstances beyond the words actually used ("extrinsic facts") to establish defamation.

Differences exist between these two kinds of libel as to what kind of proof the plaintiff must furnish, and the damages which can be recovered.

DEFENSES TO LIBEL ACTIONS:

Truth is an absolute defense to liability. It must: a) be proved by the defendant, and b) go to the entire injurious character of the defamation.

Privilege can be argued in two different forms. Absolute privilege applies mainly to statements in judicial proceedings. Qualified privilege applies mainly to "fair comment" on matters of public interest. A newspaper may comment on the character, qualifications and conduct of public officials and public candidates without fear of libel. Even if the facts asserted are later proved untrue, the publisher is not liable if s/he acted without express malice and honestly believed the assertions to be true. The press is entitled to make statements of opinion with regard to public figures and matters of public concern.

Statute of limitations--in Iowa, a libel action must be brought within two years from the violation. Suits brought after that time are non-actionable.

MEASURE OF DAMAGES:

General or compensatory damages for injury to reputation are presumed--i.e., need not be proved by the plaintiff. They are equal to present and future loss resulting from the defamation. The jury has the discretion to determine the amount of these damages, and can award only nominal damages (e.g., $1) if they wish.

Special or actual damages must be satisfactorily proven by the plaintiff, who must give specific, detailed evidence of monetary losses attributable to his/her diminished reputation. These may not include future losses. Special damages are usually pled in actions based on libel per quod, where malice is not in issue.

Punitive damages are recoverable on a showing of express malice. They are meant to punish past libelous conduct and deter similar conduct in the future.

Damages can be "mitigated" (reduced) by showing good faith reliance on an identified source, some act by the plaintiff provoking the statement, or the plaintiff's bad reputation (if related to the defamation). They can also be mitigated by proper retraction.

Summary of Iowa Libel Law cont'd.

RETRACTION (Iowa Code, Chapter 659, sections 2-4):

The plaintiff must demand retraction by serving a notice (a) specifying the statement objected to and (b) requesting it be withdrawn. Within two weeks after such a notice is given, the paper must print the retraction in as conspicuous a type and place as the original story. If a retraction is properly demanded and the paper refuses to give it, the refusal is treated as evidence of express malice.

CHAPTER 659

LIBEL AND SLANDER

659.1 Pleading.

In an action for slander or libel, it shall not be necessary to state any extrinsic facts for the purpose of showing the application to the plaintiff of any defamatory matter out of which the cause of action arose, or that the matter was used in a defamatory sense; but it shall be sufficient to state the defamatory sense in which such matter was used, and that the same was spoken or published concerning the plaintiff.

[R60, §2928; C73, §2681; C97, §3592; C24, 27, 31, 35, 39, §**12412**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §659.1]

659.2 Libel — retraction — actual damages.

In any action for damages for the publication of a libel in a newspaper, free newspaper or shopping guide, or for defamatory statements made on a radio or television station, if the defendant can show that such libelous matter was published or broadcast through misinformation or mistake, the plaintiff shall recover no more than actual damages, unless a retraction be demanded and refused as hereinafter provided. Plaintiff shall serve upon the publisher at the principal place of publication or upon the owner of a radio or television station at the owner's principal place of business a notice specifying the statements claimed to be libelous, and requesting that the same be withdrawn.

[SS15, §3592-a; C24, 27, 31, 35, 39, §**12413**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §659.2]

659.3 Retraction — actual, special, and exemplary damages.

If a retraction or correction thereof be not published in as conspicuous a place and type in said newspaper, free newspaper or shopping guide, as were the statements complained of, in a regular issue thereof published within two weeks after such service, or in case of a defamatory statement on a radio or television station if a retraction or correction thereof be not broadcast at a time considered as favorable as that of the defamatory statement within two weeks after such service, plaintiff may allege such notice, demand, and failure to retract in the complaint and may recover both actual, special, and exemplary damages if the plaintiff's cause of action be maintained. If such retraction be so published or broadcast, the plaintiff may still recover such actual, special, and exemplary damages, unless the defendant shall show that the libelous publication or defamatory statement was made in good faith, without malice, and under a mistake as to the facts.

[SS15, §3592-a; C24, 27, 31, 35, 39, §**12414**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §659.3]

659.4 Candidate — retraction — time — imputing sexual misconduct.

If the plaintiff was a candidate for office at the time of the libelous publication, no retraction shall be available unless published in a conspicuous place on the editorial page, nor if the libel was published within two weeks next before the election. This section and sections 659.2 and 659.3 do not apply to libel imputing sexual misconduct to any persons.

[SS15, §3592-a; C24, 27, 31, 35, 39, §**12415**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §659.4]

85 Acts, ch 99, §11

659.5 Defamatory statement by radio.

The owner, lessee, licensee, or operator of a radio broadcasting station, and the agents or employees of any such owner, lessee, licensee, or operator, shall not be liable for any damages for any defamatory statement published or uttered in or as a part of a radio broadcast, by one other than such owner, lessee, licensee, or operator, or agent or employee thereof, if such owner, lessee, licensee, operator, agent, or employee shall prove the exercise of due care to prevent the publication or utterance of such statement in such broadcasts.

[C39, §**12415.1**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §659.5]

659.6 Proof of malice.

In actions for slander or libel, an unproved allegation of the truth of the matter charged shall not be deemed proof of malice, unless the jury on the whole case finds that such defense was made with malicious intent.

[R60, §2929; C73, §2682; C97, §3593; C24, 27, 31, 35, 39, §**12416**; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §659.6]

Bettendorf man sues union claiming libel

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BETTENDORF, IA. — A Bettendorf man employed as a supervisor at the Rock Island Arsenal has sued a union local and its former president, saying he was libeled by a union newsletter that allegedly referred to him as the "Joke of the Month" and claimed he had "no more supervisory sense than a toad."

The suit was filed in Rock Island County, Ill., Circuit Court by James Toner, a probationary supervisor in charge of 15 employees.

Named as defendants are Local 15 of the National Federation of Federal Employees, which represents 4,100 arsenal workers, and the union president at the time the article appeared, William "Bud" Forbes, a former Bettendorf City Council member.

The suit alleges that Toner was libeled in the April 1991 issue of the local's newsletter in a column headed "A Message from Your President."

The suit quotes the article as saying in part:

"As part of my message to you from now on, I will be pointing out one supervisor per month who I have picked as the 'Joke of the Month.'"

The column said the first recipient "has tried to harass and intimidate employees in his area and has stuck his big foot in his mouth on more than one occasion."

The article claimed that seven unfair labor practices complaints and several grievances had been filed against the supervisor.

"His most recent stupid trick was to try to change policies, practices, and working conditions without consulting with his union," the column said.

The article doesn't name Toner, but Toner's lawyer, Alan Blackwood, said information in the column makes it clear that it's about Toner.

The suit says the article is false and libelous and has caused Toner to suffer mental distress and humiliation.

It says Toner has suffered more than $15,000 in damages in the form of injury to his reputation and occupation. It also asks for punitive damages of $250,000.

Terry Berg, the local's current president, referred questions to a union lawyer who couldn't be reached for comment. Forbes also couldn't be reached for comment.

Toner declined to comment.