

Libel, Slander and the Rights of a Journalist

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It seems that journalists have been facing libel and slander lawsuits from the first publication of the written word. Libel and slander are defined as written or spoken remarks that are “harmful and untruthful criticism by the media that intends to damage someone” (Straubhaar, LaRose & Davenport, 2012). A journalist must understand this definition if they intend to move forward in a journalism career. With this in mind, they must be prepared at all times to review their work and set into a place a personal plan to ensure that they are never accused of committing libel.

Libel and defamation suits are detrimental not only to the credibility of the journalist, but also the person or persons who are the subject of the libelous statement. These types of statements are usually made with malicious intent. They are designed to discredit the subject of the statement. It is also something that can be committed by anyone--journalist or civilian--causing thousands of dollars in damages as well as damage to someone's reputation. If someone were to go online and make an untrue statement about President Obama simply because they didn't like him, it could be considered libel and that person could find themselves facing a court proceeding (Straubhaar, LaRose & Davenport, 2012).

Quite often libel cases stem from political campaigns where the opinions of both journalists and the everyday person run rampant over the internet and the newspapers. As long as the individual making the libelous or slanderous statement can prove that they were simply voicing their opinion “rather than fact”, they are protected as long as they are not inciting others to violence (Straubhaar, LaRose & Davenport, 2012).

Libel suits stem back to the case between the New York Times v. Sullivan in 1964 when the U.S. Supreme Court stepped in to make a ruling on the case. The decision, to prohibit a

public official from recovering damages for a malicious statement, changed the face of libel suits forever. It required that the subject of the libel had to prove that the person who made the statement did it “with actual malice” (Hansen & Moore, 1992). Since this case, the courts have redefined what is considered libel numerous times with the journalist getting protection from libel suits that may or may not be appropriate (Hansen & Moore, 1992).

It is interesting to note that most people who go to court because they feel they have been the subject of a libelous statement usually do so in an attempt to get an apology and retraction from the member of the media who made the statement. Some cases do end in a monetary settlement, but the retraction is usually the outcome that is the most satisfactory (Hansen & Moore, 1992).

Before discussing how the general public feels towards libel, slander and journalists, it is important to understand how a person is defined as a journalist. This is important because the issue of libel may not cover someone who claims they are journalists. Congress has been defining a journalist as just about anyone who writes--from bloggers to teens with MySpace pages--but this broad definition has been changed to include the stipulation that a journalist is someone who writes for “financial gain or livelihood” (“A Solid Shield”, 2007). This means that according to the law, a journalist is someone who is paid to write and that can include freelance writers, college writers and bloggers who receive some type of compensation for their work. In the state of Texas, a journalist is a person “who for a substantial portion of the person’s livelihood or for substantial financial gain gathers or publishes news or information that is disseminated by a news medium” (Watler, 2009).

How does the general public define libel and what do they consider defamatory? It depends on the individual’s knowledge and understanding of the word libel, how it is used, and

what constitutes a libelous statement. Most jurors in libel cases do not have the knowledge it needs to truly analyze a case and make a decision about whether or not the accused has made a defamatory remark (Dillon & Covil, 1998). This is why in up to 70% of cases, the judgment is overturned or “limited in the appeals process” (Dillon & Covil, 1998). When studies have been conducted to determine how people feel about journalists in general, it has been shown that they tend to lean towards the investigative journalism that is being done as long as the individual rights of a person have not been “trampled on in the process or if reporting fairness is lacking” (Dillon & Covil, 1998). Some of these studies have also discovered that many newspaper editors are lacking in “expertise of libel understanding” (Dillon & Covil, 1998). Considering editors are the ones that decide on the stories that are printed, this is a very chilling fact and it almost seems as if journalists are set up for libel suits from the start.

Additional studies have shown that journalists, the average person and judges all have differing opinions on what is considered a defamatory or libelous statement (Dillon & Covil, 1998). How the average person defines libel is discussed above. Journalists look at libelous statements with a bit more optimism, especially when it comes to issuing a retraction to make things okay. They have adopted the “no such thing as a false idea” concept when it comes to libel (Dillon & Covil, 1998). For judges, the definition of libel is more cut and dry as they define libel and evaluate each case based on its merits as defined by the law (Dillon & Covil, 1998).

The study that shows how the average person, the courts and journalists define libel also shows that there are differing perceptions when it comes to journalists in general when defamation is discussed. The study shows that most of the public and judges “think that journalists often defame people” and that there is not a “high public regard for retraction” (Dillon

& Covil, 1998). In other words, because of past issues with defamatory statements, most people view journalists in a negative light because of the unethical decisions of a handful of their peers.

Journalists have long been considered the watchdogs of the government and the method in which the American people have been able to get current, substantive news. The American public expects journalists to provide them with the news and information they seek in a timely manner. When that news comes at the price of someone's reputation, lawyers are called in. In any case where a journalist is involved, the journalist has the chance to present their case in court and to protect themselves in the event the libelous statement they made cannot be proved.

This includes protecting the journalist's sources. When it comes to defining a journalist in the courtroom, lawyers in the state of Texas fall back to the state's shield law that went into effect in 2009. Paul C. Watler, a prominent media attorney in Dallas, has found that the shield laws have been very effective in protecting the right of journalists in the state, prompting fewer subpoenas to be issued and fewer court hearings being held (Carpenter, 2012), especially in libel cases and cases where the journalist's rights could be violated. However, the shield law in Texas only protects journalists to a point. High profile cases where the media becomes involved, and jailhouse interviews, especially ones where the defendant implicates themselves, are situations where the court has the right to subpoena the journalist's records in an effort to determine whether or not libel has been committed (Carpenter, 2012). In each case that he has worked on where a journalist has been asked to reveal their sources in an effort to determine libel, Mr. Watler has carefully analyzed whether or not the state's shield laws could be invoked (Carpenter, 2012).

How does a journalist, then, protect themselves from any type of defamatory lawsuit? To start, they need to follow any guidelines that may already be in place with the company they are

working for (Weinberg, 1983). Many large news organizations have policies in place that help journalists avoid libel suits or to minimize the damage if a libel suit is brought against the journalist. Plus, when the libel suit could be brought against a reporter because of information from a confidential source, the journalist needs to make sure they understand the shield law in their state and how it can protect them (Carpenter, 2012). Journalists should find out what the company's policy is when it comes to confidential sources in order to further help protect them. If the journalist needs to use a confidential source, they should consider asking them to sign an affidavit that can be used if the journalist or paper is sued.

Prior to publishing any article or story, a journalist should verify all the information they have gathered, especially if the information seems to be privileged information (Weinberg, 1983). They should never assume that anything that has been filed in a court document or other public place is free from libelous information. Due diligence is important and every fact should be checked and checked again before it is used in a news story of any kind.

Journalists should also avoid using any type of picture or photograph in their articles that have not been properly identified (Weinberg, 1983). Photos can be misconstrued by the public and lead them to believe that the person the article is about is doing something he or she should not.

Many journalists can take a cue from public relations professionals when it comes to ensuring they are not hit with a libelous lawsuit. To start, they need to develop their own code of ethics to follow to make sure they prepare every article without a libelous statement (Mindszenty, 2000). If something doesn't seem to be right, the journalist should pay attention to what their mind is telling them. If it is too good to be true, it probably is and should be avoided.

Journalists need to pay attention to the ever changing society around them when working on an article that could be misconstrued as libelous (Mindszenty, 2000). They should take into consideration the race, creed and culture of the people they are reporting about to ensure that they do not inadvertently write something that could be defamatory.

Journalists need to “conduct a reality check on a regular basis” (Mindszenty, 2000). This will help a journalist break out of any rut that is causing them to be lazy and not do their due diligence. When mistakes are made, defamation suits appear.

Complacent journalists tend to lose their passion for their jobs. If they allow time to decompress, to accept change and to look at things in a different light, they will be able to maintain the passion they had when they started as journalists (Mindszenty, 2000). A passionate journalist will take the time to fact check everything, make sure their sources have not given them false information, and cover their tracks to ensure there is no lawsuit pending over something he or she published.

On a personal level, journalists can also set a program in place for themselves that will help them avoid any legal hassles from lawsuits. They should set specific goals for their articles, create a plan of action to accomplish the goals they set, and “measure their results against their plan at regular intervals” to make sure they are on track (Conarroe, 1967). If the journalist needs to they can change their goals after they analyze them (Conarroe, 1967).

Journalists face a tough challenge when it comes to avoiding defamation lawsuits. They need to be prepared to check and double check their work to ensure they have not made any statements that could be misconstrued as defamatory or libelous. By putting into place a plan of action that they follow on a regular basis, they can protect themselves for libel lawsuits and provide the public with the news they want and need.

Questions for Mr. Paul C. Watler

Interview conducted at Mr. Watler's office on October, 8, 2012

(All answers were written by hand and the transcript is missing)

1. How do you define a journalist?

2. How do you handle a case where the definition of a journalist comes into play? For example, someone who writes a blog without financial gain is being investigated because of a perceived defamation against someone else.

3. A potential client has been asked to reveal their sources because of a potential libel case. What do you look for in order to build a defense?

4. How do work to prove that phone records from the phone company are vital information for a case against a journalist who could be involved in terrorist activities?

5. If a journalist is found to be innocent of any terrorism charges, could they potentially file a lawsuit for defamation or libel?

6. What type of privacy laws have you utilized in your defense of a journalist?

7. How well are the shield laws protecting journalists today?

References

- A solid shield; Congress should reject attempts to water down legislation that would let journalists protect their sources: [Home Edition]. (2007, August 1). *Los Angeles Times*, p. A.18.
- Carpenter, B. (2012, October 8). [Interview with Watler, P. C., Partner, Jackson Walker L.L.P.]
- Conarroe, R. C. (1967, Summer). How to plan and organize a public relations program. *The Public Relations Quarterly*, 24-30.
- Dillon, J., & Covil, E. (1998). What journalists, judges and public consider defamatory. *Newspaper Research Journal*, 19(2), 47-63.
- Hansen, E. S., & Moore, R. L. (1992). Public Attitudes Toward Libel: Do newspaper readers and editors see eye-to-eye?. *Newspaper Research Journal*, 13(3), 2-12.
- Mindszenty, B. (2000). Ten rules for the practice of public relations in the new century. *Public Relations Tactics*, 7(1), 29-29.
- Straubhaar, J., LaRose, R., & Davenport, L. (2012). *Media now: Understanding media, culture, and technology* (7th ed.). Boston, MA: Wadsworth
- Watler, P. (2009, Sept). The Texas journalist shield law. *Texas Bar Journal*, 72(8), 686-688.
- Weinberg, S. (1983). Libel: the press fights back. *Columbia Journalism Review*, 22(4), 65-68.