

## Chapter 6 Journalism Today

- Alien and Sedition Acts of 1798
  - Sedition Act - Placed at risk of criminal prosecution any critic of the president, Congress or the federal government

### Libel

- Libel- Defamation by written words or by communication in some other tangible form
- Slander- Defamation by spoken words or gestures
- Libel is treated more harshly because the written word is more permanent and could reach more people than the spoken word.
- Libel suits place at risk not only the news organization's pocketbook but also its reputation.
- Journalists must know what constitutes libel and what defenses can protect them in a libel suit.

### The Elements of a Libel Suit

- A plaintiff in a libel suit involving a statement published in the mass media usually must prove six things:
  - Defamation - Injury to reputation
    - A statement is defamatory if it injures a person's reputation by lowering that person in the estimation of the community or deterring third person from associating or doing business with that person.
    - Judging whether a statement is defamatory involves two steps:
      - A judge determining that the statement is capable of a defamatory meaning.
      - The jury deciding whether a substantial segment of the respectable public understood the statement as defaming the plaintiff.
    - Some statements obviously have the power to injure reputations:
      - Statements that a person has committed a crime
      - Statements that a person has a loathsome disease
      - Statements that a person is incompetent in his or her business
      - Statements that a person has engaged in serious sexual misconduct
    - For a statement to be defamatory, it must be one an ordinary reader would find factual and believable.
    - Libel plaintiffs usually sue over statements made in the body of a news story, but they may sue over pictures, cartoons, headlines or some combination of words and pictures that create a defamatory meaning.
  - Identification- The libel plaintiff must also prove the audience would associate him or her with the defamatory statement.
    - Needs to prove that reasonable readers, listeners or viewers would have understood that the statement was about the plaintiff.
    - Whether the publisher of the statement intended to refer to the plaintiff does not matter.
  - Publication - When a statement has appeared in a newspaper or on a television

broadcast, it has been published.

- A statement does not have to be so widely disseminated for a person to sue for libel.
- All the law requires is that the defendant made the defamatory statement to someone other than the person defamed.
- Once a libel is published, the plaintiff must sue within the time specified by the state's statute of limitations
- In most states, the statute of limitations is one or two years.
- Falsity- Libel plaintiffs must prove falsity when the allegedly defamatory statements involve matters of public concern.
  - Making plaintiffs prove falsity means some defamed person might not be able to recover damages, but making defendants prove truth means some truthful publications will be punished.
  - Courts usually conclude that if a statement appears in a newspaper or a news broadcast, it involves a matter of public concern.
- Injury- Libel plaintiffs must prove "actual damage," meaning damage to reputation, humiliation and mental anguish to recover damages.
  - Sometimes the plaintiff does not have to prove injury
  - If the plaintiff can prove the defendant published the defamatory statement with actual malice, then injury can be presumed.
- Fault- The state of mind of the person who uttered the allegedly defamatory statement.
  - Did the publisher recklessly or negligently say something false and defamatory?
  - Public officials and public figures must prove that the statement was published with the knowledge that it was false or with reckless disregard for whether it was false (actual malice.)
  - Whether the defendant disliked or wanted to harm the plaintiff is not an issue.
  - All that matters is whether the defendant knew the statement was false or had a high degree of awareness of the statement's probable falsity when it was published.
  - Plaintiff must produce evidence about the defendant's state of mind.
  - Private individuals must prove only that the defendant acted with negligence to recover actual damages.
  - Negligence - Acting unreasonably under the circumstances.
  - In a libel case, an error such as failing to check public records, misspelling or confusing names or accidentally transposing dates or figures might be considered negligence.
  - U.S. Supreme Court has said actual malice can be found when the defendant:
    - Knew facts that would call the story into question
    - Refused to examine evidence that would prove or disprove a charge
    - Relied on an inherently unbelievable source
    - Published an improbably story without investigation

- Simply fabricated the story
- Public Officials, Public Figures and Private Individuals
  - The most important decision in many libel cases is whether the plaintiff is a public official or a public figure.
    - Determines whether the plaintiff will have to prove actual malice and what damages he or she can recover.
    - A public figure must prove actual malice to win any damages, actual or punitive.
    - Public Officials --> Must hold some government position
      - Elected officials
      - Appointed officials
    - Three types of public figures:
      - Involuntary
      - General-purpose - Has such persuasive power and influence as to be a public figure for all occasions
      - Limited-purpose - Commenting on some topic or issue that leads to prominence
    - Just being involved in a newsworthy event does not make a person a public figure.
    - The essence of public-figure status is that a person has voluntarily assumed some special prominence or role in society.

#### Major Defenses to Libel Suits

- Main defenses
  - Truth - Proving a statement true can defeat a libel claim.
    - The defense of truth does not protect the accurate republication of defamatory charges made by other people.
  - Fair-Report Privilege - Certain occasions when people need absolute protection from libel suits.
    - Members of legislative bodies cannot be sued over remarks they make in the course of their official duties
    - News organizations can report on what happens in courtrooms and legislative chambers and what is said in official documents without worrying about libel claims.
    - A news reporter covering a trial cannot be sued for reporting false and defamatory statements made by a witness so long as the reporter's story accurately summarizes the testimony.
    - Journalists have fair-report privileges when describing government proceedings such as court hearings, administrative agency meetings and legislative sessions at all levels of government from town council to Congress.
    - In most states, the privilege extends to official documents, such as police reports, health inspection reports, official government correspondence and court records.
  - Fair Comment and Criticism- Protects from libel suits people who express their opinions about matters of legitimate public interest.
    - Defense applies only if the opinions are based on true facts, are the