

# Media Law

## PRINT MEDIA AND THE LAW: SOME PARTIAL GUIDELINES

This section is not intended to be a comprehensive listing of everything that print journalists should know about press law. This will not and should not make any journalist comfortable with his or her knowledge of legal matters. If there is any doubt, seek the advice of an attorney.

Journalists are subject to state and federal laws covering trespass, assault and/or battery, forgery, counterfeiting, burglary, theft and other offenses against an individual, the state or the nation. In addition, there are laws that affect writers, editors and publishers specifically because of the nature of their work.

Perhaps the most important thing to remember about press law is the difference between *legal and ethical*. Just because you can get away with something does not make it right. A general rule, for example, is that journalists can print material found in public records. That means the press can legally print the name of a rape victim without the consent from the victim. In ethical terms, however, it is difficult to ever justify publishing the name of a living rape victim.

Newspapers need access to the news and are guaranteed the right to print and distribute it. In general, the press of this nation is immune to pre-publication censorship. After news has been published, however, punishment may occur under various criminal laws (e.g., obscenity or the espionage act in time of war) or in civil court (lawsuits for libel, invasion of privacy and copyright infringement, for example).

1. **Libel** is one of a class of civil actions that lawyers call *torts*. If someone wrongs an individual – with libel or invasion of privacy, for example – that person could sue for damages. Libel is one of twin torts included under the more general term *defamation*; the other tort is **slander**. Libel, in general, is communication in written or permanent form; slander is oral communication.

*Defamation* is the invasion of interest and good name, by communication with others, which tends to diminish the esteem in which a person is held, or to excite adverse feelings or opinions against him. More generally, defamation consists of the publication of untruths that damage or embarrass or harm some individual, group or business.

Every journalist should have an awareness of the elements of libel as an aid to deciding when editors should be alerted to potential problems and when legal advice should be sought.

2. **Publication**. Legally this means that something has been seen by a third party. Normally, libel suits arise in mass media settings. If no publication has occurred, there is no libel.

3. **Identification.** To be libelous, a published statement must identify an individual person or business (or a member of a group small enough, such as a jury or a basketball team), that would enable a reader to pick out the individual who is the focus of the story. Was the man arrested for drunken driving Larry **J.** Garrett or Larry **A.** Garrett? A mistake in an initial can mean the difference between a safe report of a news event and an inaccurate story that may lead to a libel suit.
4. **Defamation.** There must be real defamation for a libel suit to hold up. The publication complained to must defame or take away from the good reputation of some person or business. Untruths – or mistakes – are not libelous unless it can be proved that they do harm or substantial damage. On the other hand, knowing that something is true is not enough for a journalist. You have to prove to the court that what you published is true.

Do not allow the threat of libel to make The Signal invertebrate. You can – and must – publish materials that may hurt people when they are of public interest.

5. **Unprivileged occasion.** If it is an unprivileged occasion, a libel judgment could result. If it is a privileged occasion, no libel problem should emerge if a journalist has fairly and accurately reported an official public proceeding.

First, there is **absolute privilege**. For example, a senator speaking in the senate chamber while the senate is in session may say anything without fear of being sued. This also applies to hearings held by legislative bodies as long as they are in session. Also, witnesses under oath in court have absolute privilege in all but the lowest courts (justice of the peace and municipal courts in Texas). There is an interest in freedom of speech and debate to get to the truth in such situations. This overrides occasional harm that is done to individual reputations.

Second, there is qualified privilege. This is important for citizens and journalists. Even if a senator says something defamatory while you are covering the senate, you – as a reporter/citizen – have qualified privilege to his or her words without fear of being sued successfully. The qualifications to your privilege are that you must make a fair and accurate report of:

- a) a judicial proceeding (Note: if a judge orders something struck from the record, that passage is no longer part of the trial, and, therefore, reporting it is no longer protected by qualified privilege.);
- b) a legislative proceeding;
- c) an official public proceeding;
- d) a public record. (Not all public records are protected by privilege; these include pleadings in civil cases, records of juvenile courts, etc.)

Qualified privilege of reporting includes the actions of executive and administrative officials of local, state and national government. The privilege extends to legislative activities, including committee meetings of municipal governing bodies. This privilege of reporting appears to extend to all **neutral accounts of any meeting open to the public.**

6. Journalists should have a knowledge of the difference between **libel per se** and **libel per quod**. If this distinction is understood, it will help to think beyond “surface” libels to dangers lurking in apparently innocent-looking words. Libel per se involves published statements that are defamatory on their face. Examples would include statements that suggest professional dishonesty, falsely impute unchastity to a woman, or allege facts that could arouse public hatred, ridicule or rejection.

*Libel per quod*, however, deals with statements that are made libelous by the context. It is not libel to say that a man is a big spender and just bought a \$35,000 BMW in cash. But if the man is a teller at a bank that has just discovered a \$100,000 cash shortage, you may have a problem. The plaintiff must prove that he has been damaged and sometimes must prove that the publication knowingly (and with ill-will) damaged him.

7. Pictures do lie. Pictures – photographs and cartoons – do cause libel suits. Cameras do play tricks and the innocent looking photo may have off-color tones when viewed from another angle. An embarrassing optical illusion, for example, can make a fully-clothed person appear indecently exposed. Also check captions and cutlines. Do they go with the picture for which they were intended?
8. Headlines can libel. Even standing by itself, a headline over an otherwise inoffensive story can cause a libel suit. For instance, an Iowa paper ran a headline that read **Murderer freed by trial jury**. Actually, a man had just been acquitted of a charge of murder.
9. Letters to the editor must be handled especially carefully. Cautious publications call the author of every letter to ensure that the individual whose name is signed to the letter really did write it. If a letter contains libelous material, it is not only the writer of the letter but also the publication and its editors who will be sued, the later because they are responsible for the spreading of the libel by publishing the letter.
10. Classified ads can be dynamite. Watch for double meanings. Avoid personals where meanings of wordings are suspect. If personal ads are run by a paper, individuals should not be identifiable. One college paper ran an ad which read: Susan Doe (but the paper used her real name) – Wham! Bam! Thank You, Ma’am!
11. **Accurate quotations in a defamatory statement do not protect you or the publication.** You and the publication can be sued along with the source for the same reasons that apply to libelous letters to the editor.

12. When a publication discovers that it has libeled someone, it usually prints a correction or retraction accompanied by an apology. This should be prominently displayed to be a factor in lessening the damages. However, since a retraction is, in effect, a confession of error, it should be approved by an attorney with special competence in communication law. The person offended may be asked to sign a release as a promise not to sue. If threatened with a libel suit, or if someone demands a retraction, a reporter should make no apologies or admissions, but should courteously gather the facts and talk to the editor.
13. Defenses to libel are sketched below to provide guidelines for advertising department staffers, reporters and editors. Again, when specific problems arise, advice should be sought from an attorney. Also keep in mind that even if you have an airtight defense to libel, if someone sues it will cost a great deal of time and money.
  - a. **Truth.** The best defense to libel is the ability to prove that the statement printed is true. This defense is not used often because people tend not to sue when the statement is true. A paper's defense can be weakened – and overcome – if the plaintiff proves that the article was printed with ill-will. Also, digging up embarrassing facts from a person's past may result in a lawsuit – no for libel, but for invasion of privacy.
  - b. **Proof that the matter was published “without fault.”** The U.S. Supreme Court has said that a person must establish some kind of fault – often negligence – in order to collect damages. In Texas, the fault standard is defined by the Texas Supreme Court as “a showing that the publisher or broadcaster knew or should have known that the defamatory statement was false.” (*Foster v. Laredo Newspapers, Inc.*, 19 Tex. S. Ct. Jnl. 390, 541 S.W. 2d 809 (1976).)
  - c. **Privilege.** This is a defense given to the press because of the public's need to know facts upon which to base actions as citizens and voters. Even false material may be covered by privilege inherent in public speeches, meetings, legal documents, legislative proceedings, legal opinions, required reports, etc. In its articles, the newspaper must be fair, impartial and accurate. Not all public records and documents are privileged only under a limited number of circumstances.  
**Hallway or office statements are not protected under privilege.**
  - d. **Proof that the published material related to a public official or public figure and was published without malice.** U.S. Supreme Court case *Times v. Sullivan* (1964) defined actual malice as publishing of material with knowledge that it was false or with reckless disregard of its truth.
  - e. **Fair comment.** If you offer your talents to the public, the media is protected if it states its opinion about your performance.

Good intentions are better than bad, but they do not form a defense in a libel suit. Even an innocent typo may result in a lawsuit.

Libel can be prevented, or at least more easily defended, if reporters and copy desk staff use safe wording. The desk must also guard against libel by questioning and checking the facts. Reporters must remember that the desk may not catch all errors; each reporter is responsible for the accuracy of his or her own copy.

14. The **law of contempt** also affects journalists. Reporters, editors and photographers may be held in contempt of court for a published article or act that interferes with the administration of justice (the most common act resulting in contempt is refusal to disclose sources). A reporter can also be held in contempt for reporting the decision of a grand jury before it is revealed in open court.
15. Another legal limitation on journalists is the **right to privacy** – the right to be left alone or to be free from unwarranted publicity. The law of privacy has four branches:
  - a. **Intrusion on the plaintiff’s physical solitude.** This is akin to trespass, using secret cameras or hidden microphones, etc., and is risky as well as unethical.
  - b. **Publication of private matters violating ordinary decencies.** Consider an unauthorized news story about a family’s deformed child, done with no news peg or without the family’s consent.
  - c. **Putting a person in a false position in the public eye,** as by signing his or her name to a letter attributing to the person views that he or she does not hold. Fictionalizing – making up quotes – has resulted in newspapers losing privacy suits.
  - d. **Appropriation of some element of a person’s personality for commercial use.** This occurs mainly in a paper’s advertising department. Do not use a person’s name or likeness in an advertisement without first obtaining that person’s signed permission on a release form.
16. The primary defense to a lawsuit for invasion of privacy is proof that the matter was one of legitimate public interest. This defense is commonly called **newsworthiness**.
17. Federal and state open records and open meetings laws also provide rights and restrictions for reporters and ordinary citizens. Texas state law has held that the public has a right of access to police reports listing the name, age, residence and employment of a suspect as well as information regarding the charge and arrest. Not open to the public are information about a confession, evidence, criminal records or records containing descriptions of the suspect’s character.

18. **Copyright law.** Two basic things journalists need to know about copyright laws are how to copyright a story or picture and how to avoid a lawsuit for copyright infringement.
- a. **Copyrighting a story.** Creative works are automatically copyrighted to the creator. But creative works must be registered before the creator can sue for copyright infringement. Copyright registration is accomplished by filling out a form available from the Register of Copyrights, Library of Congress, Washington, D.C. The Register of Copyrights will require that material deposited for registration include two complete copies of the best edition. Unpublished works may be copyrighted by the same process. Copyright lasts the life of the author plus 50 years.
  - b. **Avoid copyright infringement.** Honest behavior is the best way to avoid copyright infringement. A request for written permission for any work that is not your own is the best way to ensure compliance with copyright statutes.

# Media Law Resource Page

The following organizations are useful sources for legal questions.

## **Student Press Law Center**

Free legal advice for student journalists

[www.splc.org](http://www.splc.org).

## **Reporters Committee for Freedom of the Press (RCFP) –**

Freedom of Information Service Center

[www.rcfp.org](http://www.rcfp.org)

1-800-F-FOI-AID

## **Society of Professional Journalists**

Nation's largest journalism organization

[www.spj.org](http://www.spj.org)

## **Freedom Forum**

Journalism Think Tank

[www.freedomforum.org](http://www.freedomforum.org)

## **Poynter Institute**

Journalism Think Tank

[www.poynter.org](http://www.poynter.org)