

I. COMMON LAW LIBEL AND SLANDER — BASICS

by Ernest L. Bell, III, Esquire, Keene, New Hampshire
(Reprinted from 1984 N.H. Bar Assoc. Mid Winter Meeting Continuing Legal Education Publication.)

Appendix - How to Avoid Libel Suits:

1. Avoid slipshod, indifferent or careless reporting. Whenever a statement could injure someone's reputation, treat it like fire. The facts of a story should be confirmed and verified, as far as practicable, and in accordance with customary professional procedures.

2. Truth is a defense (most of the time, but be careful in New Hampshire), but there may be a vast difference between what's true and what can be proven to be true to a jury. When in doubt as to whether a story is accurate, check it out. Remember, a retraction is not a defense to a libel action but serves merely to mitigate or lessen damages.

3. There's no such thing as a "false opinion," so you have greater leeway with expressions of opinion than statements of fact. Base your comment or criticism on facts which are fully stated and which are true. Label in same way as opinion.

4. Watch out for the "routine" story of minor significance. It frequently does not get enough attention and, probably for that reason, accounts for more libel cases than all of the investigative reporting and human interest stories combined. Make reports of arrests, investigations and other judicial or legislative proceedings and records precisely accurate.

5. Try to get "the other side of the story." A good reporter sticks to the facts and not to some bystander's opinion of what might be the truth if the facts were known.

6. Take particular care with quotations. The fact that a person is quoted accurately is not in itself a defense to a libel action, if the quoted statement contains false information about someone.

7. Never "railroad" a story through, but instead edit it carefully to make sure it says precisely what you want it to say. Do not use sly or cute innuendo to suggest some misbehavior that you do not describe explicitly. If you are going to defame someone, do it right.

8. Avoid borderline cases of invasion of privacy since the law of the right of privacy is still developing. Egregious insensitivity to the tender and non-newsworthy parts of a person's life may earn you only the wrath of a jury.

9. Do not make unauthorized use of names and pictures for advertising or other commercial purposes. Do not use unidentified pictures to illustrate social or other conditions, when pictures of people who expressly consent, including professional models or staff members, will suffice and are readily obtainable.

10. If an error has been made, always handle demands for retractions which come from a lawyer for a potential plaintiff with the advice of legal counsel. A well-meaning but unnecessary or poorly-worded correction may actually prejudice a publisher's or broadcaster's defenses in a subsequent lawsuit.