

# Every publisher contributes to the foundation of press freedom

Last month, media lawyers across the country watched Sarah Palin's libel trial with bated breath. Coming at a time when some of the U.S. Supreme Court members have been muttering in side opinions about their unhappiness with the long-standing *New York Times v Sullivan* standard, one in our profession cannot help but worry that perhaps the blessings of the First Amendment may be imperiled.

In that seminar case, you will remember the *Times* ran an ad claiming a "wave of terror" was being raged against those seeking to support civil rights and asking for financial support for those supporting the student movement in certain Southern states. Sullivan was a Montgomery police Commissioner and believed he was targeted by the ad. He claimed he was libeled and his reputation harmed.

The decision is complex and not quickly summarized. "...[W]e consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials," the Supreme Court said. "The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice' — that is, with knowledge that it was false or with reckless disregard of whether it was false or not."

Today, 58 years after that opinion was issued, it is hard to believe that the case on which newspapers stand while going to press every day may be yanked away from us. But hearing the testimony from the editors at the *New York Times* reminds us of the diligence required by editors every day in doing their jobs, as they stand between the

reporter and the public.

A long time ago, I created a list of questions I ask myself as I review your stories. This is not everything I look for, but it gives you an idea of what you need to look for when you edit your own content. For example, I ask myself: Who is the potential plaintiff? Is it a public figure, such as an elected official or someone who seeks out the public eye and promotes himself and his business frequently in the local media? Or is the potential plaintiff a private person, who does not seek out attention in the media? Is the potential plaintiff a minor/child?

What is said about the potential plaintiff? Does it seem negative? Are the "facts" in the story true and easily verifiable? Even better, are they from public records, or do you find that the facts come from interviews with third parties? Does the reporter have copies of public records on which the story is based? What does the headline to the story say? Does it accurately reflect the gist of the story? Are there pictures with the story? Do the cutlines of the photos accurately reflect the gist of the story? Could the photos be misinterpreted in the context of the story?

Is the story balanced? Did all sides have the opportunity to respond to the allegations in the story? Is the editor aware of any bias of the reporter doing the story? In particular, has the reporter done stories on this subject in the past, and how does this story reflect in connection with those prior stories? Who is the reporter's source? Is it an

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unnamed source? Was confidentiality promised to the source? What is the source receiving in connection with the publication of this story? Did the reporter trespass on private property to gather information or photographs for the story? Did the reporter have to lie to get access to information for the story? Were documents stolen in the process of gathering information for the story?

These are just general concerns — every story can have its own red-flags that grab the attention of the lawyer doing a pre-publication review. A good editor can catch some of these issues early in the editing process and strengthen the final product before it ever comes to the lawyer for review.

I know I've discussed this with all of you before, but now, more than ever, as we ponder what the U.S. Supreme Court will do in coming years, it seems important to bring all this back down to your level. Each of you is a pebble in the foundation of our First Amendment rights.

We do not lose our Constitutional rights because of one court decision ... it is when we haven't done our best job of ensuring what we publish is truth that we put those rights in jeopardy.



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