

# Defamation

By Jacob A. Stein

A friend was in the office sounding me out about a lawsuit against his boss. His bully of a boss had called him a liar in front of some important people. Didn't I think this was an actionable case of defamation?

At any given time there are people who wish to fight back against a boss or a neighbor or a business associate because of something nasty the person said or wrote. The victim wants to sue for defamation. (A word about terminology: *defamation* is the general term that includes both libel and slander. Libel written slander spoken.)

As he spoke I had in mind the cautionary proverb that a person who sues because somebody calls him a liar may find that a jury believes he *is* in fact a liar.

I asked what his boss's salary was. It was a good salary, but not enough for the boss to pay a substantial judgment – and the expense of defamation litigation requires a substantial judgment to justify the time and expense on a contingent-fee basis. Working people can't afford to pay by the hour for defamation litigation. It's too expensive. Defamation law is unsettled, and unsettled law triggers pleadings, motion, and papers.

No, a lawsuit wasn't the solution to my friend's problem. I spoke of how one wise lawyer dealt with a similar situation. He sent a letter to the slanderer stating that the matter was under careful investigation. He had better watch what he said. He may be sued. Most of the time, the defamer defamed no more.

Rarely does a really good defamation case walk in the door. Here are the criteria. The defamatory statement must be demonstrably false and made with the intent to injure. The defamatory statement must have caused a provable loss of income in addition to claims of injury to reputation. And finally, the defendant must have lots of money to pay a judgment.

The facts provided by the clients who want to sue often meet two of the requirements, but rarely all three. Few potential plaintiffs can prove a loss of income caused by the defamation. The friends of the defamed person do not believe the lies, and his enemies already believe them. A proximate cause issue.

Some defamation cases are brought not because the case is a good one but because something must be done to show indignation. This is especially true when the dispute has political overtones. Politicians commence defamation suits to express outrage, thereby demonstrating their own purity. Just as the alleged libel may be believed by some because it has appeared in print, a denial coupled with a lawsuit may similarly convince some that the libel is untrue. The litigants, once out of public eye, may give occasional press interviews denouncing the other, but the lawsuit goes on the docket, probably never to be tried. Occasionally the plaintiff's cheerleaders convince the plaintiff to go to trial. The trial can prove a disaster. General William Westmoreland's case against CBS is one example.

One the the gib-name plaintiffs in a defamation suit that never went to trial was General Douglas MacArthur. In 1943 the general sued the *Washington Time-Herald* and its columnist Drew Pearson

for libel. The paper accused the general of proposing 19-gun salutes for friends and "pulling wires" to further his ambition. The general wanted \$750,000 as fair compensation for injury to his reputation. The case was never tried.

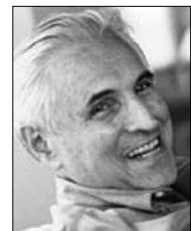
While it was pending, there was a knock on the door of Pearson's Georgetown residence – fate had sent Pearson a perfect defense, in the form of a beautiful Eurasian woman. She had bolted from the Chastleton Apartments at 16th and R streets, N.W., where she had been sequestered by the general. She placed in Pearson's hands a collection of General MacArthur's love letters to her. Shortly thereafter the general was made aware that Drew Pearson possessed some interesting documents the general might not want to see in print. MacArthur dropped his lawsuit, and the letters were never published.

In 1957 General Harry Vaughan, President Truman's military aide from 1945 to 1953, was provoked into filing a defamation suit against the *Saturday Evening Post*. At the time, the *Post* was trying to boost circulation with sensation articles. The November 3, 1956, article about Vaughan identified people who were sent to jail because of Drew Pearson's local newspaper columns. Next to it was a picture of General Vaughan testifying at a public hearing. The caption read, "Many Pearson charges against Harry Vaughan were later confirmed by testimony before Senate Committee." Vaughan and others read the caption and the photograph as charging Vaughan with dishonesty.

Fed up with Pearson and with the *Post*, Vaughan decided not only to file suit but also to risk a trial. The *Post* wished the jury to believe that Vaughan was mixed up with five-percenters and was a tool of lobbyists. At trial, Vaughan was questioned at length about instances that the *Post* hoped would show him as a corrupt influence-peddler. Unimpressed by the *Post's* defense, the jury returned a \$10,000 verdict for Vaughan for damage to his reputation. It did not, however, award punitive damages.

The verdict was a disappointment to Vaughan's lawyers, but not to Vaughan. It gave him bragging privileges. He was a man who saw it through to a difficult but exculpatory end.

Two Plaintiffs who commenced defamation suits discovered that the defamation suit can take a bad turn. Although they were plaintiffs in the civil suit, they ended up as defendants in criminal prosecutions, and both were convicted. Their names? Alger Hiss and Oscar Wilde.



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