

The Libel Suit Strikes Back

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Much has changed since 1972 when reporters Woodward and Bernstein exposed President Nixon of wrongdoing. Through their extraordinary reporting, the public learned of “dirty tricks,” criminal actions and a cover-up led by this country’s leaders inside the White House. All resources available to these reporters including unnamed sources of information provided details that fueled these stories. Strong journalism provided a new hope for those seeking the truth and the faith placed by the public in the Fourth Estate remained strong.

Fast forward 45 years later and now the media has become a political punching bag and scapegoat used to further an agenda. “Fake news” has further confused the issue eroding the trust between the media and the public. A certain segment of the population now believes the news media poses a greater threat to the United States than white supremacists. Perhaps not coincidentally, a rise in defamation suits against the media has occurred as the libel suit strikes back as seen in this survey of recently filed cases.

A. Fox News’ Eric Bolling Sues Huffington Post Reporter Over Reported Allegations of Sexual Harassment.

Huffington Post reporter Yashar Ali notified the world via a tweet: “Just received a summons. Eric Bolling is suing me for defamation - \$50 million in damages. I stand by my reporting + will protect my sources.” Ali later noted, via twitter, that Bolling did not choose to sue the Huffington Post but rather “he is coming after me personally” before promising to continue his aggressive reporting on Bolling and others.

Ali’s report stated that Bolling had sent unsolicited lewd text messages to female colleagues at Fox Business and Fox News. Various unnamed sources confirmed the text messages in Ali’s report. Bolling’s attorney told Ali that Bolling did not recall “such inappropriate communications, does not believe he sent any such communications, and will vigorously pursue his legal remedies for any false and defamatory accusations that are made.” Regardless, Fox News suspended Bolling less than 24 hours after the publication of the report.

Ali’s attorney responded to the lawsuit with a statement that they would seek sanctions for the filing and potentially pursue a claim against Bolling for malicious prosecution. Ali tweeted once again that he looks forward to his attorney “taking his deposition and the discovery process.” It appears we will find out whether this suit has merit or “was filed for public relations purposes and to retaliate against Mr. Ali for uncovering the truth” as stated by Ali’s attorney.

B. Robert Murray sues John Oliver and HBO.

Robert Murray, CEO of coal company Murray Energy Corporation, chose to strike back at HBO, Time Warner, and John Oliver for calling him a “geriatric Dr. Evil,” among other things, on Last Week Tonight with John Oliver. Prior to the broadcast, Murray claims to have provided various statements and reports related to a mine collapse to Oliver for his on-air discussion. His lawyers also warned Oliver “to cease and desist from a broadcast of defamatory comments or any

misguided attempt at humor regarding the tragic mine collapse.” Oliver proceeded to discuss the mine collapse while allegedly making no reference to the statements and reports provided by Murray in advance of the broadcast and making jokes at Murray’s expense. Murray claimed that the statements and omissions were “defamatory” and that they reflected “discredit upon the methods by which [he and his businesses] do business.” Murray sued for defamation, false light-invasion of privacy, and intentional infliction of emotional distress. Murray also moved for a temporary restraining order and preliminary injunction seeking a gag order that would restrain Oliver and HBO from “(i) re-broadcasting the Defamatory Statements that are the subject of Plaintiffs’ Complaint, and (ii) publicly discussing the substance of this litigation” in order to protect Murray from the “John Oliver Effect.”

John Oliver, HBO and Time Warner sought to remove the case to federal court in the Northern District of West Virginia. The ACLU also sought leave to file an Amicus Brief opposing the Motion for a Temporary Restraining Order. The Northern District of West Virginia never considered the Amicus Brief or the merits of the case. Rather, the Northern District of West Virginia remanded the case back to the state court after rejecting Oliver, HBO and Time Warner’s argument that loosely associated corporations were fraudulently joined destroying diversity jurisdiction. The case will proceed in the state courts of West Virginia.

C. Sarah Palin unsuccessfully sues *The New York Times*.

A *New York Times* editorial written following the mass shooting at a practice of the Republican softball team in D.C. this summer gave rise to another defamation action filed by former vice-presidential candidate Sarah Palin against *The New York Times*. The editorial referenced a 2011 editorial regarding the shooting of Representative Gabby Giffords in Arizona and a map of targeted electoral districts erroneously associated with Palin’s political action committee. The reference erroneously described the map and stated that a connection had been established between the map and the shooting of Giffords. *The Times* corrected this error two times the day after publication of the editorial. Palin brought suit three weeks later alleging that the original uncorrected editorial defamed her.

The Times later stated that it regretted the errors in the editorial but that it was “pleased to see that the court acknowledged the importance of the prompt correction [it] made once [it] learned of the mistakes.” After the unconventional move of holding an evidentiary hearing on a motion to dismiss during which the editor of *The New York Times* editorial page had to testify about his knowledge at the time of publication, the Southern District of New York quickly dismissed the claim based on the Palin’s failure to allege actual malice. The Court held that the Complaint failed “on its face to adequately allege actual malice, because it fails to identify any individual who possessed the requisite knowledge and intent and, instead, attributes it to *The Times* in general.” The Court also found that the immediate correction of errors contained within the quickly drafted editorial was “much more plausibly consistent with making an unintended mistake and then correcting it than with acting with actual malice.” The Court concluded *The Times* did not exhibit actual malice but maybe negligence, at worst, stating “[w]hat we have here is an editorial, written and rewritten rapidly in order to voice an opinion on an immediate event of importance, in which are included a few factual inaccuracies somewhat pertaining to Mrs. Palin that are very rapidly corrected.”

D. Conclusion

As the mantra of “fake news” continues to escalate and wealthy or high profile individuals put the media on the defensive through libel lawsuits over its critical reporting, the public’s faith in journalists continues to decline. The three lawsuits mentioned above highlight the need for the

press to be vigilant in its fact checking and for its lawyers to pursue swift dismissal of meritless claims. The chilling effect that this exposure to libel suits may have on future reporting has yet to be determined. Regardless, it seems likely that media organizations should prepare for the use of libel suits to strike back at critical reporting in the near future.