

Unit Introduction

In 1637, an English writer named William Prynne made the unfortunate mistake of writing a book that criticized the queen. Brought before a panel of judges, the hapless Prynne was found guilty of libel and ordered to spend the rest of his life in prison. As an added punishment, he had his ears lopped off before he was hauled off to jail.

USINFO.STATE.GOV

We have come a long way since 1637. For instance, nowadays if you commit libel or slander -- you can keep your ears!

But, even though today's penalties for libel are far less severe than what was given out in 1637, the penalties are still strong enough to merit attention. As a PAO you need to review these laws, and the journalistic practices of those journalists and broadcasters assigned to you. It could be a major embarrassment to your command to purposely or inadvertently libel someone in or outside your organization.

As a PAO you wield a great deal of power and influence because of the information you disseminate to the public. Considering this, this lesson is very important to your job performance.

Intermediate Training Objective (ITO)

Given a public affairs scenario involving media law, develop and recommend public affairs courses of action in accordance with Department of Defense and service public affairs policies and regulations. Upon completion of this unit of instruction, the student will be able to:

- State the definition of defamation
- State the definition of libel
- State the definition of slander
- State the definition of copyright
- Explain the purpose of a copyright
- Explain the four (4) categories of "invasion of privacy"
- Explain the three (3) defenses against allegations of libel
- List the five (5) conditions which must be met before a statement is held legally libelous
- Define the term "public figure"
- Define the term "public official"

Unit Overview

1. Defamation
2. The Seriousness of Libel
3. Conditions for Libel
4. Avoiding Defamation
5. Retractions
6. Privacy
7. False Light
8. Misappropriation of likeness
9. Wrongful intrusion
10. Copyright

Defamation

My initial response was to sue her for defamation of character, but then I realized that I had no character.

Charles Barkley, on hearing Tonya Harding proclaim herself "the Charles Barkley of figure skating", 1994

Mr. Barkley obviously didn't intend to sue Tonya Harding, and was simply making a joke. The important thing is that people resort to the courts when they feel that their names are used unfairly.

For defamation to take place it must:

- Expose an individual or organization
- Lower an individual in the esteem of others
- Cause an individual to be shunned or avoided
- Injure an individual in his or her business



Defamation

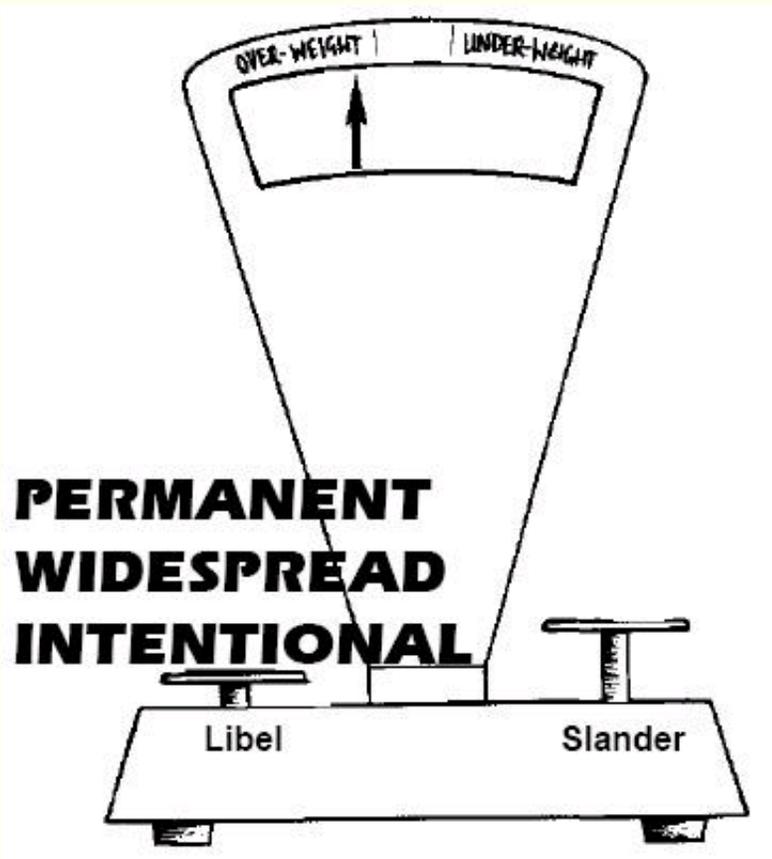
SLANDER is *spoken* defamatory communication in the presence of others.

LIBEL is *published or broadcast* defamatory communication.

Learning Quiz (Click on the correct answer in the sentence below)

Which is considered more serious: to [slander](#) or to [libel](#) someone?

The seriousness of libel



Is Libel more serious than slander weigh the two against each other

permanent – Libel weighs heavier because published or a broadcast news story is per the public record. Imagine one day trying to every paper sold by the New York Times. It done. Imagine trying to locate every person particular broadcast so you can tell them the segment was wrong. You won't be able to story is out there, *permanently*.

Widespread – Libel weighs heavier because of publishing or broadcasting a story reaches larger audience than what is said between t

Intentional - Libel weighs heavier due to the writing, editing and preparing a broadcast or newspaper story is an intentional act. It takes forethought and planning. A spoken word is unintentionally, in anger, and without much but hours of preparation are behind the average newspaper or broadcast news story

Five conditions for libel

To legally libel someone there are five conditions that have to be met:

1. It was published or broadcast.
2. It identified someone unfavorably.
3. It was created by a person that was negligent or reckless (i.e. at
4. It was stated as a fact even though it was false.
5. It caused injury to the person identified.

Avoiding defamation

As a PAO the following guidelines will help you lower the possibility of being accused of defamation. Make sure that you, and all journalists or broadcasters working in your office understand these concepts.

- Attribute your sources and establish policy on the use of the word "alleged."
- Only accuse someone of a crime if there is a confession, accusation or conviction by an official legal body. Remember that accusations of a crime must be supported with criminal reports from official sources.
- Avoid attributing physical or mental disease to an individual. Remember, the Privacy Act protects medical records.
- Do not associate a person with a group or cause that is held in disrepute.
- Do not accuse someone of poor moral character.
- Do not accuse someone of being incompetent or dishonest in his or her profession.
- Do not use words like "Communist," "Nazi," "Crook," "thief," "sickly," or "incompetent."
- Avoid sexist, racial or ethnic slurs.

DI NFOS Advisory Alert* Check with your JAG Office for additional information or advice.

Retractions

CNN retracts Tailwind coverage

July 2, 1998

Web posted at: 4:01 p.m. EDT (2001 GMT)

Also in this story:

(CNN) -- Cable News Network on Thursday retracted its story that the U.S. military used nerve gas in a mission to kill American defectors in Laos during the Vietnam War.

The story was broadcast June 7 on the CNN program NewsStand. CNN Interactive also carried the report.

The Pentagon said it was pleased by the 54-page CNN retraction.

Publishing a retraction is one way to avoid a defamation suit in court. CNN News Group Chairman, President and CEO Tom Johnson issued a retraction. He said that an investigation indicated that there was insufficient evidence to state that sarin or any other deadly gas was used by the U.S. military. Johnson said that the report "cannot be supported" and there was no evidence that American defectors were targeted or at the camp as stated in the original program that was aired.



Retractions

The Daily Evergreen would like to sincerely apologize for an injustice served to the Filipino-American, Spanish-speaking and Catholic communities on the front page of Thursday's Evergreen.

The story "Filipino-American history recognized" stated that the "Nuestra Senora de Buena Esperanza," the galleon on which the first Filipinos landed at Morro, Bay, Calif., loosely translates to "The Big Ass Spanish Boat." It actually translates to "Our Lady of Good Hope."

Parts of the story, including the translation above, were plagiarized from an inaccurate Web site.

October is Filipino-American History Month. Members of the Filipino-American Student Association of WSU will hold events to celebrate their history and culture all month. They should be able to celebrate without gross inaccuracies and poor coverage by the Evergreen.

We hope these groups accept our deep regret.

The Daily Evergreen, On-line

Lessons Learned

Don't believe everything you get off the web.

No story is too small to check for accuracy.

If you "google" this story, you will get back many hits on this subject. Remember why we said libel is more serious? That libel is permanent, widespread, and intentional.

Instructor Notes: There was no reason this inaccurate information on Nuestra Senora de Buena Esperanza. It was a stupid mistake on part of The Daily Evergreen, and could have been overcome with a little fact checking, which would have taken 15 minutes of the reporter's time. Let's face it, even a retraction does not repair the loss of credibility that occurred by getting your facts wrong.

Be sure to get legal advice from JAG, because a well-intentioned but poorly worded retraction may prejudice your defense.

Laws dealing with retractions vary from state to state, and in many states retractions are only a partial defense unless the retraction appears with the same prominence as the original.

Some states have time limits for requesting retractions, and when retractions should be issued.

Taken off the web:

UPDATE: "Big Ass Spanish Boat" gaffe
2/18/2003 3:34:57 PM

Back in October, Romenesko linked to the Washington State University student newspaper's "**Big Ass Spanish Boat**" retraction and apology. Freshman journalism student **Kim Na**'s Daily Evergreen story on Filipino-American History said "Nuestra Senora de Buena Esperanza" -- the galleon on which the first Filipinos landed at Morro Bay, Calif. -- loosely translates to "The Big Ass Spanish Boat." (It actually translates to "Our Lady of Good Hope.") The young reporter explained she got her information from a Web site that later admitted the passage was a joke.

Interim Review

(Click on the appropriate answers)

For defamation to take place it must:

There are eight choices below. Pick four that describe defamation.

Expose an individual or organization to hatred or contempt

Expose an individual or organization to positive interest and respect

Lowers an individual in the esteem of others

Heightens an individual in the eyes of his or her peers

Causes an individual to be shunned

Causes an individual to become popular

Injures an individual in his or her business

Makes a person more successful in his or her business

Interim Review

1. Slander is published or broadcast defamatory communication.

True

False

2. LIBEL is published or broadcast defamatory communication.

True

False

Interim Review

To legally libel someone there are five conditions that have to be met.

1. It was published or broadcast.
2. It identified someone unfavorably.
3. It was created by a person or organization that was negligent or reckless (i.e. at fault)
4. It was stated as a fact even though it was false.
5. It caused injury to the person identified.

Avoiding defamation

- Attribute your sources and establish policy on the use of the word "alleged."
- Only accuse someone of a crime if there is a confession, accusation or conviction by an official legal body. Remember that accusations of a crime must be supported with criminal reports from official sources.
- Avoid attributing physical or mental disease to an individual. Remember, the Privacy Act protects medical records.
- Do not associate a person with a group or cause that is held in disrepute.
- Do not accuse someone of poor moral character.
- Do not accuse someone of being incompetent or dishonest in his or her profession.
- Do not use words like "Communist," "Nazi," "Crook," "thief," "sickly," or "incompetent."
- Avoid sexist, racial or ethnic slurs.

Privacy



Being that you are in the public information business you have to make distinctions of what is a private or public person. In this lesson we will discuss what constitutes a “public figure” or a “public official.” We will also touch on different conceptions of what is a “private person” and will present a case study that highlights the issues.

In the lesson Guidelines for Release you learned that, in most cases, the Freedom of Information Act protects most information.

A private person has a reasonable expectation of privacy from the media. A person who has set up restrictions that protect the private person from the following:

- Publication of private or personal information
- Publication of information that places a person in a false light
- Appropriation of a person’s name or likeness
- And wrongful intrusion

According to “Free Speech and the social construction of privacy” by Schauer, Frederick and Social Research, most invasion of privacy claims are not based on the idea of misappropriation of a name or likeness but rather that people have the right “to control the facts about their own lives.”

So, you can understand why people are sensitive about this issue.

The public person

So if you are not a private person, are you a public one?

All-Purpose Public Official

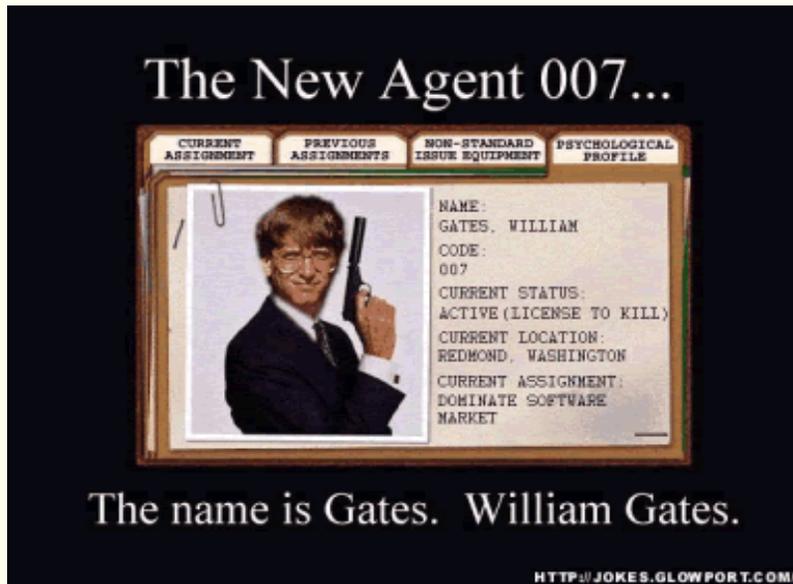


In this photo you have MicroSoft Corporation President Bill Gates (left) and the former mayor of New York Mayor Guilliani (right). Guilliani was a public official when he held office. This is defined as someone who is elected or appointed to office and who appears to have substantial control over public and governmental affairs. Guilliani, at one time, met the criteria. What this means though, is if Guilliani felt that he was libeled by the media, he must prove "actual malice." So what type of person would you classify Bill Gates?

The Public Person Continued

All-Purpose Public Figure

A **public figure** is someone who injects himself/herself into the vortex of a public issue or controversy or has steps to attract public attention.



Bill Gates is an all-purpose public figure. The appeals court has defined an all-purpose public figure as "a well-known celebrity...a household name" as the CEO of a major corporation has almost synonymous with MicroSoft its

The Limited public figure



Is former representative Bill Condit a limited public figure? Obviously not, he was a public official. But what of Mrs. Condit? She is not a public official, nor is she a celebrity or household word as defined in the term all-purpose public figure. She has filed a \$10 million libel lawsuit against The National Enquirer for a headline that stated she attacked Chandra Levy. She could be considered a Limited or vortex public figure. This is someone who injects themselves into a public debate with the purpose of affecting the outcome. The Supreme Court has ruled that a private person can become a vortex public figure if they meet the following criteria:

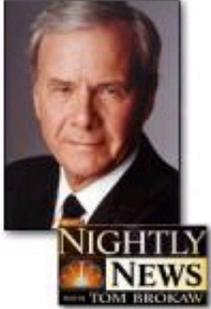
- The alleged defamation must involve a public controversy
- The person suing has voluntarily participated in that controversy
- And that person supposedly libeled must have tried to affect the outcome of the controversy

Media Law Case Study



Imagine that you got up in the morning and found that you have been accused of something terrible.

Everyone you know believes it. After all, if it's in the newspaper, it has to be true. Right?



"The speculation is that the FBI is close to making a case. They probably have enough to arrest him...prosecute him, but you always want to have enough to convict him as well. There are still some holes in the case.

Media Law Case Study



This is the man the FBI "was about to arrest."



Do you know his name?

Media Law Case Study



His name is Richard Jewell.



*The odds are that
most of you know his name.*

Media Law Case Study



Richard Jewell was a security guard at the 1996 Olympics.



He was trained very well for the job. When he found what he thought was a bomb, he people from the area before it went off. He was cited for his professionalism and his b within a few days, there as a dramatic turn of events. The Atlanta Journal-Constitution unidentified law enforcement officials, published a special edition naming Jewell a sus



Media Law Case Study



Richard Jewell addressed the media.



I was trained to spot the unattended packages and to report such packages to the next person in the security chain of command. That is what I did on the 27th of July. All I did was my job.

The media started calling me a hero. I did not consider myself a hero. The bomb technician who crawled on his belly and got next to the bomb was a hero.

The media said I fit the profile of a lone bomber. That was a lie. The media said I was a former law enforcement officer, a frustrated police wannabe. That was a lie. I was then and am now a law enforcement officer. The fact that I was between jobs and took a position as a security guard for the Olympics did not change that fact. The media said I was an overzealous officer. That was a lie.

Media Law Case Study



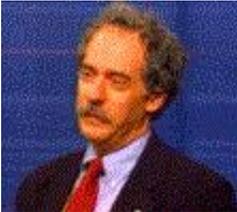
Others weighed in on the controversy.



BARBARA JEWELL (Richard's mother): The media has descended upon us like vultures upon prey. They have taken all privacy from us. They have taken our peace. They have rented an apartment which faces my home in order to keep their cameras trained upon us around the clock.



DAVID TUBBS, FBI Spokesman: This search is part of an ongoing investigative process and does not indicate in any way that Mr. Jewell has been charged with a crime under our system of justice. Mr. Jewell has not been placed under arrest and has not been charged with any crime.



MARVIN MILLER, Criminal Defense Attorney: I think there's no question about it. You have a situation where the FBI used a tactic that you've seen in countless cases over the years of leaking information that benefits them in a number of ways and really doesn't do anything to their investigation

Media Law Case Study



What do you think?



SKIP BRANDON, Former FBI Official: I don't know whether the FBI leaked the name or not. It probably was leaked, and that's inexcusable. That shouldn't have happened. I think that Mr. Miller probably is getting a little far beyond the facts in this case. It would not make any sense to me as an investigator when you're beginning an investigation to leak the name of a suspect. For example, they later searched Mr. Jewell's apartment, and it doesn't make any sense for a good investigator to tell the person you're going to search that you're going to come after him, that they are a suspect. It gives them time to get rid of evidence. So I just--I don't think it makes any sense in this case at all.



ELIZABETH FARNSWORTH, CNN Interviewer: Mr. Kalb, turning to the press aspect of this, do you think that an injustice has been done to Mr. Jewell by the press?

MARVIN KALB, Harvard University: (Boston) That's very hard to say, Elizabeth. It seems to me that at the very beginning, the press was doing its job. Three days into the process, the press went into a kind of media frenzy, and at that particular point, the press was not doing Mr. Jewell, the facts, the case, anybody any great service.



ELIZABETH FARNSWORTH, CNN Interviewer: Mr. Miller, what happens next? Does Mr. Jewell have a case against the FBI and against the press, do you think?



MR. MILLER, Criminal Defense Attorney: I think that he has a difficult case against the federal government because it's been careful to insulate itself from lawsuits, and it's difficult to sue the federal government. Uh, the media may be a different story entirely, and he may be in a position where he can bring a suit against them.

Here's a man who did nothing wrong, the whole case was based on a profile so far as we know today, with no hard evidence whatsoever, and he is in the glare now for the future out in--out onto his ancient years, until he gets white hair, so he needs some way to redress himself, **but I don't know if he can ever overcome this, even with litigation.**

Media Law Case Study



And Richard Jewell did sue.



Richard Jewell v. NBC

This arose from the comments by Tom Brokaw on NBC. The broadcasting corporation stood by their story, but later agreed to a settlement of \$500,000.

Richard Jewell v. Piedmont College

Jewell received an undisclosed settlement.

Richard Jewell v. CNN

CNN agreed on an undisclosed settlement of a complaint brought by Jewell and his mother. CNN still maintains that its coverage was fair and accurate.

Richard Jewell v. Cox Enterprises

This suit came from the story by the Atlanta Journal-Constitution naming Jewell as the FBI's prime suspect on July 30, 1997. The Georgia Supreme Court refused to hear the case upholding a lower court ruling that Jewell was a **public figure** by the time the Constitution printed the story.

Media Law Case Study



So is Richard Jewell a public, or a private person?



SOMETHING TO THINK ABOUT.

Do you consider Richard Jewell a public figure? At what point does a private figure turn into a public one?

Does this mean a private person does not have the right to go to the “court of public opinion” and fight against unfair charges?

How does this lesson on public and private individuals apply to the Richard Jewell case?

DID THIS CASE BELOW CHANGE THINGS? AT WHAT POINT DID JEWELL BECOME A PUBLIC PERSON?

Richard Jewell v. Cox Enterprises

This suit came from the story by the Atlanta Journal-Constitution naming Jewell as the FBI's prime suspect on July 30, 1997. The Georgia Supreme Court refused to hear the case upholding a lower court ruling that Jewell was a **public figure** by the time the Constitution printed the story.

At what point does a private person become a public figure? Does this mean that private persons can not defend themselves in the public arena and only in the courts?

Media Law Case Study



Can you identify this person?

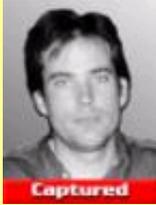


Take a few moments and search your memory.

Media Law Case Study



His name is **Eric Rudolph**.



This is the actual person who set the bomb at the Atlanta Olympics. If you knew Richard Jewell's name rather than Eric Rudolph's, then you retained the name of the accused as opposed to the one who ***actually committed the crime***.

He was captured behind a restaurant searching for food. It is presumed that he evaded police capture by hiding in the hills that surrounded his hometown.

Media Law Case Study



Staff Room: Instructor's Comments



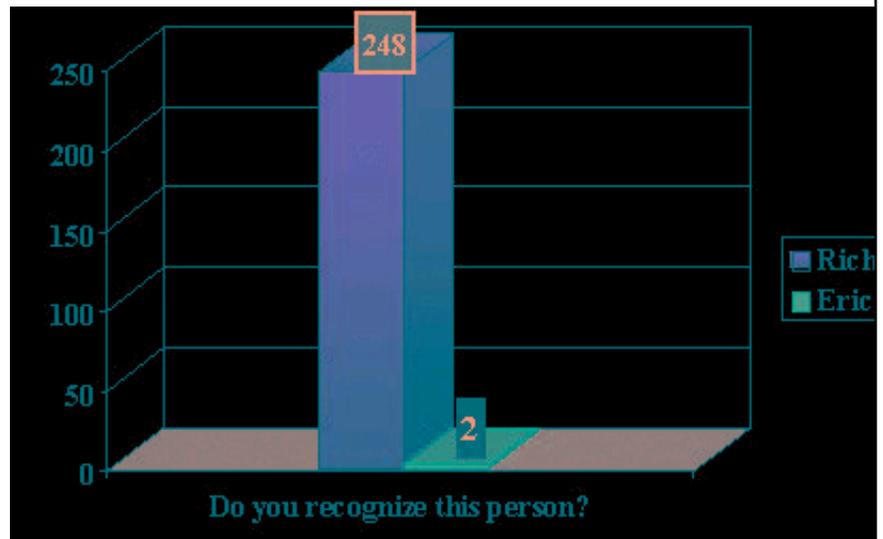
This case study has been presented at least 15 times here at DINFOS Jewell's picture was shown in 15 classes and all 15 classes knew his what he was accused of. In fact, one student said, "Yeah, he was the set that bomb at the Atlanta Olympics."

Eric Rudolph's picture was presented the same amount of times, and only approximately 250 students only one knew his name, and only one of them knew he was associated in *some* way with the bombings.

The point is this. You libel someone, whether on purpose, or by accident with them for life. Think about it. **Most people knew who was ACCUSED the crime, but most people didn't know the person who COMMITTED**

A very unscientific survey:

Classes of in-residence students were repeatedly asked to identify Richard Jewell and Eric Rudolph. The graph to the right represents the results. It is understood that overtime, as the case recedes out of public memory, the results will become more and more unreliable.



This is what we mean when a libel is permanent. It is stored, recorded, and kept for a very long time by businesses that do this sort of thing for money. The mistake, lie, or libel can be around for a very, very, long time.



Media Law Case Study



Staff Room: Instructor's Comments

What this means is if a person was found innocent, or a retraction is printed. The person is tagged with that label...

Forever.

If you want to know more about the Richard Jewell case, click on the Pdf accompanying this lesson.

[Richard Jewell Study](#)

One final point:

After Richard Jewell was cleared by the FBI, it was a federal judge who ordered the release of all sealed documents related to the investigation.

The documents indicated that the FBI had no evidence linking Richard Jewell to the case.

So, was the media at fault or the FBI?

Was Jewell a private person or was he a public one?

Go into your discussion room and talk it over. I'll see you there.

Private or Personal Information

Military Journalist: You mentioned that you suffer from Muscular Dystrophy. May I talk about that in the article?

Interviewee: I'd rather you didn't. I'm afraid what might happen if my boss ever saw that.

Do not disclose private facts about an individual without permission.

A libel and defamation lawsuit was filed against a California school district when a high school newspaper ran a story disclosing a father's alleged alcohol abuse.

Publication of Information putting a person in a false light

A photograph of a married couple in an affectionate pose, taken without their knowledge or permission, that was used to illustrate an article that said love at first sight was founded upon sexual attraction alone and would be followed by divorce was sufficient to establish a false light claim. [Gill v. Curtis Publishing Co., 239 P.2d 630 (Cal. 1952)]

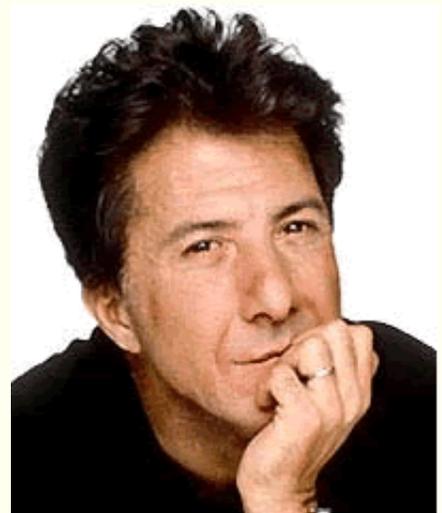
Photographer's Guide to Privacy, Fall 99

Do not reuse stock photos for different purposes, because the same photograph used in a different context may convey a different meaning. This is frequently a problem with photos because there is no way to explain the full context of the situation represented in the photograph. In general, get written permission before publishing photographs. Release forms are something your photograph staff can carry along with their extra rolls of film.

Click [here](#) to view the Photographer's Guide to Privacy.

Misappropriation of a person's name or likeness

How would you like to wake up and find yourself in a magazine ad wearing a dress and advertising a new spring line for a fashion house in New York? Well this happened to Dustin Hoffman. In the 80's he made a movie called "Tootsie" where he played an out of work actor who donned a dress in order to get a part on a soap opera. Well, trying to capitalize on the fame of the movie, an advertising company with the aid of a little computer enhancement placed Hoffman in the latest designer dresses. The problem was Hoffman did not give permission and a court awarded him more than \$2 million in compensatory and punitive damages.



Wrongful Intrusion

In Arkansas a federal trial court upheld a subpoena seeking a television station's out-takes in a privacy suit. It was considered "wrongful intrusion" for the television corporation to film a surgery without the patient's consent.

In the District of Columbia, a reporter was ruled to have not "intruded" on the privacy of a school when he entered the school to conduct the initial interview and came back to retrieve his notebook. The court determined that there was no expectation of privacy in an area that was open to the public.

The act of intrusion is punishable, even if the information is not published, broadcast or communicated. So, tell your journalists or broadcasters to keep everything above board.



Do not record an interview without getting permission. Once you do, it's acceptable to use a recording device in public.

Test Your Knowledge

A reporter uses a high-powered directional microphone to record a conversation through an open window on a private residence. He then transcribes it for publication in a newspaper. On what grounds could the concerned individuals sue for invasion of privacy?

Appropriate

False light

Wrongful intrusion

Publication of private matters

Test Your Knowledge

With regards to the scenario on the previous page, if the reporter had not published the recorded conversation, would he be free from prosecution for invasion of privacy?

Yes

No

Copyright

As stated previously you are in the information business. It is likely that you will have to use copyrighted resources to do your job.



Copyright

Definition

Copyright is the right of a writer, composer, artist or photographer to own, control and profit from the production of his or her work.

Copyrighted material may not be republished without the copyright owner's permission. Use caution when using copy righted work because often you have to pay for the right to use it



Copyright

Laws

1. Copyright law does not apply to facts, events, ideas, plans, methods, systems or blank forms.
2. Before 1978, copyrights were good for 75 years. But the copyright Revision Act of 1976 made copyrights on materials produced after 1978 good for 50 years beyond the life of the author.
3. In many cases, the author, composer, artist or photographer is not the owner of the copyright. You may need to contact the author's publisher for permission to use the material.

Copyright

Copyright and the PAO

Public affairs officers cannot copyright articles and photographs produced for the government, because the government owns the copyright.

Note* This means that photos and stories produced by the public affairs staff can be distributed and used freely by members of the public. This is a very good thing. Imagine the goodwill you will spread when a reporter asks if he can use your photograph, b-roll, or story. Say YES!

The names of installation newspapers are copyrighted. This ensures continuity for the readership, and protects the name being changed on the whim of the printing contractor. This is a good thing too!

Note* Is your base or installation paper copyrighted? Have you checked? It might be a good idea to do so.

Copyright

Copyright and the PAO

The Fair Use Doctrine is a law that allows copyrighted work to be used for purposes of criticism, comment, news reporting, and teaching. You can use quotes from other people's work as long as you:

Do not infringe on the author's ability to profit from the sale or use of the work

Do not attempt to pass the work off as you own

And give credit to the author

How much of the copyrighted work can I use without getting into trouble?

A.P. Styleguide: "The greater the amount of the copyrighted work used, the less likely that a court will characterize the use as fair..."

A.P. Styleguide: "Size alone is not decisive...when the portion used was small but ...important."

Check with your JAG office for guidance.

Unit Summary

In this lesson we have reviewed definitions of **libel** and **slander**. We reviewed what constitutes a **public figure** and a **public official**. We have studied **defenses against libel charges**, **conditions for a statement to be libelous**, and **categories of invasion of privacy** in our nation's laws.

As a PAO it is your responsibility to make a study of the defamation laws to ensure that you guide your commander out of harm's way. You are not alone in this. *The JAG office is your best ally.* Develop contacts in that office, and use them frequently for advice and guidance.

Your job has powerful implications. What you write is *permanent, widespread, and intentional.*

So it better be accurate.

