

How laws governing press change

By JACKIE KLEIN

analysis

Much has been said recently about contradictions in interpreting the freedom of the press.

The First Amendment isn't one of the 10 Commandments nor does it provide unalienable rights, covering the media with an indestructible blanket of protection. It can be confusing.

Troy attorney Jack Mazzara and Donald McVay discussed the First Amendment during a recent seminar in Southfield sponsored by the Michigan Press Association.

In a 1964 landmark decision, the U.S. Supreme Court first granted the press constitutional protection under the First Amendment guarantees of freedom of speech to publish defamatory statements about certain types of persons. As a result, a public official can't recover damages in a libel action unless he proves the alleged defamation was published with actual malice, according to the court ruling.

In 1967, the court expanded the constitutional protection to apply to public figures. In 1974, the court determined a private person doesn't have to prove actual malice. However, a person suing for libel, the court ruled, can inquire into the editorial process of the news persons involved in publishing the allegedly libelous story.

THAT MEANS he also can inquire about news persons' beliefs, opinions, intent, conclusions, editorial control and judgments in preparing the article.

"In order for defamatory words to be subject to a libel action, they must refer to an identifiable person," said McVay. "If you write 'all cab drivers in New York are crooks,' you're not referring to a particular member of a large group."

"If the group is small and you say, for example, 'the jury was bribed,' any individual member can sue. Opinions can be libelous if it implies the author is privy to undisclosed facts. 'It's all right to say 'Smith is never seen without a drink in his hand and therefore must be an alcoholic.' But to say 'Smith is an alcoholic,' implies the writer is aware of facts which give credence to the statement."

The law tries to balance the constitutional right of free speech, the public's right to know and individual's right to privacy.

The high court hasn't constitutionalized the right of persons to be left alone and pass through the world unnoticed.

But if a reporter uses a tape recorder or taps a telephone, for example, to gain information about someone's private life, the writer can't escape liability by claiming his actions are protected by the First Amendment.

ON THE other hand, a reporter isn't liable for intrusion if he accepts private information about an individual from another person who obtained the information by intruding on the individual's privacy.

The Supreme Court has never ruled on this, but lower courts reject First Amendment defenses when publicity is given to the private life of someone the public doesn't care about or would find the story offensive.

However, if the matter publicized is of legitimate public concern or interest, and is newsworthy, it doesn't constitute invasion of privacy.

"If a young woman is walking down a public street and a gust of wind blows up her dress, a reporter who photographs her in that position without her consent has invaded her privacy," Mazzara said.

"Publication of a picture of a man with the front of his trousers down at a football game, in connection with an article on football fans, wasn't found to be invasion of privacy. The man actively encouraged the photographer to take his picture."

Placing someone in a false light also

is sometimes an invasion of privacy. A family was held hostage by escaped convicts. A magazine article depicted the family as acting heroically in the face of the convicts' threats and acts of violence. The convicts, in fact, treated the family courteously. The family sued for invasion of privacy but lost.

THE GOVERNMENT can't prevent publication of information already a matter of public record. But the First Amendment doesn't guarantee the press greater access to information than the public has. Closed trial orders restrict the media's access to court, McVay said. This is a substitute for the "gag rule" which prevents publication of what happens in court, the attorney maintained. The Supreme Court hasn't yet ruled on the validity of closed trial orders but a decision is expected soon.

Reporters have been denied access to prisons to investigate conditions. Court files are sometimes suppressed at the request of one of the parties in a lawsuit.

"Journalists avoid disclosing their sources to protect them or preserve independence and news-gathering abilities," Mazzara said. "Reporters' ethics require them not to reveal sources is often in conflict with the right of every man's evidence in the judicial process."

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(P7A)

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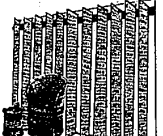
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