

Press Law

Robin Callender Smith

diary faces libel claim

A TOP woman civil servant has started libel proceedings over the third volume of the Diaries, published last week.

Miss Jean [Name] at the Office of [Name] chief

Surveys, libelled on diary and claims she was nine pages of the diary and seeks an injunction to restrain repetition. The page refers to immi-

Miss [Name] of Regents Park, Avenue, London, is suing the diaries' joint publishers, and Ham

Porn film men jailed

Three men who ran a Southampton cinema club showing pornographic films were jailed for keeping a

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PRESS LAW

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Preface

This book was born from a concern about the general level of legal ignorance amongst journalists. Some 10 years ago, as a reporter on the *Eastern Daily Press* and *Eastern Evening News*, too much of my own copy was written in a dangerous fashion. The accepted textbook in the field, while an excellent introduction to Press Law, avoided many of the specific queries I wished to have answered. A succession of tolerant senior colleagues imparted their wisdom, reinforced by the confidence of experience rather than by a real understanding of why what they suggested was correct.

Those good old days are fast running to a close. There have been major examinations of the laws on defamation, contempt, copyright, official secrets and privacy. Two Private Members' Bills have, in becoming Acts, created novel additions to the law of publications. One makes it potentially actionable to state the truth; the other provides a cloak of anonymity for an accused facing rape accusations.

Press law is riddled with anomalies. Implementation of some of the proposals in the reports mentioned above could remove the most manifest. One of the Faulks Committee recommendations was that legal aid should be available in filtered situations for defamation actions: such aid is not available at the moment. Further, that claims for less than £1,000 damages in defamation actions should be triable in the county court. That limited area could lead to radical adjustment of reporting at provincial and national levels.

The Younger Committee on privacy proposed a new cause of action where damage is caused by the use of information unlawfully acquired.

Despite stories of "gold-digging" actions with which the Press are threatened by the lunatic fringe, there are comparatively few defamation actions simply because the general reading public are unaware of the law in this area. Even given

advice, the money put at risk to obtain the remedy may outweigh the injury suffered. A change in this situation may lead to injured readers being less content to accept an informal apology and being inclined, instead, to seek vindication through the county court.

Complaints about an erosion of the freedom of the Press in this specific area are scarcely tenable simply because the ordinary (rather than the professional) person is given the chance to remedy the injury to a reputation.

If journalists are given the opportunity to understand the law and then operate within it, the causes for complaint about unsafe copy could diminish. I also believe that a journalist should be prepared to and be capable of questioning critically and constructively both the law he works within and the law he observes.

To this end, certain statutes have been quoted in detail. If their provisions seem obscure and unnecessarily complex, journalists may be moved to question — rather than just to accept passively — the general utility of “legalese.”

It is a sincere hope that this book will give journalists the fundamental information they must have to operate safely within the law and, at the same time, kindle an interest in law generally.

Some cases have been quoted to take the legal idea beyond bare theory into the realm of practical application. The results are not as logical, perhaps, as the façade presented by the legal system would beg belief but there are many other areas of life which share this defect.

If some of the detail seems daunting to the embryo journalist (or to the experienced man who wants to find out what really has been going on) there may be comfort in the fact that few lawyers (without photographic memories) grasp and retain such details easily. Skim-reading of sections two or three times to grasp the general ideas will break the back of most of the material so that later critical, concentrated study can establish a foundation of residual knowledge. This can act as a touchstone, however unconscious, when writing copy so that legal problems are avoided.

There is no intention in this book to turn journalists into lawyers. However, if a legal reason exists for saying or not say-

ing a particular thing, it is part of the journalist's craft to appreciate this. The book is not offered as a weighty academic tome, each page loaded with footnotes. Its purpose is to bridge the gap between introductory material and the specialist works.

Since the major part of the text was written there have been some important developments. The Old Bailey trial of *Gay News* and its editor for blasphemous libel concluded with convictions which, at the time of writing, are the subject of an appeal to the Court of Appeal. The Royal Commission on the Press published its report. A summary of developments in these two areas is contained in the appendices which follow the main text.

It was possible at a late stage to include relevant provisions from the Criminal Law Act 1977 in the text.

An important case on the law of contempt may have been heard by the Divisional Court by the time the book is published. It concerns *The Journal* at Newcastle and Border Television. Reports of a trial at Carlisle mentioned that an accused had pleaded not guilty to certain theft counts and had then faced a jury trial pleading not guilty to handling counts. The trial had to be stopped because jurors could have realised that the accused had previous convictions (see p. 196). The information about the previous convictions came, of course, in open court but at a time before the jury was empanelled. The Phillimore Committee recommended that fair and accurate reports of proceedings in open court should not, of themselves, constitute contempt (see p. 132). The Attorney-General wished to have a clearer resolution of this important area and the decision of the Divisional Court will be of interest to both the Press and the public.

I am indebted to Professor Albert Pickerell of the U.C.L.A. School of Journalism at Berkeley, California, for certain material he had prepared on the operation of the Official Secrets Acts in the United Kingdom.

As more than a commonplace, I record my thanks to my former students, graduate and non-graduate: their comments on my abstractions helped me learn about what they wanted to know. My thanks are due to my legal, journalistic and teaching colleagues for comment and criticism at every stage, which

has been heard but not necessarily acted upon.

The greatest debt, however, is to my wife, Leletta. Despite the supreme good fortune of being neither a lawyer nor a journalist, she made certain that the manuscript moved from being a mere idea to what is a reality.

ROBIN CALLENDER SMITH

October 5, 1977

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PART 1

GENERAL MATTERS

1 Defamation and the Faulks Committee

Two definitions are set out below. The first, culled from case law, reflects the current classical view. The second, proposed as a statutory definition by the Faulks Committee on the law of defamation in 1975, may shortly become the touchstone for actions in this area. The differences between the two will be examined. It is important to grasp that defamation, whichever definition is used, is primarily a civil matter with the plaintiff seeking to recover damages for the tort (civil wrong) of injury to his reputation. If his reputation is not damaged but statements are made which affect him financially in his work, then he may have an action for the tort of injurious falsehood if he can prove the words were published maliciously and that the facts stated were untrue. In certain situations, defamatory matter may make the publisher liable to a criminal prosecution for criminal libel: this topic is dealt with separately.

Classical definition

Defamation is the publication to a third party of a statement which tends to lower a living person in the estimation of right-thinking members of society generally; or which makes them shun or avoid that person; or which disparages his reputation in relation to his work.

Statutory definition

Defamation shall consist of the publication to a third party of a matter which, in all the circumstances, would be likely to affect a person adversely in the estimation of reasonable people generally.

There was a traditional press definition, used as a rule of