Libel

“Sticks and stones can break your bones, but words can never hurt you.”

Ah, if only....
Libel: 
An Oversimplified Definition

Publication of a false statement of fact that seriously harms someone’s reputation.
Libel: **Publication** of a false statement of fact that seriously harms someone’s reputation
Publication: broadly defined

- Articles
- Headlines
- Photo captions
- Blogs
- Ads
- Cartoons
- Freelance materials, guest columns, letters to the editor, quotes
- Promotional material
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Libel: Publication of a **false** statement of fact that seriously harms someone’s reputation
Truth:
An Absolute Defense
The Catch:

Knowing something is true and proving it’s true can be two different things
Hyperbole

• A statement so outrageous no reasonable reader would believe it is true
  – E.g. Rev. Jerry Falwell’s “first time” was with his mother in a drunken orgy in an outhouse.
    » Hustler v. Falwell
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Opinion

• “George Bush is the worst president in United States history.
  – So subjective it cannot be proved true or false.

• Photo caption: “Welcome to Our Hillbilly Hellhole.”
  – complete fact basis for opinion revealed in photo.
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Red Flag Statements

• Accusations of illegal conduct or involvement with criminal justice system
• Sexual misconduct
• Associated with “loathsome diseases”
• Lying
• Unfit for business
• Academic problems
• Racial/religious/ethnic bigotry
• Financial instability; lack of creditworthiness
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Fault Required

The First Amendment requires that in order for media defendants to be held responsible for libel, the person suing must show — at a minimum — that the reporter/editor acted unreasonably.
The Lesson:

If you always do what a reasonable reporter should do (and don’t do what a reasonable reporter wouldn’t do), you will never be successfully sued for libel.
Acting Reasonably

- Use trustworthy sources — in quality and number
  - Evaluate your sources
  - Do not overstate or have blind faith in their credibility
- Take accurate notes (kept or destroyed on a consistent basis)
- Documents, documents, documents
- Report — don’t “sell”
- Talk to all sides — including the subject
- Be open-minded
- Do the work required — or don’t do the story
- Be rigorous in your choice of language
- Never publish a story if you doubt its truth
Invasion of Privacy

How far is too far when covering the “news”?
Four kinds of invasion of privacy claims recognized

• Public Disclosure of Private and Embarrassing Facts
• Intrusion
• False Light (Not in Florida)
• Misappropriation
Public Disclosure of Private and Embarrassing Facts

- Certain details about people, even though true, may be "off limits" to the press and public

- Truth is not a defense
Public Disclosure of Private and Embarrassing Facts

• **Examples:** Publishing detailed information about a private person’s sexual conduct, medical/mental condition, educational records

• **Look for facts that are:**
  - Sufficiently Private
  - Sufficiently Intimate
  - Disclosure would be highly offensive to reasonable person (shocking!)
The ‘Cheerios Test’

Terry Bollea’s (Hulk Hogan’s) expert witness UF Professor Mike Foley’s shorthand for content that makes the reader/viewer want to barf into their breakfast cereal. Formerly known as the ‘Wheaties Test.’
Defenses:

• Newsworthiness

• Consent
Intrusion

• Generally based on the act of newsgathering

• Publication not required

• Three most common types of intrusion:
  - Trespass: Going onto private property without the owner's consent
  - Secret Surveillance: Using bugging equipment, hidden cameras, other electronic aids
  - Misrepresentation: Invalid or exceeded consent (often in the context of undercover reporting)

• Defenses: Newsworthiness; consent
Misappropriation

- Unauthorized use of a person's name, photograph, likeness, voice or endorsement to promote the sale of a commercial product or service

- Defenses:
  - Consent
  - Newsworthiness

- Publications should routinely have subjects sign a model release form when using their name or likeness in a commercial context
Pre-Publication Review
Plaintiff?

Accuracy?

D
Plaintiff?  Accuracy?  Intrusion?  D
Plaintiff?
Accuracy?
Intrusion?
Defenses?
Questions?