



Libel Exemptions in the Sixth and Seventh Circuit Court of Appeals

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Libel and Twitter: Does the Urgency of the Defamatory Information Matter with Tweeting Journalists?

Specifically considering the Sixth Circuit Court of Appeals in Ohio, urgency is defined as the timeliness of a subject of public interest and is considered a key criterion when determining potentially libelous tweets made by news sources on Twitter; therefore, in the majority of cases, considering the timeliness of a news story containing defamatory information that is of great public interest would lead the Sixth Circuit Court of Appeals to rule in favor of the dissemination of the information, rather than the protection of the individual's reputation.

❖ The freedoms of expression and press, under the First Amendment, were included in the Constitution to establish a well-informed public which would be able to participate in democratic self-governing and to enhance a marketplace of ideas.¹ The Supreme Court has ruled many times in favor of protecting both of these rights.²

❖ However, libel and defamatory information is not included under these protections. Depending on the status of the libeled person, the plaintiff must meet certain standards in a libel suit. But the Supreme Court has ruled that errors in information are inevitable.³ They have also ruled that public interest in a subject has trumped the possible defamation that information could have on a person's reputation.⁴ Therefore, depending on the status of the libeled person and the nature of the information, a court may rule that it is allowable.

❖ Specifically looking at Ohio's libel law, the courts protect the neutral reportage privilege, which "protects accurate reporting of accusations against private individuals as well as public figures, when the accusations themselves are newsworthy and concern a matter of public interest."

❖ A definite case can be made that Ohio's Sixth Circuit Court of Appeals may rule in favor of a journalist whom publishes defamatory, but newsworthy and urgent information about a person via Twitter.

¹ Roth v. United States, 345 U.S. 476 (1957) ² Associated Press v. United States, 326 U.S. 1 (1945)

³ N. A. A. C. P. v. Button, 371 U.S. 415 (1963) ⁴ Coleman v. MacLennan, 78 Kan. 711, 727 (1908)

Defining Non-actionable Opinion in the Seventh Circuit Court of Appeals

Based on a study of Seventh Circuit Court of Appeals libel cases within the past 10 years, the courts consistently fail to include important considerations set forth by the Ollman test in their analysis to determine fact from opinion, threatening the thoroughness of the Seventh Circuit Courts' decisions. The Seventh Circuit Court needs to decide upon and apply a more comprehensive analysis that gives greater consideration to context in order to determine whether a statement is fact or opinion.

❖ In *Solaia Technology v. Specialty Publishing Co.*, the Illinois court restricted the distinct importance of both literary and social context in the interpretation of a statement as fact or opinion. The justices should have considered each context separately, instead of combining them into one consideration. This sets a dangerous precedent allowing courts to ignore the significance of either the literary or social context in the way readers interpret a statement as fact or opinion. This distinction is most important when statements closely straddle the line of fact and opinion. In these instances, analyzing both contexts separately and giving weight to the results of each could tip the decision a different way.

❖ In *Rose v. Hollinger*, the court adopted the Milkovich test, declaring that a statement is protected free speech as long as it cannot be "reasonably interpreted as stating actual facts (Milkovich pg. 4)." Without specific considerations to follow, this test is in danger of being applied subjectively. The courts should replace the Milkovich test with one that is less vague and more comprehensive.

❖ Since the *Solaia* decision in 2006, the Seventh Circuit Courts have been inconsistent in their analysis of whether a statement is fact or opinion. The courts applied the *Solaia* analysis in two cases, both the Milkovich test and the *Solaia* analysis in one case, and the Ollman analysis in one case. Out of these tests, the Ollman analysis is the only one which considers context comprehensively. The courts should establish and consistently apply a comprehensive analysis for future cases, or else they will risk losing esteem in court judgments on the issue.

Imperial Apparel v. Cosmo's Designer Direct, 227 Ill.2d 381 (2008).

International Galleries, Inc. v. LaRaza Chicago, Inc., 05 C 4991 (Illinois 2007).

Maxon v. Ottawa Publishing Co., 08 MR 125 (Illinois 2010).

Milkovich v. Lorain Journal Co., 111 L. Ed. 2d 1, 16 (1990).

Ollman v. Evans, 750 F.2d 970, 984-85 (D.C. Cir. 1984).

Rose v. Hollinger International, Inc., 383 Ill. App. 3d 8 (2008).

Solaia Technology, LLC v. Specialty Publishing Co., 221 Ill. 2d 558, 581 (2006).