

The Volokh Conspiracy

An Interesting Defamation Case

by Eugene Volokh on [May 20, 2012 7:30 pm](#) in [Defamation](#)

I just ran across an interesting case, [Memphis Pub. Co. v. Nichols \(Tenn. 1978\)](#). The *Memphis Press-Scimitar* published the following article that mentioned Mrs. Ruth Ann Nichols:

“ WOMAN HURT BY GUNSHOT

Mrs. Ruth A. Nichols, 164 Eastview, was treated at St. Joseph Hospital for a bullet wound in her arm after a shooting at her home, police said.

A 40-year-old woman was held by police in connection with the shooting with a .22 rifle. Police said a shot was also fired at the suspect's husband.

Officers said the incident took place Thursday night after the suspect arrived at the Nichols home and found her husband there with Mrs. Nichols.

Witnesses said the suspect first fired a shot at her husband and then at Mrs. Nichols, striking her in the arm, police reported.

No charges had been placed.

Please think briefly about the story, and then click on the link before to learn what the court decided.

Did you read the story as suggesting that the shooter found her husband in a compromising position with Mrs. Nichols — perhaps having sex, or having had sex, or being just about to have sex? That's apparently how many readers read the story as well.

But it turns out that, though each statement in the story was literally true, Mrs. Nichols was at the Nichols home together with the shooter's husband, Mr. Nichols, and two neighbors. They were apparently all sitting in the living room, talking.

The court concluded that the story could be libelous — assuming negligence was shown on the newspaper's part — because, even though the statements were literally true, they carried a strong implication (that the husband and Mrs. Nichols were together by themselves in a compromising position) that was false:

“ In our opinion, the defendant’s reliance on the truth of the facts stated in the article in question is misplaced. The proper question is whether the meaning reasonably conveyed by the published words is defamatory, “whether the libel as published would have a different effect on the mind of the reader from that which the pleaded truth would have produced.” The publication of the complete facts could not conceivably have led the reader to conclude that Mrs. Nichols and Mr. Newton had an adulterous relationship. The published statement, therefore, so distorted the truth as to make the entire article false and defamatory. It is no defense whatever that individual statements within the article were literally true. Truth is available as an absolute defense only when the defamatory meaning conveyed by the words is true.

Such “defamation by half-truth” decisions are rare. All statements, after all, omit something, and one can always argue that the full story would convey a somewhat different message from the partial story. Usually that’s not enough to turn literal truth into libel. But in some situations, where the statement does carry a very strong implication that turns out to be false, a libel claim can indeed be brought even when the statement is literally true.

Another [classic example](#) — though just a hypothetical and not a real case — involves the first mate who, upset by his teetotaling captain, writes in the ship’s log,

“ Captain sober today.

The statement may be literally accurate (the captain was sober today, as on all days) but it carries a very strong implication that turns out to be false (that today was unusual in this respect).

[H.P. Grice’s work on conversational implicatures](#), by the way, relates to this.

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Walt Tuvell ▾

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[harryeagar](#) • 6 years ago

Most newspaper stories of this sort are based on police accounts.

What information did the reporter have? Did he know how many people were there?

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[gt bear](#) • 6 years ago



As is so often the case, defense counsel was negligent, perhaps to point of malpractice, in not raising arguments under the state constitution. Caveat: I haven't read the briefs and I don't know the case law. But the relevant text is,

Section 19. That the printing press shall be free to every person to examine the proceedings of the Legislature; or of any branch or officer of the government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions, is one of the invaluable rights of man and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty. But in prosecutions for the publication of papers investigating the official conduct of officers, or men in public capacity, the truth thereof may be given in evidence; and in all indictments for libel, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other criminal cases.

In that text, there are several ways to argue either that the standard should be higher than mere negligence, or that literal truth is a defense, or that the jury should have been able to choose the standard of liability (so long as not less than negligence.) Here the plaintiff had compelling facts, but I'm not sure the court got the law right (except to the extent that the law is what they say it is, subject to first amendment constraints.) - arbitrary aardvark

^ | v · Share >



Kirk Lazarus · 6 years ago

I must be subnormal. I read the thing twice and didn't think about sex with Mrs Nichols once.

^ | v · Share >



arsync · 6 years ago

I was under the impression that such an action would lie in a "false light" claim, not a defamation claim. At least under CA law...

^ | v · Share >



LawyerHouston · 6 years ago

It just seems to me that you should lose some claim to be treated as a private citizen once you start shooting people. Justified, unjustified, I just don't care. I immediately assumed that something illicit was going on, otherwise why the shooting?

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Buck Turgidson → LawyerHouston · 6 years ago

Apparently, lawyers in Houston don't read the facts of the case as closely as they should.

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petetheelder → LawyerHouston · 6 years ago

It was the shooting victim and her husband who who sued the newspaper, not the shooter.

2 ^ | v · Share >



Fred Rodgers • 6 years ago

569 S.W.2d 412

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Ike B. • 6 years ago

Odd that I could think of all sorts of reasons why one would go to another's home, find one's husband with the woman that lives there, and shoot them both. Adultery made it on the list after a few readings, but it was fourth or fifth. None of them actually spoke well of the shooter, though.

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crunchyfrog0 • 6 years ago

Who shoots someone with a .22? All that's likely to do is piss them off.

2 ^ | v • Share >



SemiSalt → crunchyfrog0 • 6 years ago

False bravado. You might want to review the Reagan assassination attempt as an example.

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QuiteExasperated → SemiSalt • 6 years ago

According to Col. Cooper, one of the preferred assassination methods of the Israeli black ops types is/was to walk up to the target, empty the magazine of a Ruger .22 pistol into him, drop the gun and split. Ten .22 caliber holes in the torso are usually fatal.

The problem is not so much lethality as stopping power. Stopping somebody quickly with a .22 requires a great deal of skill or a great deal of luck. Unless, of course, you empty the magazine into them. In that case I would think the cumulative injuries would be pretty effective. Also of course the much lighter bullets are much more liable to ballistic defeat by thick clothing, bone, etc.

This does remind me, though, speaking of Col. Cooper, of his admonition regarding .25 automatics. "Carry a .25 automatic, if you must, but never load it. If you load it, you may shoot it at someone. If you do, and he finds out about it, he may become very angry with you."

2 ^ | v • Share >



gt bear → QuiteExasperated • 6 years ago

I like a high velocity .22 round, as an attention-getter. I have moral scruples against shooting to kill in most situations, if avoidable. (This is theory; I have never shot at someone.) I understand there are risks to this approach and it's not for everyone.

-arbitrary aardvark (posting as gtbear since the last round of comment revamping.)

 |  • Share >**Yrro Simyarin**  gt bear • 6 years ago

There are significant risks, as there is no legal difference between shooting someone with a .22 and a .45, but there are significant practical differences in the results.

 |  • Share >**chesler** • 6 years ago

Why did the defendant shoot at her husband and then at Mrs. Nichols? (It bothers people that I tend to react to things as would someone with Asperger's, and not read things into things, so I couldn't guess what the defamation was until you pointed it out.) Were Mrs. Nichols, the husband, and the two neighbors having an affair? Were Mrs. Nichols and the husband having an affair, but not engaging in it then? (Those things didn't occur to me either.)

1  |  • Share >**Jj**  chesler • 6 years ago

"It bothers people that I tend to react to things as would someone with Asperger's"

...

Sigh...

 |  • Share >**johndburger** • 6 years ago

I was just about to add a link to Grice - well done!

 |  • Share >**Laura** • 6 years ago

I did suspect something untoward, given that a woman shot her husband and another woman upon finding them together, but the fact that there were witnesses caused me to realize that they weren't alone. Has to have been something like that, though.

1  |  • Share >**LarryEArnold**  Laura • 6 years ago

OTOH "No charges had been placed" after shots fired at two different people, one of which was hit. That seems to indicate that there was *something* out of the ordinary going on.

1  |  • Share >**Charles** • 6 years ago

"the suspect arrived at the Nichols home and found her husband there with Mrs. Nichols."

Yeah, the paper certainly wasn't suggesting anything untoward. The reader would have simply assumed that a couple of neighbors were there, too.

1  |  • Share >

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Stephen_Lathrop • 6 years ago

Maybe if you expect journalism to be done sloppily you leap to the illicit sex conclusion. Because I assume that major explanatory information would be included, I reached a puzzled WTF conclusion. It did not occur to me (except to quickly reject it) that sex was involved.

1 ^ | v • Share >



Guest • 6 years ago

H.P. Grice's work on conversational implicatures, by the way, relates to this.

This is a good reference. In undergrad I did a fair amount in this field. Since becoming a lawyer, I've always thought that my fellow lawyers would benefit from some rudimentary familiarity pragmatics, including Grice's implicature work. Lawyers often have to describe why something does or does not generate a certain inference, but they often lack structure for doing so. That doesn't render them helpless, but they sometimes have to recreate the pragmatics wheel.

2 ^ | v • Share >



John B • 6 years ago

I certainly did not learn that there were other parties present -- the article didn't tell me, after all -- but I did not imagine that something untoward was going on other than the apparent fact that the shooter did not like it that her husband and the plaintiff were in the same house. The article, as quoted, doesn't even say they were in the same room. I would have found it believable that the husband was changing a lightbulb or just sitting on a couch drinking an iced tea.

The paper could have done a better and more comprehensive reporting job, but I would not find the report libelous.

2 ^ | v • Share >



Gospace • 6 years ago

Actually, that comes from an old English sea story, about the Captain, who had been lax reviewing the daily deck log entry, read the last few months entries, and upon reading in every days entry, "The Captian was drunk again today.", became furious. He assembled his officers and ordered that that entry never be made again. After that, every few weeks there would be an properly notated entry, "The Captain was sober today." At least, that's the way I heard it. The tale dates from the days of wooden ships and iron men.

^ | v • Share >



Tenesmus → Gospace • 6 years ago

My understanding of the story is as you have relayed it, though I feel like I got it from Mark Twain (and where he got it...?), but, whatever...

^ | v • Share >



joshua82 • 6 years ago

It's like a real-life version of the apocryphal story of the reporter who wrote, "During his recent trip to Nevada, Congressman X was photographed having dinner with a Las Vegas showgirl," instead of writing the also-true version, "... was photographed having dinner with a Las Vegas showgirl, her husband, and her children."

3 ^ | v • Share >



absaroka → joshua82 • 6 years ago

One of the accusations leveled at John Henry Faulk (<http://en.wikipedia.org/wik...>) during the Red Scares was that he had been seen dining with various communist officials. The story was true; he had attended some gala (perhaps a U.N. function?) that was attended by various communist ambassadors, as well as ambassadors from most of the world, the US ambassador, and so on. He won a libel suit based on that (and much else), although his career never recovered.

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