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LAW; How a '74 Fracas Led to a High Court Libel Case

By DAVID MARGOLICK and SPECIAL TO THE NEW YORK TIMES APRIL 20, 1990

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Sixteen years have passed since the wrestling match between the Mustangs of Maple Heights High School and the Mentor High Cardinals degenerated into a vicious brawl. But for Michael Milkovich, the melee lives on, though the people grappling now are lawyers, and their arena is the United States Supreme Court.

Even Mr. Milkovich, a man who was to Ohio wrestling what Woody Hayes was to Ohio football, would concede that the stakes now are higher than they were in 1974, when only the Greater Cleveland Conference crown was on the line.

When the High Court, which twice before declined to hear Mr. Milkovich's case, finally hears arguments on it next week, at issue will be a man's reputation, a free press and the thin line the law draws between facts and opinions. More specifically, the Justices must address a question that news organizations consider critical: whether columns, editorials and other articles that include the writer's opinion must be held to the same standard of accuracy as regular news coverage.

After the fracas, which involved fans as well as wrestlers, a local sports columnist wrote that Mr. Milkovich, Maple Heights's longtime wrestling coach, lied under oath about his role in fomenting the episode. Contrary to the coach's account, the columnist asserted, Mr. Milkovich had baited officials, egged on the excited crowd and finally stood by when the fight erupted.

The accusation stung Mr. Milkovich, a man so revered in this bedroom community near Cleveland that a school here is named for him. He sued the columnist, J. Theodore Diadiun, and his newspaper, The News-Herald of Willoughby, Ohio, for libel.

Dozens of Judges Involved

In Mr. Milkovich's 27 years of coaching here, his teams won 10 state championships. But victory in court has proved far more elusive. Since it was filed in 1975, Mr. Milkovich's suit has wandered through the judiciary. By his count, 70 to 80 judges have considered it.

Along its arduous way, the case has raised a host of issues, both legal and political. There is the vexing matter of when someone becomes a public figure, and whether a man who once promoted himself as "Ohio's No. 1 High School Coach" qualifies as one. Under the law, public figures must generally put up with much harsher criticism than ordinary citizens. Another issue is whether, as Mr. Milkovich has charged - and a Justice of the Ohio Supreme Court has echoed - judges currying favor with the press are gutting the law of libel.

But most important is the subtle distinction between an assertion of fact, which can be refuted and can therefore be defamatory, and an opinion, for which targets have no legal remedy.

Rallying Behind Team

In March 1974, a month after the brawl, which sent four Mentor wrestlers to the hospital, the Ohio High School Athletic Association censured Mr. Milkovich and barred his team from the next state championship as punishment. But through a series of house-to-house bottle drives and spaghetti dinners, local residents raised \$4,000 to appeal the suspension. In January 1975, after hearing testimony from Mr. Milkovich and others, a judge in Columbus lifted the ban.

The next day Mr. Diadiun (pronounced DIE-a-dun) assailed the ruling in his column. Under the headline "Maple Beat the Law With the 'Big Lie' ," he charged that Mr. Milkovich had perjured himself before the judge. The lesson, he wrote, was "if you get into a jam, lie your way out." The sportswriter had witnessed the melee and Mr. Milkovich's appearance before the athletic association, but not the hearing before the judge. He based his account on an interview with the athletic association commissioner, who was in the courtroom.

Mr. Diadiun's lawyers, from Wickens, Herzer & Panza of Lorain, Ohio, assert that his column represents "emotionally charged commentary" rather than a statement of fact and cannot be libelous.

News Organizations Concerned

Standing behind Mr. Diadiun and The News-Record is an array of news organizations, including the three major broadcast television networks, Dow Jones & Company, The Washington Post, and The New York Times, which filed a joint friend-of-the-court brief in the case.

Against the news media giants stand the 68-year-old Mr. Milkovich, who retired in 1977, and his lawyer, Brent L. English of Cleveland. The average reader, Mr. English argues, would consider Mr. Diadiun's writings to be "an accusation of a pernicious crime rather than a mere expression of his opinion."

In 15 years of litigation, the Lorain Journal Company, which owns The News-Herald, has spent nearly \$500,000 in legal fees on the case, according to Richard A. Naegele of Wickens, Herzer. The firm has collected so much in fees that its lawyers call one portion of their office building the "Milkovich wing." Mr. Milkovich has spent \$40,000 of his own money on the case, while Mr. English has donated at least \$250,000 worth of his time. For all this, never has the original question - whether Mr. Milkovich indeed lied - been answered.

Pride in the Paper

As for Mr. Diadiun, who at 43 is now metropolitan editor of The Cleveland Plain Dealer, it sometimes seems that more copies of his column have been appended to court briefs than were originally printed in The News-Herald.

Maple Heights, a place unremarkable for either its trees or its altitude, is one of those suburban communities that sprouted after World War II. Its historical society dates back only to 1982. The town consists largely of houses so simple and so much alike they almost belong on a Monopoly board, into which residents - primarily of Polish, Italian and Czechoslovak extraction - poured their savings, their energies and their pride.

Sport as Religion

Single-mindedly and almost single-handedly, Mr. Milkovich, the brother, uncle and father of several former state wrestling champions as well as one himself, put Maple Heights on the map, turning wrestling into a kind of religion.

Matches were like frenzied revival meetings, in which the coach, dressed in a red shirt so that his wrestlers could spot him during matches, presided over as many as 4,000 parishioners. There were pilgrimages, like the busloads of students and their families who headed to Columbus each March for the state championship. There were also acolytes: a Wrestlers' Dads club, cheerleaders and

boosters and pep clubs and "mat maids," who assembled huge quilt-like cakes that the entire student body shared after victories.

And there were disciples, notably the 1,500 boys who wrestled for Mr. Milkovich. They were, by and large, the sons of blue-collar families, with names like DiDomenico and Borczsz, Gucciardo and Sadowsky. Many would never go to college but for the athletic scholarships the coach got them. Five of Mr. Milkovich's wrestlers were killed in Vietnam.

School Named for Him

In 1983, over the opposition of two local officials who remembered the brawl, the middle school was named for him. When, in the year 2076, the citizens of Maple Heights retrieve the time capsule placed in the cornerstone of the county library a century earlier, they will find one of Mr. Milkovich's wrestling medals in it. The only blot on the Milkovich legend was the melee with visiting Mentor, a town 23 miles to the northeast.

To this day, Mr. Milkovich maintains that he did nothing wrong and that the whole episode was overblown. "The kids who went to the hospital received two aspirin and that was it," he said. He told the same thing to both the athletic commission and the judge who lifted its suspension. Was an Oath Violated? In the column written after that decision, Mr. Diadiun complained that the judge had fallen for Mr. Milkovich's "polished and reconstructed" story. "Anyone who attended the meet knows in his heart that Milkovich lied at the hearing after having given his solemn oath to tell the truth," he wrote.

Once the article appeared, Mr. Milkovich said, "The whole student body wanted to know how a coach could lie under oath and get away with it, and how many other things you got in your life by lying and cheating." He offered two explanations for Mr. Diadiun's column, the first facetious. "I think he was high when he wrote it," he said, "And he wanted to sell newspapers."

"That's just not true," Mr. Diadiun said. "I had always admired Milkovich. I was reacting to what I thought was a miscarriage of justice."

Up and Down the Courts

For several years, the case bounced between the trial and appellate courts of Ohio and the United States Supreme Court, which twice declined to hear it. In December 1984 a divided Ohio Supreme Court ruled that the "plain import" of the column "is that Milkovich committed the crime of perjury." But in 1987, that court reversed itself and held that the article was, after all, opinion. It noted that

the article was printed under the words "T.D. Says," and that it appeared on the sports page, "a traditional haven for cajoling, invective and hyperbole."

In dissent, Justice Clifford F. Brown called the ruling a "verbal orgy of nonsensical jargon" and accused the majority, two of whom had recently been elected to the court with the editorial support of the state's newspapers, of kowtowing to the news media.

Mr. Milkovich, once a robust, barrel-chested man, has grown pale and frail. His wife, whom he met at a wrestling match, is now in a nursing home, and Mr. Milkovich himself had triple bypass surgery a few weeks ago. He is too weak to go to Washington to hear the arguments in his case.

Mr. Milkovich goes to matches only rarely these days, fearful that he might get too excited and suffer the same fate as the father of one Maple Heights wrestler, who during one match not long ago had a heart attack and died. In a recent visit to the school gymnasium, whose air was thick with a compound of sweat and antiseptic and wet rubber, Mr. Milkovich counseled the young wrestlers only halfheartedly before giving up and sitting down. "I've had enough of it," he said. "I'm burned out." But he remains optimistic about the outcome - "They wouldn't have picked my case over 400 others if it was a hot-dog case," he said - and offered Mr. English some advice on how to handle the Justices. "Don't let 'em shout you down," he said.

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