

Long Island BusinessNEWS

APRIL 1-7, 2011 | VOL. 58 | NO. 14 | \$2.00 | libn.com

OFFPOINT

A setback for the Internet reputation-fixer industry



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There is no national shield law giving news organizations the right to protect their sources, so when federal grand jury testimony gets leaked or a CIA operative is outed, a judge may legally subpoena the reporter involved and demand names.

Good journalists refuse, of course, and are sometimes jailed. The really good ones emerge with a book deal.

Lacking a federal statute, 36 states – New York among them – have passed their own laws recognizing that a free press has a fundamental right to spill the beans with the help of people who'd rather not be named.

How broadly the protection extends, and to whom, is tested on a regular basis by state and local courts. Over the years, there have been assorted fines and jail time, including a recent five-month stint by a freelance video blogger.

In the most famous case of what's sometimes called reporter privilege, New York Times writer Myron Farber was convicted of contempt and sentenced to six months in jail in 1978 for refusing to turn over his notes on the "Dr. X" story, in which a physician was charged with killing patients at a New Jersey hospital. Farber served 40 days but was eventually pardoned by then-Gov. Brendan Byrne. The Times got back \$101,000 in fines. The doctor, by the way, was acquitted.

The issue came back to the fore last month, when an Indiana judge ordered The Indianapolis Star, local television station WRTV and the Indianapolis Business Journal to turn over informa-

tion on readers who had posted anonymous comments to the news organizations' websites. And, yes, Indiana has a shield law.

The ruling stems from a defamation lawsuit brought by Jeffrey Miller, the retired chief executive of Junior Achievement of Central Indiana, who alleges he lost out on a top city job because of rumors, maliciously spread, that he had misappropriated money at JA. Legal readers will recognize the terms "tortious interference with a business or contractual relationship" and "intentional infliction of emotional distress."

(They apparently take Junior Achievement pretty seriously out in the Heartland.)

The news organizations fought the judge's ruling, claiming rights to free press and free speech, but lost. They have begun turning over the identifying information, mostly Internet Protocol addresses from posters who commented anonymously.

Correctly, so, according to John McEntee, a libel expert at the Farrell Fritz law firm in Uniondale, who suggests that shield laws weren't designed to protect Internet posters.

"The laws give certain protections to the media to support the free flow of information and ideas," McEntee told me. "These people are piggybacking on the media, but they don't have the same status as you guys. These aren't journalists who are posting, they're sometimes people with an ax to grind, cyber bullies."

"It's like an anonymous letter to the editor," he added. "You wouldn't publish it without finding out who it's from and verifying the information."

Quite true, counselor, and yet anonymous postings to media Web pages are common. At libn.com, for example, we monitor comments and weed out the obscene and hateful, but don't demand real names or identifying email addresses.

In print, we always make such demands. Save for a few unruly posters to some of our online NASCAR stories, it hasn't been a problem. Our biggest posting issue by far is with computerized spam, not defamation, which in its written form is better known as libel.

The truth is, no laws exist on the rights of Internet journalists, and the industry's few self-imposed rules change often. We've tried to walk the razor's edge between the protection of reputation and what the Supreme Court has called "the profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open." So far, the courts have also generally extended that commitment to Web posters.

The Indiana decision doesn't really change that, but it sends the clear message that posters may be held legally accountable for their comments. The days of hiding behind an anonymous identity appear to be numbered.

As a result, we want to remind you that posters to libn.com are responsible for their comments. We will fight to protect your anonymity – especially if it leads to a book deal – but it is not guaranteed. We reserve the right to remove any post we feel is obscene, profane, vulgar, racist, sexually explicit, abusive or hateful. We'll also dump posts that insult, defame, threaten, harass or abuse other readers.

Posters may, of course, continue to do all of the above to me. I've learned to take it.



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