THE DEFAMATION OF A PUBLIC OFFICIAL

Freedom of expression on matters of public concern is a principle that is well established in American constitutional law and in the decisions of the United States Supreme Court. The right of an individual citizen to speak his mind on political issues is one which the founders of our country sought to protect by enacting the first amendment to the Constitution which ordains: "Congress shall make no law . . . abridging the freedom of speech, or of the press . . . ." 1 In speaking of this liberty in Stromberg v. California, the United States Supreme Court stated that the "opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means . . . is a fundamental principle of our constitutional system." 2 And in New York Times Company v. Sullivan, Mr. Justice Brennan expressed the basic rationale of the decision in the following words:

We consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehe- ment, caustic, and sometimes unpleasantly sharp attacks on government and public officials. 3

Problems arise when the constitutional safeguards guaranteeing free speech come into direct opposition with the established rules of the law of defamation. Either one or the other must prevail. Recent decisions of the United States Supreme Court have, in the interests of free speech, brought about some rather drastic changes in the law of libel insofar as it directly concerns public officials. It is the purpose of this comment to examine how these decisions have affected the law of defamation, to indicate the inadequacy of the rule enunciated in the New York Times and subsequent cases, and to discuss the effect of the decision on California law.

I

THE NEW YORK TIMES DECISION

Prior to 1964, the rule concerning defamation of public officials held by the majority of jurisdictions was that misstatements of fact were not privileged, and thus provided grounds for an action in libel. The majority of

1 U.S. Const. amend. I.
2 Stromberg v. California, 283 U.S. 359, 369 (1931). The freedom of speech and of the press guaranteed by the first amendment has been extended to the states through the due process clause of the fourteenth amendment. Bridges v. California, 314 U.S. 252, 270 (1941); Whitney v. California, 274 U.S. 357, 375-376 (1927) (concurring opinion).
state courts felt that the value to the community of information to the public was outweighed by the harm which could be caused to the reputations of men in public positions. Furthermore, it was feared that good men would be deterred from seeking office if misstatements of fact were considered privileged.\(^4\)

However, in 1964, this majority position was completely overthrown by the landmark case of *New York Times Company v. Sullivan* in which the Supreme Court held that under the first and fourteenth amendments to the Constitution a state could not award damages to a public official for defamatory falsehood relating to his official conduct unless the official proved actual malice—that the falsehood was published with knowledge of its falsity or with reckless disregard of whether it was true or false.\(^5\)

But who is a “public official”? The *Times* court expressly declined to answer this question.\(^6\) The extent of the privilege was not indicated, and no guidelines were laid down to aid other courts in interpreting the rule.

Four months after the *Times* decision, the defamation of a public official was again before the Supreme Court in *Garrison v. Louisiana*.\(^7\) Relying on the *Times* rule, the Court held that the constitutional guarantees of free expression apply in cases involving criminal as well as civil libel, and that therefore the non-malicious comments made by the defendant disparaging judicial conduct of eight judges in New Orleans were privileged. The Court reiterated the proposition established in *Times* that “where the criticism is of public officials and their conduct of public business, the interest in private reputation is overborne by the larger public interest secured by the Constitution, in the dissemination of truth.”\(^8\) A few comments were made on what “official conduct” might be the subject of criticism,\(^9\) but the Court again refrained from defining a “public official.”

In *Rosenblatt v. Baer*\(^10\) the Supreme Court again affirmed the rule enunciated in *New York Times* and finally attempted to provide guide-

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\(^4\) Post Publishing Co. v. Hallam, 59 Fed. 530 (6th Cir. 1893), was the leading case followed by the majority of courts. See Noel, *Defamation of Public Officers and Candidates*, 49 COLUM. L. REV. 875, 891 (1949) for a list of states following the majority viewpoint.


\(^6\) “We have no occasion here to determine how far down into the lower ranks of government employees the ‘public official’ designation would extend . . . , or otherwise to specify the categories of persons who would or would not be included.” New York Times Co. v. Sullivan, 376 U.S. at 283 n. 23.

\(^7\) Garrison v. Louisiana, 379 U.S. 64, 74, 79 (1964).

\(^8\) Id. at 72, 73.

\(^9\) “(A)nything which might touch on an official’s fitness for office is relevant. Few personal attributes are more germane to fitness for office than dishonesty, malfeasance, or improper motivation, even though these characteristics may also affect the official’s private character.” Id. at 77.

lines, albeit minimal, for defining the general classification of a "public official." In Rosenblatt the plaintiff, who was formerly employed by a county as supervisor of its recreation area, brought suit alleging that a column written by the defendant and published in the Laconia Evening Citizen contained defamatory falsehoods. The column was written during the first ski season after plaintiff's discharge from his position as supervisor of the area. The column made no express reference to plaintiff but did state that the recreation area was doing "hundreds of percent" better than the previous year and asked what happened to the income from the operation of the resort in previous years. The jury awarded damages to plaintiff but before an appeal was heard in the New Hampshire Supreme Court the United States Supreme Court decided New York Times Co. v. Sullivan. In affirming the judgment for plaintiff the New Hampshire Supreme Court held that the award was not barred by the New York Times decision and that it was not necessary for plaintiff to show actual malice in order to recover.

On certiorari the United States Supreme Court reversed the New Hampshire judgment and remanded for further proceedings. Mr. Justice Brennan delivering the opinion of the Court stated that the trial judge erred in his instruction authorizing the jury to award plaintiff damages without regard to evidence that the asserted implication of the column was made of and concerning him. Under the instructions given in the state court the jury was permitted to find that negligent misstatement of fact would defeat any privilege to discuss the conduct of government operations. Justice Brennan remarked that this was contrary to the test in Times and Garrison where it was stated that recovery by public officials for misstatements of fact could be allowed only when the statement was made with knowledge of its falsity or with reckless disregard of whether the statement was true or false.

The Rosenblatt decision again applies the good-faith privilege when the individual bringing suit is a "public official," but, like Times and Garrison, the Court does not precisely determine who is included in the classification of "public officials." Rosenblatt left open the possibility that plaintiff could have adduced proof that he was not a "public official" and

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11 "This year, a year without snow till very late, a year with actually few very major changes in procedure; the difference in cash income simply fantastic, almost unbelievable." Id. at 78.


13 "(N)o explicit charge of speculation was made; no assault on the previous management appears. The jury was permitted to award damages upon a finding merely that respondent was one of a small group acting for an organ of government, only some of whom were implicated, but all of whom were tinged with suspicion. In effect, this permitted the jury to find liability merely on the basis of his relationship to the government agency, the operations of which were the subject of discussion." Rosenblatt v. Baer, 383 U.S. 75, 82 (1966).
that his claim would therefore have been outside the *New York Times* rule. Justice Brennan's instructions to the trial court suggest that if plaintiff was not a "public official" the statements would not be privileged regardless of their public nature.14 While *Rosenblatt*, like *Times*, does not expressly define the term "public official," the *Rosenblatt* decision does set out the underlying basis for the *Times* rule:

Criticism of government is at the very center of the constitutionally protected area of free discussion. Criticism of those responsible for government operations must be free, lest criticism of government itself be penalized. It is clear, therefore, that the public official designation applies at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs. . . . Where a position in government has such apparent importance that the public has an independent interest in the qualifications and performance of the person who holds it, beyond the general public interest in the qualifications and performance of all government employees, . . . the *New York Times* malice standards apply.15

Thus, in the decision of *Rosenblatt v. Baer* the Supreme Court reiterated the proposition established in *New York Times Company v. Sullivan* that misstatements of fact concerning public officials must be made with malice to be actionable. The federal constitutional rule thus established by these two cases supersedes what was formerly the rule in the majority of jurisdictions which had been that both negligent and malicious misstatements of fact gave rise to a cause of action.16

II

**WHO IS A "PUBLIC OFFICIAL"?**

Even after the decisions in the *Times* and *Rosenblatt* cases the problem still remains: Who is a "public official"? Should the rule extend only to candidates for public office and elected or appointed public officials, or should it include any public figure? In short, should the rule established be confined to the political arena or should it extend to include matters of public concern?

As indicated above, the *New York Times* case expressly refrained from making any determination whatsoever on the extent of the rule.17 And

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14 Id. at 87–88.
16 See note 4, supra; Annot., 110 A.L.R. 393, 412 (1937); Annot., 150 A.L.R. 348, 358 (1944).
17 See note 6 supra.
although an exact definition of a "public official" does not appear in the Rosenblatt decision, minimum guidelines were set down and the possibility of future expansion of the rule was recognized. As Justice Brennan stated:

It is clear, therefore, that the "public official" designation applies at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of government affairs.18 (Emphasis added.)

The privilege to make good-faith misstatements of fact concerning official conduct is therefore limited to matters involving governmental conduct. The whole tone of the Rosenblatt decision suggests that if the plaintiff is not a public official negligent misstatements of fact concerning him will provide grounds for a cause of action for defamatory falsehood, regardless of public concern.19 If the defendant fails to establish that the plaintiff was a "public official" he will be liable even though the good-faith comments he made concerned a matter in which a majority of the public may have an interest. It is here submitted that the privileges should not be limited to a "public official" situation but should be expanded to include cases where the subject of comment is a matter of public concern.

Many courts and commentators have attempted to establish when a privilege should be accorded to misstatements of fact concerning public men.20 The "absolutist" position has been frequently advocated by Mr. Justice Black who concurred in separate opinions in both the New York Times and Rosenblatt cases. Justice Black would extend an absolute privilege to anyone who chose to attack a public official on the ground that all libel and slander laws violate the constitutional protections of the first amendment. Speaking of the publication in the Rosenblatt case, Justice Black stated that it was this very kind of publication that the New York Times rule was adopted primarily to protect.

Unconditional freedom to criticize the way such public functions are performed is . . . necessarily included in the guarantees of the First Amendment. And the right to criticize a public agent engaged in public activities cannot safely . . . depend upon whether or not that agent is arbitrarily labeled a "public official" . . . An unconditional right to say what one pleases about public affairs is . . . the minimum guarantee of the First Amendment.21

Justice Black thus solves the problem of who is a public official in a very simple manner: he believes that all libel laws infringe upon the constitu-

19 See Note, 75 Yale L. J. 642, 651 (1966).
20 For some examples where the "public official" designation has, and has not, been applied, see Note, 18 Vand. L. Rev. 1429, 1443-1444 (1965); Bertlesman, Libel and Public Men, 52 A.B.A.J. 657 (1966); Note, 15 De Paul L. Rev. 376 (1965); Note, 30 Albany L. Rev. 316 (1966); Note, 34 Fordham L. Rev. 761 (1966).
tional liberties of free speech and press and that therefore they should be barred in both federal and state courts. The absolute privilege doctrine advocated by Justice Black has met with strong criticism, and as one commentator has put it, to adopt his view is tantamount to holding that "a completely open season on public officials would best serve the public interest. Fabricated charges of embezzlement of public funds, of bribery, of espionage for a foreign power, could be made freely and without legal accountability under this view." Few courts or commentators would carry the guarantees of the first amendment as far as this, nor would the majority in Rosenblatt v. Baer. While the Supreme Court has only applied the privilege to make good-faith misstatements of fact to cases involving those responsible for the conduct of governmental affairs the door has been left open to expand the privilege in future decisions and it is here submitted that the dictates of public interest demand such an expansion.

What direction should this expansion take? While it does not appear that our highest court is going to abolish the laws of libel, the privilege should be extended beyond the narrow class of public officials so that it includes matters of public concern as well. What appears to be an intelligent analysis of the whole problem is contained in the majority opinion written by Justice Burch for the Kansas Supreme Court in Coleman v. MacLennan, the leading case expressing what was heretofore the minority view. It was this case which Mr. Justice Brennan relied upon in formulating the New York Times rule, though Justice Brennan did not adopt all of its tenets. The Kansas court felt that

... the correct rule, whatever it is, must govern in cases other than those involving candidates for office. It must apply to all officers and agents of government, municipal, state and national; to the management of all public institutions—educational, charitable and penal; to the conduct of all corporate enterprises affected with a public interest ... and to innumerable other subjects involving the public welfare.

Thus the Kansas court would consider privileged any communication made in good faith upon any subject in which the party communicating had an interest or duty—public or private, legal, moral or social. The constitutional privilege, therefore, should not be limited to cases involving "public officials" but should include matters of public concern as well.

22 Id. at 95.
24 "This conclusion does not ignore the important social values which underlie the law of defamation. Society has a pervasive and strong interest in preventing and redressing attacks upon reputation." Rosenblatt v. Baer, 383 U.S. 75, 86 (1966).
26 Id. at 735-736.
Federal and state decisions since 1964 indicate the difficulty encountered because of the indefiniteness of the rule expounded in *Times* and *Rosenblatt* and the need for the establishment of uniform guidelines to govern the application of this privilege. Some courts have rigidly followed *Times* and do not apply the privilege unless the plaintiff may in some way be designated a "public official." Other courts, adopting the reasoning of Judge Burch in the *Coleman* decision, have expanded the *Times* rule to include matters of public interest and public figures, and it is submitted that these latter cases represent the best solution to the extent of the *Times* rule.

III

RECENT DECISIONS

A brief analysis of defamation cases decided since *New York Times Company v. Sullivan* could be instrumental in formulating the extent of the privilege accorded by that decision. For purposes of discussion, these cases may be classified into three general groups: 1) those which have refused to recognize the privilege where the plaintiff is merely a public figure and not a public official; 2) those which have applied the *Times* rules where the plaintiff, though not a public official, is closely associated with a public official; and 3) those cases in which the plaintiff has voluntarily pressed his views upon the public concerning a matter of public concern.

Of the first group of cases, *Associated Press v. Walker*27 and *Curtis Publishing Co. v. Butts*28 are representative. In the *Associated Press* case a well-known former general brought suit for libel against a newspaper association for reporting that he had led a charge of students against federal marshals and had assumed command of a crowd in riot at the University of Mississippi campus. The Texas Court of Civil Appeals affirmed a judgment for plaintiff, adopting as its rationale the pre-*Times* majority view (as espoused in *Post v. Hallam*29) that only statements of opinion, and not of fact, were privileged. The Texas court apparently considered the *New York Times* rule inapplicable because the plaintiff was not a "public official." And in the *Curtis Publishing Co.* case a football coach secured a libel judgment in the United States Court of Appeals for the Fifth Circuit against a national magazine which published an article stating that he collaborated with another coach to fix a football game. The case never reached the *Times* rule because it was held that defendant waived any defense on constitutional issues (thereby waiving the *Times* defense) by failing to raise objections at the trial level. However, the

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28 351 F.2d 702 (5th Cir. 1965).
court pointed out that it did not regard the plaintiff, an employee of a state university, as a public official within the meaning of the New York Times decision.\textsuperscript{30}

In the second group of cases mentioned above the courts have extended the Times rule to situations where the plaintiff, though not a public official, is so closely associated with a public official that the rule can be said to apply to him. Pearson v. Fairbanks Publishing Company\textsuperscript{31} and Gilberg v. Goffi\textsuperscript{32} are examples of this limited extension of the Times rule. The Pearson case held that a newspaper columnist who advocated the cause of a senatorial candidate could not sue for libel under the Times rule unless actual malice was shown. The reason given was that plaintiff occupied the same standing in law as the senatorial candidate whose cause he was publicly supporting. Similarly, in Gilbert v. Goffi the defendant made charges of conflict of interest against a candidate for mayor on the ground that the candidate was a member of a law firm that practiced in the municipal courts of the city. Plaintiff, the candidate's law partner, sued for libel alleging that the editorial derogated his professional integrity. The court invoked the Times rule and held that plaintiff's action was "so closely related to criticism of a public official that the Times case is determinative."\textsuperscript{33}

In the above cases, whether or not plaintiff was a "public official" or closely associated with such official was a determinative factor in the ultimate decision. However, two recent cases have abandoned the "public official" test and instead have applied a "public figure" or "public concern" test. In so doing, these cases have stated excellent guidelines for future application of the New York Times rule.

In the first of these cases, Pauling v. National Review, Inc.,\textsuperscript{34} plaintiff, winner of the Nobel Prize for chemistry and the Nobel Peace Prize, brought a libel action against the corporate owner, the individual publisher and the editor of a national periodical for an article to the effect that plaintiff was un-American and a Communist sympathizer. The complaint was dismissed directly on the doctrine of New York Times Co. v. Sullivan

\textsuperscript{30} Curtis Publishing Co. v. Butts, supra note 28, at 712–713 n. 23. One judge dissented, believing that defendant could not have waived a constitutional right which had not been enunciated at the time; see 351 F.2d 702, 723–724 (dissenting opinion). For cases which have not invoked the Times rule, see: Youssoupoff v. C.B.S., Inc., 48 Misc.2d 700, 265 N.Y.S.2d 754 (Sup. Ct. 1965) (assassination of Rasputin); Spahn v. Julian Messner, Inc., 43 Misc.2d 219, 250 N.Y.S.2d 233 (1964), aff'd 260 N.Y.S.2d 451 (1965) (fictional biography of a baseball player); Dempsey v. Time, Inc., 43 Misc.2d 754, 252 N.Y.S.2d 186 (1964), aff'd 254 N.Y.S.2d 80 (1964) (alleging that a former professional boxer cheated to win his title).


\textsuperscript{33} Id. at 825.

\textsuperscript{34} 269 N.Y.S.2d 11 (1966).
which had been decided after suit was initiated but before this decision was rendered. The New York Supreme Court expressly pointed out that neither Times nor Rosenblatt limited the privilege to make good-faith misstatements of fact to just those cases which involved "public officials" and that therefore the court was justified in expanding the rule to include those who have voluntarily placed their opinions and actions before the public. The court held, therefore, that when a "private citizen has, by his conduct, made himself a public figure engaged voluntarily in public discussion of matters of grave public concern and controversy . . ." then such citizen cannot recover for defamatory falsehood unless it is proven that the statement was made with knowledge of its falsity or with a reckless disregard of whether it was false or not.

A similar conclusion was reached in Walker v. Courier-Journal and Louisville Times Company, Inc. The plaintiff, again General Walker, sought judgment for libel against a newspaper and a radio and television station for comments made by those media in reliance on reports released by the Associated Press. In dismissing the complaint the District Court held that by virtue of the Times decision the freedom of expression had superseded the law of libel in matters of "grave national interest." The court recognized that Walker was not a "public official" within the meaning of the Times decision. However, the language of the Kansas Supreme Court in Coleman v. MacLennan was quoted with approval in arriving at the conclusion that if the matter were one of public concern the privilege should be recognized. In a concise summary the District Court held:

. . . [T]he Supreme Court of the United States has served clear notice that the broad Constitutional protections afforded by the first and fourteenth amendments will not be limited to "public officials" only, for to have any meaning the protections must be extended to other categories of individuals or persons involved in the area of public debate or who become involved in matters of public concern.

One of the functions of the first amendment is to protect freedom of speech and of press on all matters in which there is some element of public participation. In January of 1967, the United States Supreme Court,

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40 "This privilege extends to a great variety of subjects and includes matters of public concern, public men, and candidates for office." Coleman v. MacLennan, 78 Kan. 711, 714, 98 Pac. 281, 285 (1908).
perhaps recognizing the conceptual difficulties in the "public official" limitation, moved in the direction of expanding the constitutional privilege. In *Time, Inc. v. Hill*, Mr. Justice Brennan stated:

We hold that the constitutional protections for speech and press preclude the application of the New York statute to redress false reports of matters of public interest in the absence of proof that the defendant published the report with the knowledge of its falsity or in reckless disregard of the truth.

The Supreme Court, then, has apparently recognized that the privilege to make good faith misstatements of fact applies whenever the matter involved is of grave public concern and legitimate public interest. The reasoning of the Kansas Supreme Court in *Coleman v. MacLennan*, in holding that the privilege exists where the subject involves important matters of public concern, should therefore be explicitly adopted as establishing the extent and limits of the constitutional privilege.

IV

DEFAMATION IN CALIFORNIA

In California the cases involving defamation of a public official have concerned themselves more with an interpretation of Civil Code §47(3) than with the constitutional basis for affording a privilege to a good faith communication concerning a public official or public figure that is a misstatement of fact. The Civil Code provides:

A privileged publication or broadcast is one made . . . 3. in a communication, without malice, to a person interested therein, (1) by one who is also interested, or (2) by one who stands in such relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent, or (3) who is requested by the person interested to give the information.

The whole problem, therefore is resolved somewhat differently in California, but several similarities to the *Times* and *Rosenblatt* decisions may be found in the California cases. The leading California case on the subject is *Snively v. Record Publishing Company*. It was there decided that

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45 "Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press." Cal. Const. art. I, §9. See Albany v. Meyer, 99 Cal.App. 651, 279 Pac. 213 (1929).
47 Snively v. Record Publishing Co., 185 Cal. 565, 198 Pac. 1 (1921). This decision expressly overruled Jarmen v. Rea, 137 Cal. 350, 70 Pac. 216 (1902), and Daphiny v. Buhne, 153 Cal. 757, 96 Pac. 880 (1908), wherein it had been stated that a false statement of fact concerning a candidate for office was not privileged.
the privilege provided by Civil Code §47(3) which protects communications concerning the acts of a public officer was not lost merely because the charge complained of was false. Since under California law a libel is defined as a "false and unprivileged communication," the court held that a publication had to be both false and unprivileged in order for it to constitute actionable libel. The language of the Civil Code was said to imply that a publication concerning a public official would be privileged even if untrue if made without malice.

The underlying rationale of the Civil Code section and of the Snively decision was expressed some six years after the Snively case in Jones v. Express Publishing Company which also concerned public officials:

The doctrine of privileged communications rests primarily upon public policy. Under the proper circumstances the interest and necessities of society become paramount to the welfare or reputation of a private individual, and the occasion and circumstances may for the public good absolve one from punishment, even though they may be false.

In language remarkably similar to that of the Kansas Supreme Court in Coleman v. MacLennan the court further stated that it was the duty of every citizen to fairly and impartially criticize the faults of public officers which impair their usefulness for the office which they seek or hold.

While the preponderance of California cases interpreting Civil Code §47(3) have been concerned with public officials and candidates for office, the California courts have not limited the privilege of good-faith misstatements of fact to criticism of public officials only. On the contrary, a close analysis of Civil Code section and representative cases interpreting that section seem to indicate that the California courts have applied the very test advocated in the first part of this comment—viz., that a privilege should be found whenever the matter involved is one of "public interest." In such cases actual malice must be proven and malice is defined as a publication made "with knowledge of its falsity or without an honest belief

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51 Coleman v. MacLennan, 78 Kan. 711, 98 Pac. 281 (1908).
52 Supra note 50.
in its truth or without reasonable grounds for believing it to be true. . . ." 54

A privilege to make good-faith misstatements of fact concerning those responsible for various aspects of the state educational system has been recognized on several occasions. Thus in Heuer v. Kee 56 a non-malicious publication falsely stating that a schoolteacher had mistreated one of her students was held to be privileged. An in Everett v. California Teachers Association 58 plaintiff, the acting superintendent of a school district, sued the defendant for libel in publishing a report which was critical of his qualifications for his position. The court, in dismissing the complaint, stated: "A publication seeking to convey pertinent information to the public in matters of public interest comes within the purview of the privilege in Civil Code §47(3)." 57 It is admitted that in both of these cases the court could possibly have made an argument for classifying the plaintiffs as "public officials" since both of them were paid by the county school districts. However, "public interest" or "public concern" was the test applied rather than that of a "public official."

Cases and controversies involving disputes among members of labor unions have led to frequent application of the privilege accorded by Civil Code §47(3), and especially sub-section (1) which provides that a privileged communication is one made without malice "to a person interested therein by one who is also interested." 58 Thus in Jeffers v. Screen Extras Guild, Inc., 59 the court held that a labor union was an association of persons with a common interest and that therefore non-malicious statements concerning the manner in which the union was being operated were privileged by the Civil Code. And in DeMott v. Amalgamated Meat Cutters 60 it was stated: "Statements made without malice wholly within the ranks of a labor union during a dispute between contending factions over union policies and administration . . should be regarded as privileged." 61

The privilege in the Civil Code has been recently applied to still other areas. In Maidman v. Jewish Publications, Inc. 62 a lawyer brought suit on

54 Noonan v. Rousselet, 239 Cal.App.2d 447, 453, 48 Cal.Rptr. 817 (1966). The court admitted that the California test for "actual malice" was not as stringent as the test established in New York Times.

an article which charged him with deliberately misleading the court in a previous trial. The California Supreme Court relied on *Jones v. Express Publishing Co.* in holding that it was the privilege of every citizen and every newspaper to comment on the conduct of public officials and that statements of opinion, although of a defamatory nature, were privileged under Civil Code §47(3). Emphasis was placed upon the fact that Maidman held a position of importance in the Jewish community and that comment about his qualifications was a matter of legitimate interest to the members of that community.

In one of the most recent California cases on the subject, *Williams v. The Daily News Review,* it was stated that under §47(3) of the Civil Code matters of public interest and comment thereon were privileged whether the publication was in the form of an opinion or was a false statement of fact. The privilege was not limited solely to cases involving "public officials." Rather, the privilege was said to apply where the subject matter of the article was "determined to be of public interest or the defamed individual of renown among a certain interested group." Here the alleged libel concerned a report charging contractors with tardiness in a street paving job and this was considered of sufficient public interest to come within the scope of the privilege.

Thus, California courts seem inclined to extend the "comment" privilege to include good-faith misstatements of fact about a person who is a "public figure," or a matter which is of public interest.

*John Alkazin*

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66 *Id.* at 417.
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