

Libel–Proofing for Copy Editors

o Charles DeLaFuentes

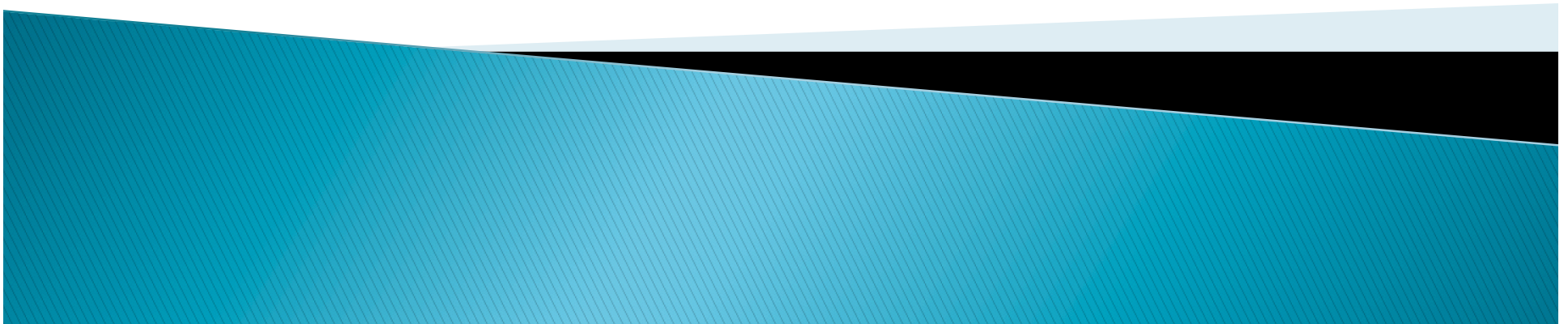
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What is Libel?

- ▶ It's a false (as in erroneous or inaccurate or maybe misleading) statement about a person – or a company – that harms the subject's reputation.
 - Reputation: Hold that thought for a moment
- ▶ The plaintiff doesn't even have to be named in the article, if it's reasonably clear whom the report referred to



What is Libel?

- ▶ Libel can crop up anywhere, print or online
 - A crime story about a confession
 - A restaurant review
 - A headline over a photo caption
 - Misplaced or muddy attribution
- ▶ Let's define what we're talking about
- ▶ Then we'll look at some examples

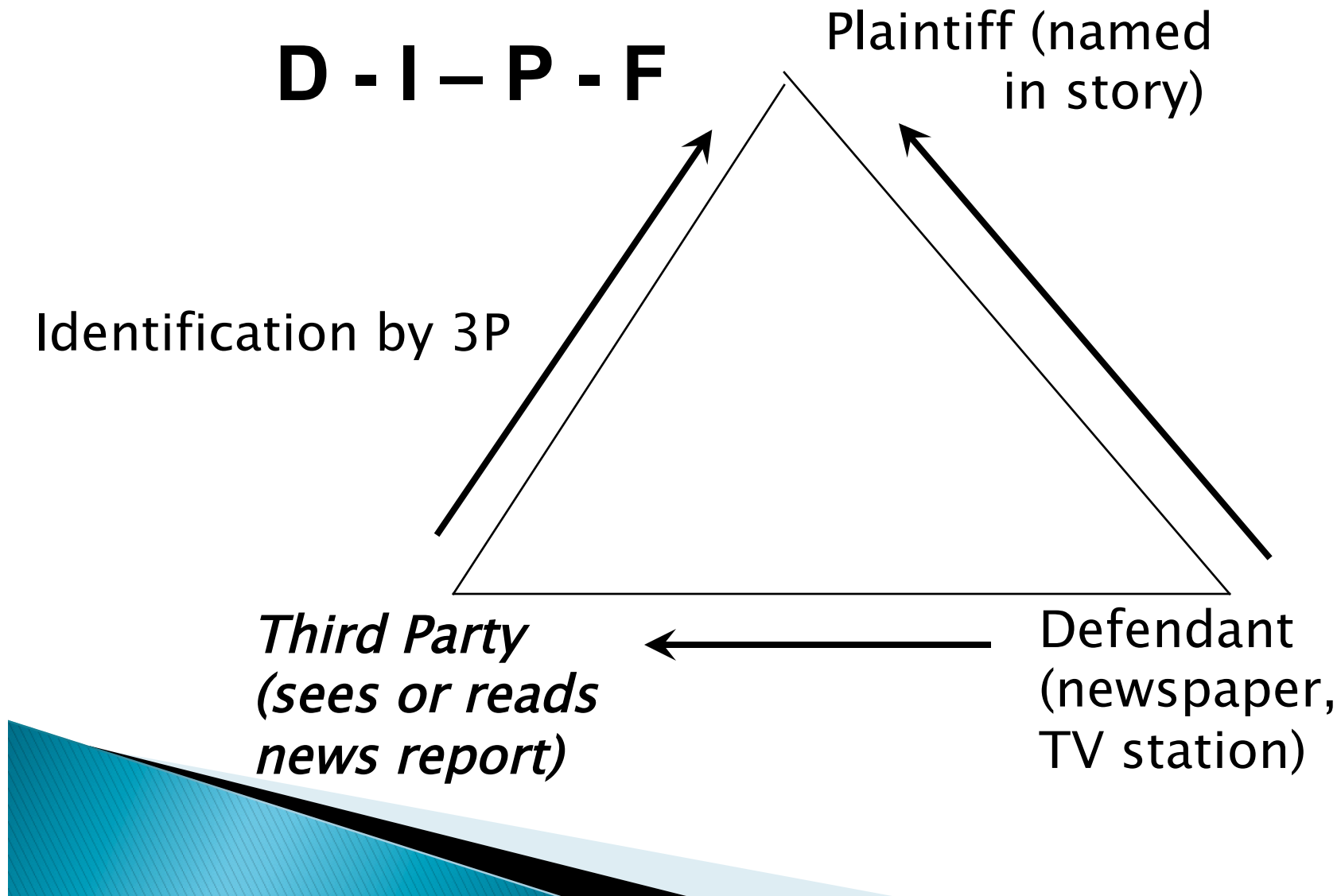


What is Libel?

- ▶ Most libel pertains to
 - Criminal activity
 - Character and honesty
 - Professional competence
 - Political, religious, racial matters
- ▶ It's what the legal system calls a tort — no different than a car crash that injures another person



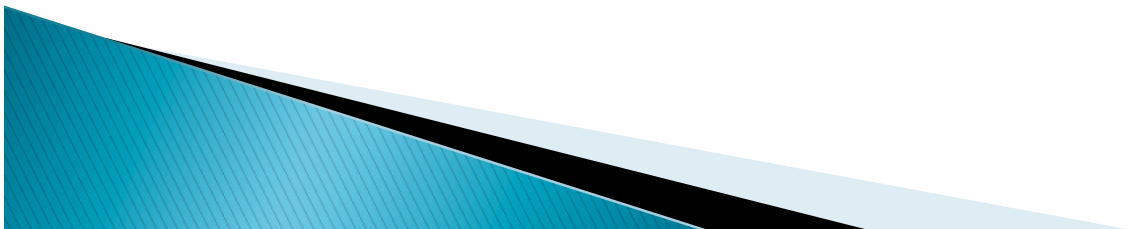
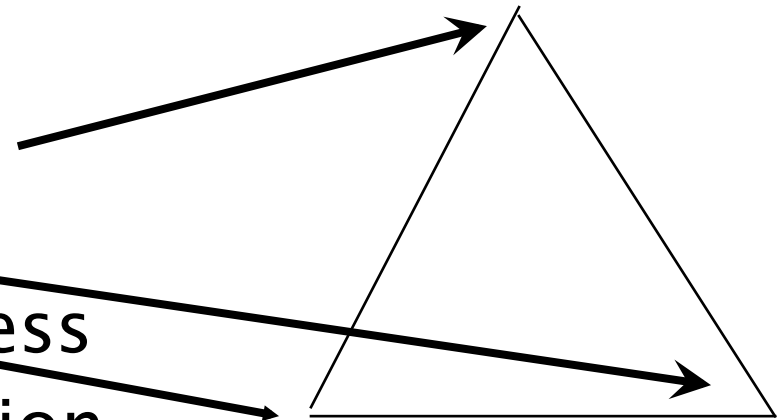
What Libel Looks Like



What Libel Looks Like

For libel to occur, three parties are required:

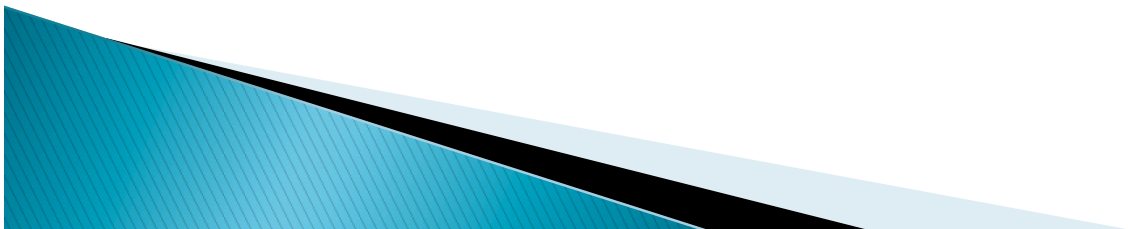
1. The target of the libel
2. The libeler
3. Someone who thinks less of the target – reputation



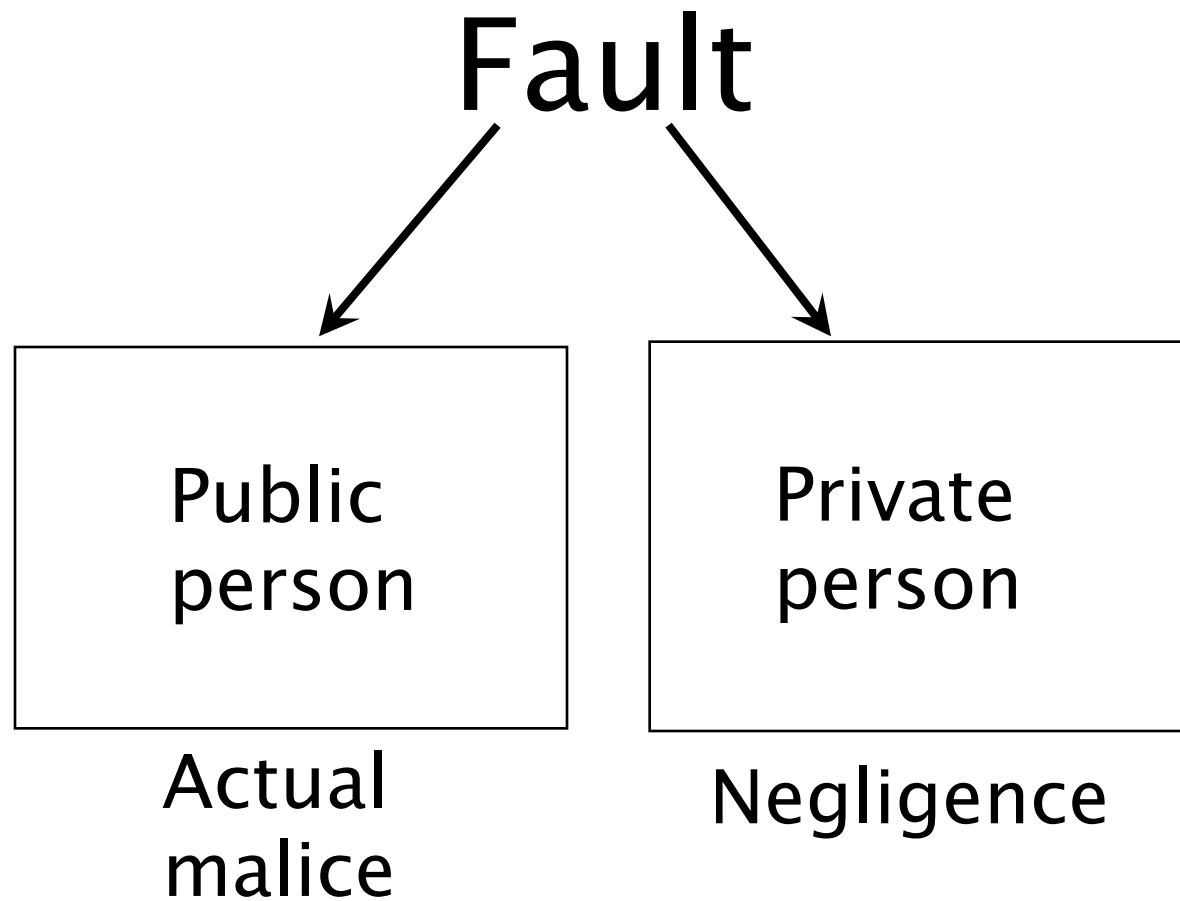
What the Plaintiff Has to Prove

▶ **Do – It – Pretty – Fast**

- Defamatory words
- Identification:
 - The communication concerned the plaintiff
- The statement was published
- Fault:
 - Actual malice
 - Negligence



The Fourth Element: Fault



Fault

- ▶ If the plaintiff is a public official or public figure, the plaintiff will have to prove the defendant committed **actual malice**
 - Harder to win case
- ▶ If the plaintiff is a private figure, the plaintiff will have to prove the defendant was **negligent**
 - Easier to win case



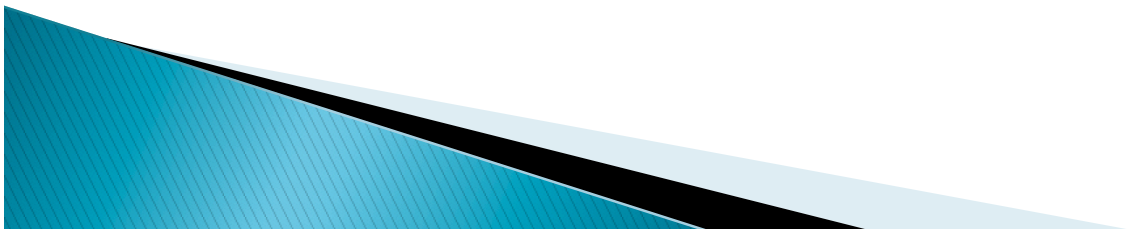
Fault

▶ ACTUAL MALICE

- The defendant knew the story was false but printed it anyway. OR
- The defendant published it and didn't care whether it was true or false

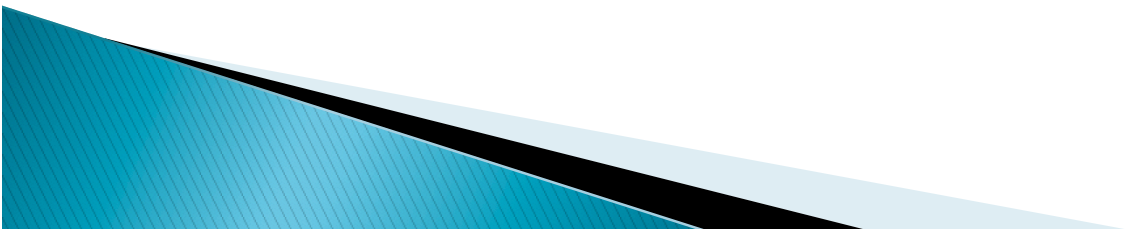
▶ NEGLIGENCE

- The defendant was careless while writing and editing the story for publication

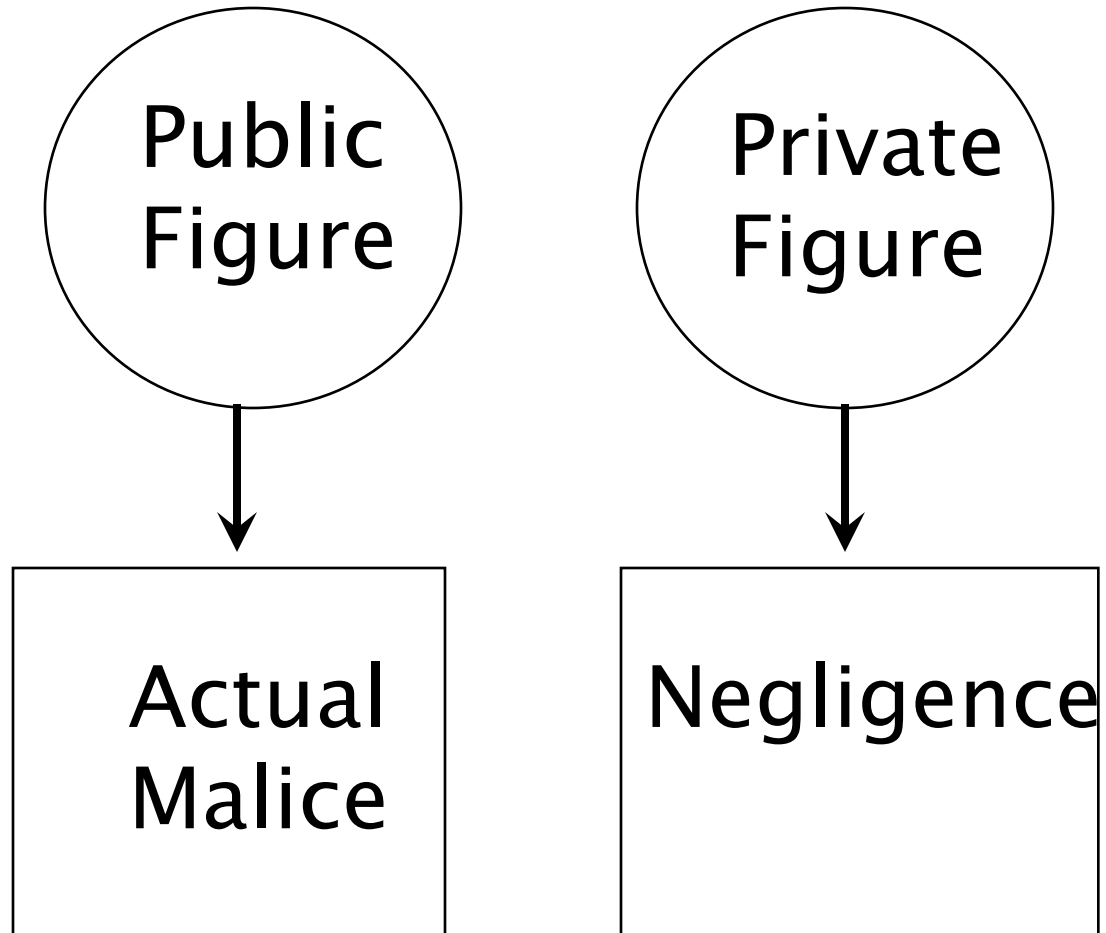


Fault

- ▶ ACTUAL MALICE = MURDER
- ▶ NEGLIGENCE = MANSLAUGHTER



Fault



New York Times v. Sullivan (1964)

- ▶ Before *Sullivan*: If the statement is true, then no libel
- ▶ After *Sullivan*: The actual malice standard
 - We posted/printed the story & we knew it was false
 - We didn't care whether it was true or false when we posted/printed it
- ▶ Best advice: Forget about *Sullivan*



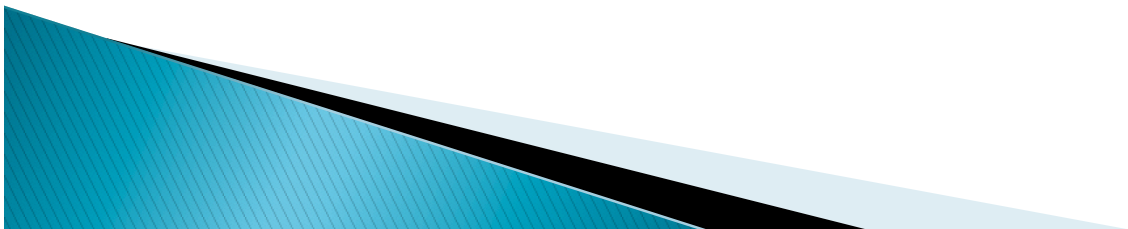
New York Times v. Sullivan (1964)

- ▶ A public official has to show more than that a statement was false in order to win a libel case
- ▶ Actual malice
 - A misnomer, because the court wasn't using the word malice like we do — spite or ill will



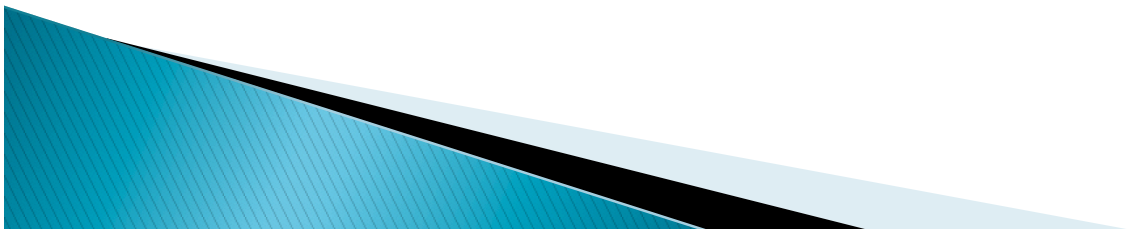
New York Times v. Sullivan

- ▶ Malice — hence libel — occurs against a public official only if
 - The defendant knew it was wrong when it was published
 - Or, the defendant didn't care whether it was wrong when it was published



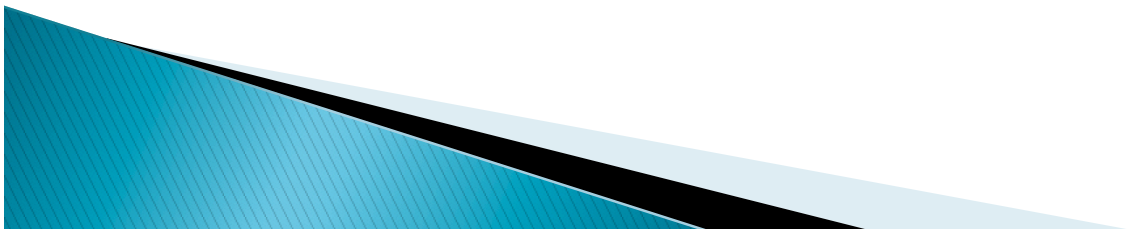
New York Times v. Sullivan

- ▶ The doctrine applied only to public officials
- ▶ Later, it was applied to people in the news, to all public figures
- ▶ It does not apply to private citizens, who do not have to show malice



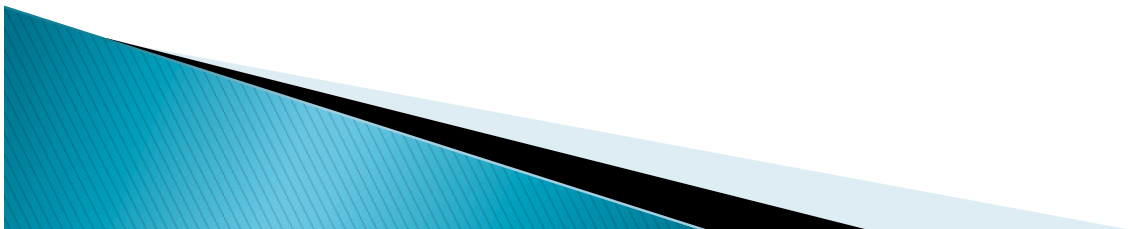
New York Times v. Sullivan

- ▶ Now that you've heard about Sullivan, forget about it
- ▶ Actual malice is a wonderful concept for libel lawyers & publishers, but not for reporters & editors
- ▶ We're here to make sure that false statements don't get into print
 - Then we'll never need to rely on the actual malice defense



Defense: Truth

- ▶ The best & oldest defense in a libel case, of course, is that the statement is true
- ▶ Truth prevails over damage to reputation
 - No matter how harmful the statement is



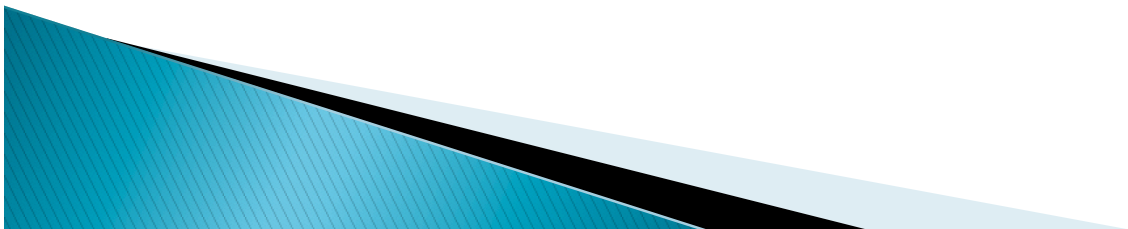
Defense: Fair Comment/Opinion

- ▶ An opinion can't be libelous
- ▶ The tricky part is that the courts don't divide fact and opinion the way many journalists do



Defense: Fair Comment/Opinion

- ▶ A statement, in a restaurant review, that the food is barely edible, is opinion – no libel
- ▶ A statement in that same column that the kitchen is riddled with roaches is libelous if the kitchen doesn't have roaches
 - That's a statement of fact, even though it's in an opinion column



Defense: Fair Comment/Opinion

- ▶ “A man was convicted yesterday of raping a 6-year-old girl at knifepoint under a roller coaster in a busy amusement park. The despicable defendant faces life in jail when he is sentenced next month.”



Defense: Fair Comment/Opinion

- ▶ Most of you would delete the unattributed despicable
 - That's good journalism
- ▶ But if it stays in, it's not libelous.
 - Despicable is opinion, not fact
 - Our profession doesn't allow that in the news columns
- ▶ But the courts don't care where opinion appears
 - (On the other hand, if the lede said that the man "was arrested yesterday on charges of," despicable would be a problem.)



Defense: Official Proceedings

- ▶ Another defense worth mentioning, available in most states, is that the libelous statement is within an accurate report of official proceedings
 - Also known as qualified privilege



Defense: Official Proceedings

**Absolute
Privilege**

Applies to
the speaker



**Qualified
Privilege**

Applies to
a reporter
repeating
what the
speaker
said

The key: These are two different people!



Defense: Official Proceedings

Absolute Privilege

- o Members of Congress
- o Legislators
- o City council members



Qualified Privilege

Applies to a reporter repeating what the speaker said

The key: These are two different people!



Defense: Official Proceedings

**Absolute
Privilege**



**Qualified
Privilege**

At a trial:

- o Judges
- o Lawyers
- o Witnesses

Applies to
a reporter
repeating
what the
speaker
said

The key: These are two different people!



Defense: Official Proceedings

Absolute Privilege

- o Government administrators
- o Police officers & arrest reports

Qualified Privilege

Applies to a reporter repeating what the speaker said

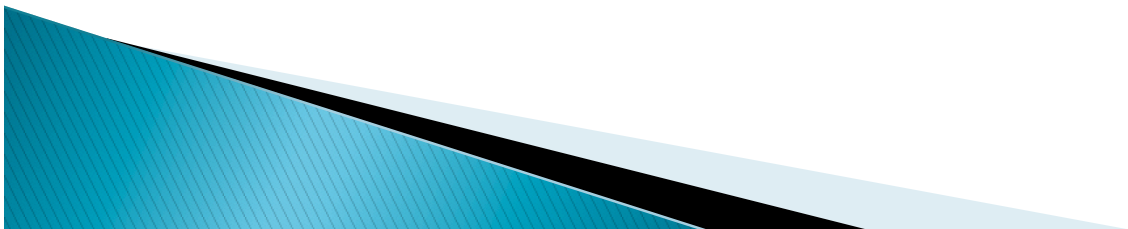
The key: These are two different people!



Defense: Official Proceedings

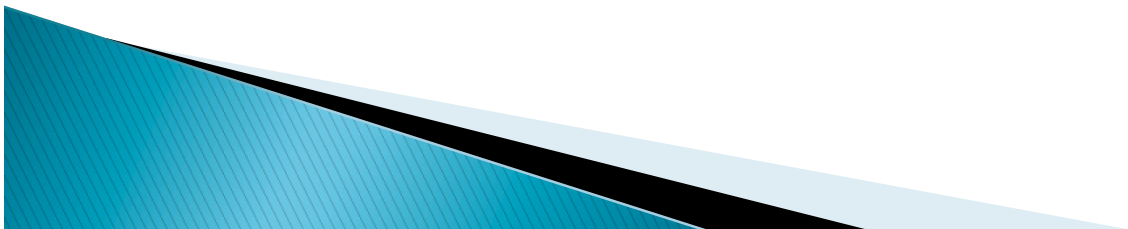
- ▶ **Absolute Privilege:**

- If A testifies in court that B is a murderer, a report to that effect is not libelous
- If A makes the same statement only on the courthouse steps, it's not protected



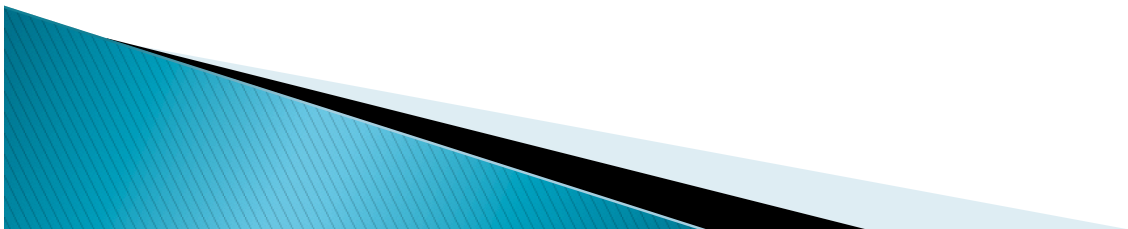
Defense: Official Proceedings

- ▶ Qualified Privilege:
 - B may well choose to sue A, and not the newspaper, but might sue the newspaper as well
- ▶ In a high-profile trial, there's no way not to print the statement made out of court
- ▶ But even then — and certainly in a low-profile trial — it's worth running the statement past a libel lawyer



Defense: Official Proceedings

- ▶ No protection is available based on a fair and accurate report of an official proceeding, a newspaper can be liable for reporting a libelous statement made by someone else
- ▶ In a high-profile story, reporting such statements may be unavoidable
- ▶ Again: Ask a lawyer



Communications Decency Act

- ▶ Emerging issue: Liability for publication of outsiders' comments on a Web page
- ▶ The Act appears to protect Web sites from libelous comments made by third parties
- ▶ A plaintiff's lawyer may argue some day that giving out this immunity is an unconstitutional taking of the plaintiff's reputation
 - The law may be void because it violates the Constitution



Defenses to Forget

- ▶ You can't libel the dead
- ▶ The descendants can't successfully sue over the statement "Lincoln was a philanderer."
- ▶ You still want to ask:
 - "Who says?"
 - "Are we sure"
 - "Is there a historian who might dispute this?"



Defenses to Forget

- ▶ Group libel
 - Neither an individual nor a group can successfully sue for the statement “used-car salesmen are thieves”
 - The statement doesn’t affect a specific person
- ▶ Our vigilance should still have either kept it out, or attributed it
 - Then provide a response



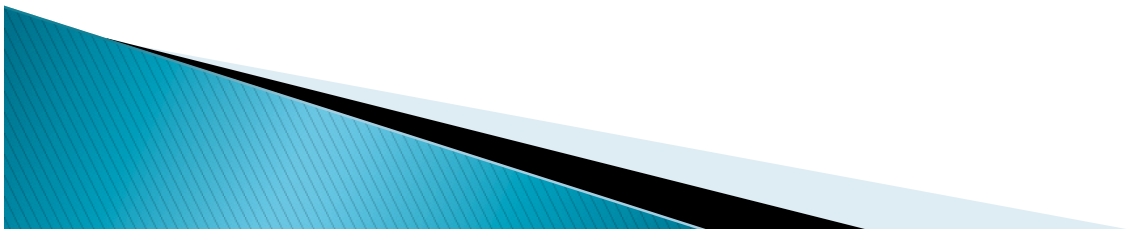
Who Said? errors ...

- ▶ Unattributed fact
- ▶ Accepted fact
- ▶ Induced reliance
- ▶ Lurking libel
- ▶ Peripheral libel



Other five sins

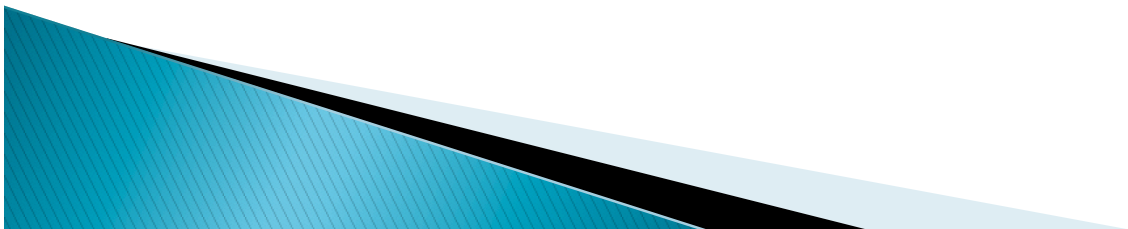
- ▶ Plain error
- ▶ Implication
- ▶ Tone
- ▶ Ambiguity
- ▶ Headlines



Unattributed facts

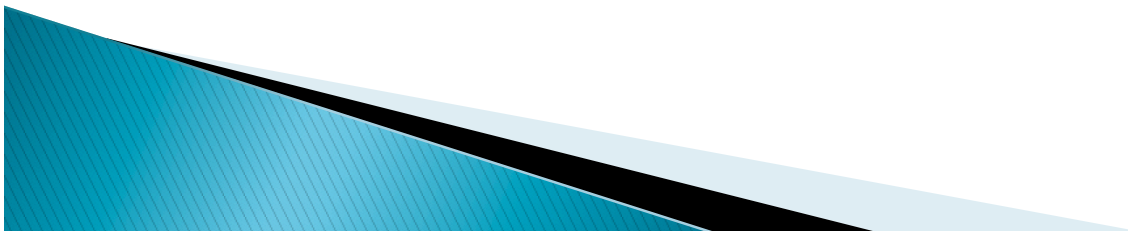
An upscale version of Thelma and Louise has been sued by a real estate broker for posing as wealthy apartment buyers to pilfer diamonds and other items from Manhattan pads.

While touring the multimillion-dollar apartments, the team would take turns distracting the brokers, swiping everything they could get their sticky little fingers on.



Unattributed facts

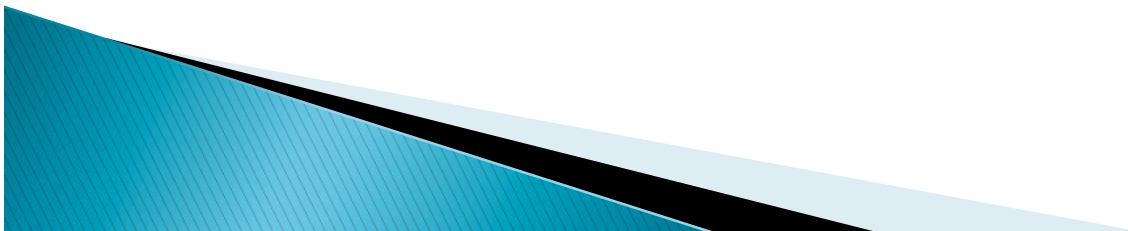
Spirited out of Guantanamo Bay in the dead of night, an al Qaeda henchman fidgeted and smiled in a Manhattan courtroom yesterday as he was charged in a pair of deadly bombings.



Unattributed facts

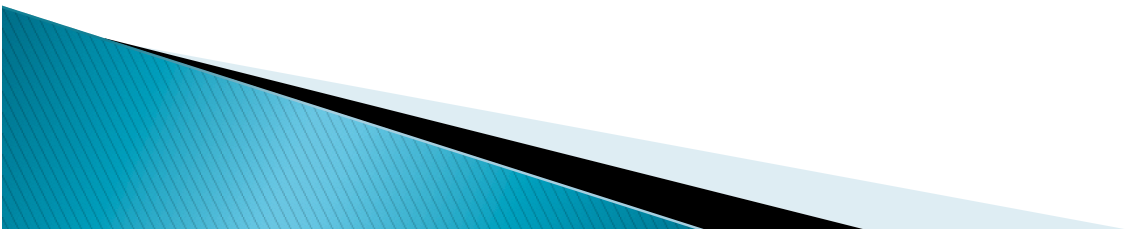
A driver was charged with drug possession after police found 51 bags of cocaine in his underpants.

The district attorney's office said the driver was arrested after police pulled him over for several traffic violations. After patting him down, they discovered the drugs.



Unattributed facts

CHECKPOINT: Police officers set up a drunken-driver checkpoint yesterday. The officers check every fifth car that passes through the checkpoint, handing out pamphlets and asking drivers if they have been drinking. Officers give a man a sobriety test in the background. The man was found to be impaired and taken into custody.



Unattributed facts

A police sergeant shot and wounded a 27-year-old man who ran a stop sign and then tried to drive away after he was pulled over, the police said. The car had drugs in it, but the man did not appear to have a weapon.



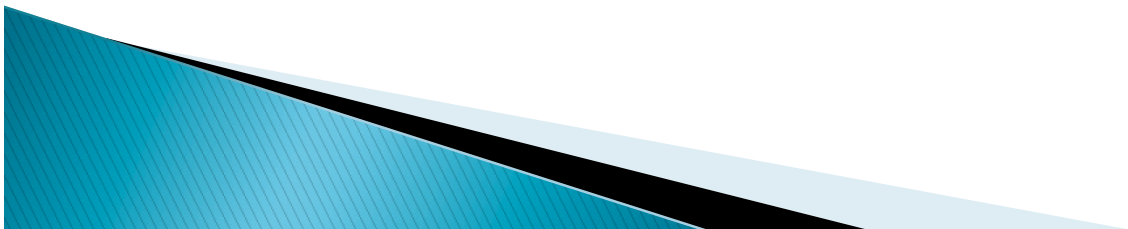
Unattributed facts

A woman about to testify against her accused rapist was attacked by the pervert, who had stalked her for months and then pounced on her outside her home and slit her throat, cops said yesterday.



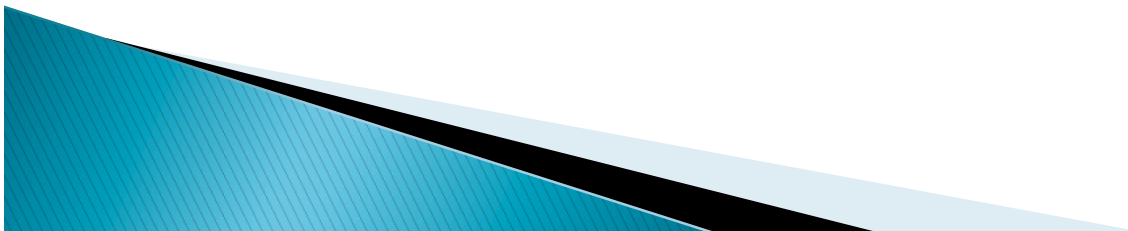
Unattributed facts

A hands-on biology professor has been busted for giving personal anatomy lessons to two female students, police said. They said the frisky-fingered prof was demonstrating anatomy by pointing to parts of a student's body. A former student claimed that a year ago, the pervy prof had some students' hand-in papers, and when she handed in hers, he squeezed her breast.



Unattributed facts

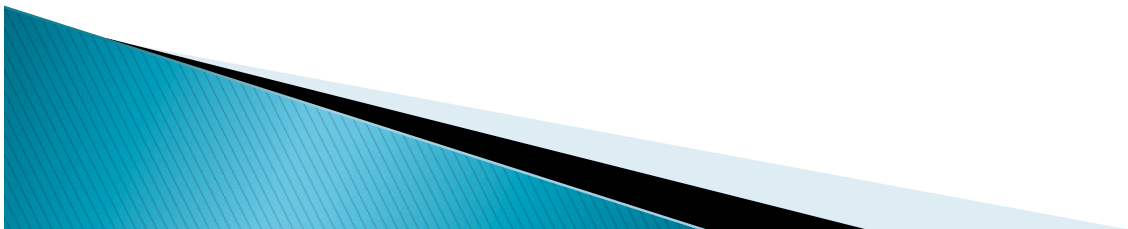
Eight current or former police officers were charged yesterday with accepting thousands of dollars in cash to drive a caravan of firearms into the state, an act of corruption that brazenly defied the city's strenuous efforts to get illegal guns off the streets.



Unattributed facts

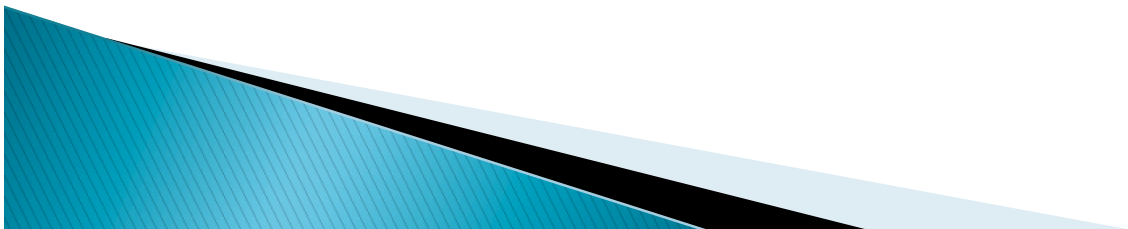
The aged beef at a well-known steak house was treated better than a 66-year-old former salad maker who is suing the famed restaurant for age discrimination.

After complaining to an owner, about the alleged mistreatment, Pepper Green was demoted to “shrimp and onion peeler,” according to the complaint filed in Brooklyn Federal Court, which seeks unspecified monetary damages.



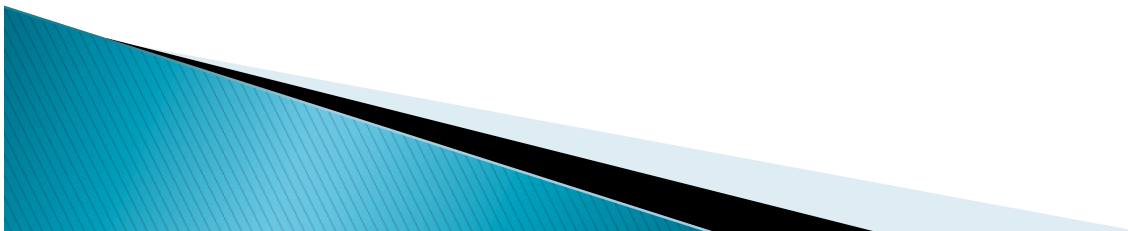
Unattributed facts

City officials missed a glaring clue that could have exposed a corruption scheme that resulted in the indictment of one Bloomberg administration's top housing officials.



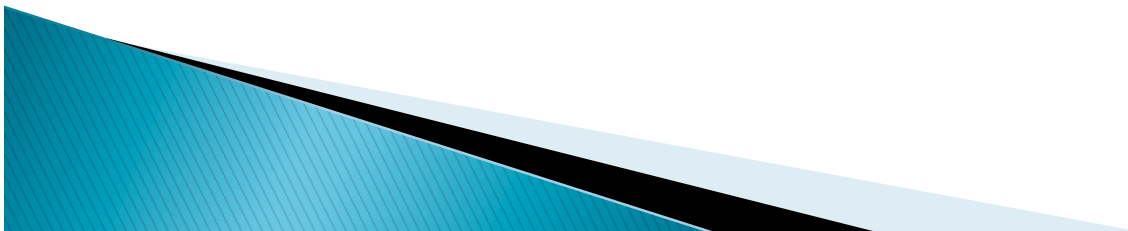
Unattributed facts

A high-end madam who boasted she used cops as security and made millions by peddling flesh – including underage girls – to rich and powerful clients has been busted after a probe.



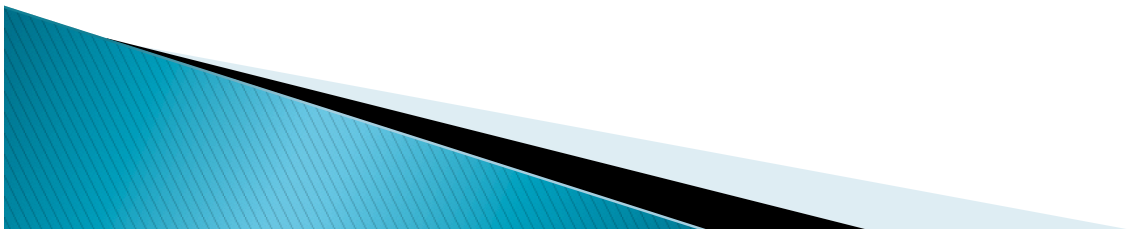
Unattributed facts

The children's father turned violent. One night he flung a pot from the stove at Ms. Appel. Then he pounded her skull into the wall. The police came and arrested him.



Unattributed facts

Kenny Kramer, the inspiration for Kramer on “Seinfeld,” filed a \$1 million defamation suit against a former writer on the show for defaming him and his business in a new book.



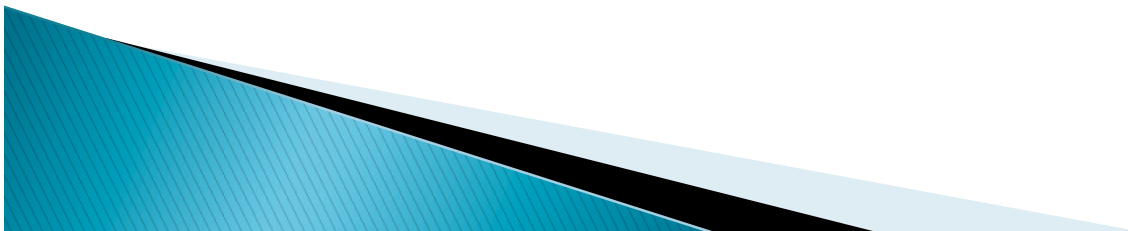
Accepted fact

A cruise ship passenger will testify in a civil suit against the cruise line this week that she was raped by a bartender who slipped her a Mickey, but prosecutors were stymied by cruise management.



Accepted fact

A state senator was slapped with a federal indictment Monday charging him with lying to FBI agents about a liquor store in which he was a secret partner.



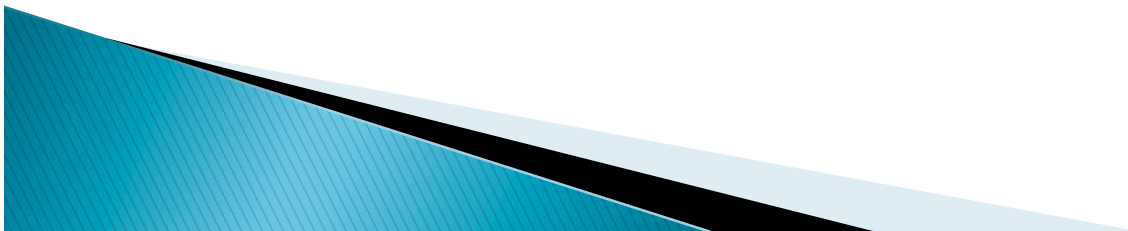
Accepted fact

A teenager who the authorities said started a fatal house fire last week now faces another murder charge after a second victim died of injuries relating to the arson.



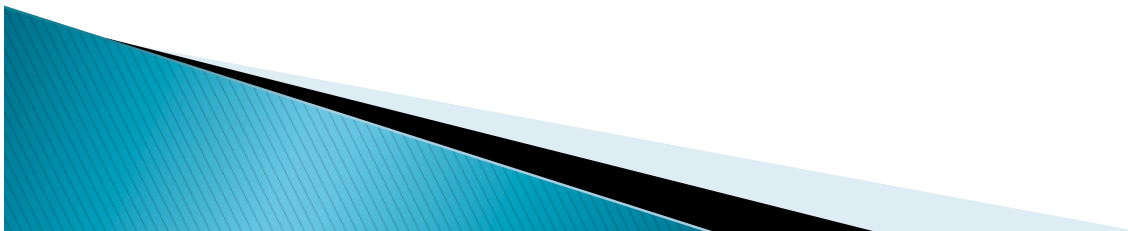
Accepted fact

A teenager who allegedly helped two other teens beat a black man in a bias attack told cops he's being threatened by them for agreeing to testify against them, police sources said.



Accepted fact

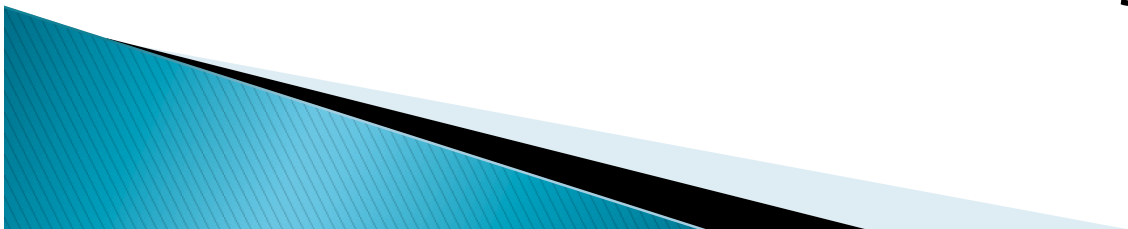
An elderly nursing home patient was left dazed and bloody after a vicious altercation with a nurse – but the facility kept the victim's next of kin in the dark for days, the woman's shell-shocked family claims.



Induced reliance

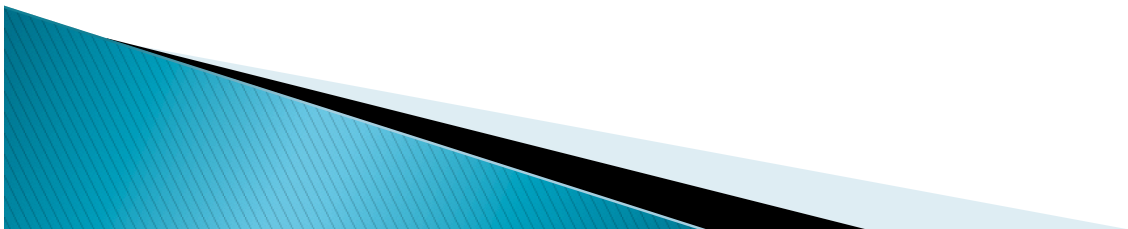
“I’m sorry, I’m sorry. I didn’t mean to shoot him,” an alleged gunman told cops.

He plays a chef on the Sopranos, but Jack Trades cooked himself a recipe for disaster when he was busted for drunken-driving yesterday. The actor admitted to cops he drank four glasses of wine before getting behind the wheel and driving home.



Induced reliance

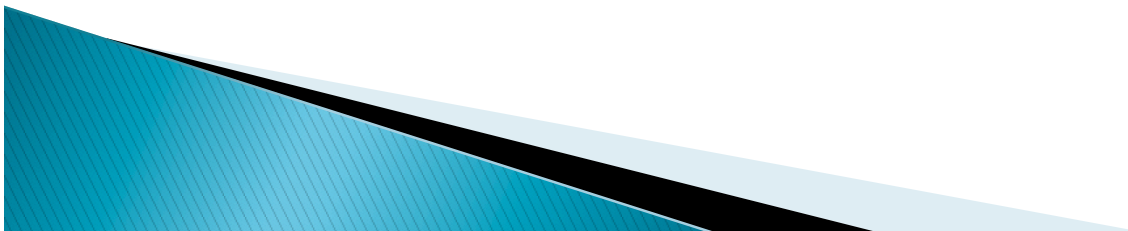
The court papers make clear that Ms. De La Place did not participate in robbing drug dens. Rather, her role was to hook up with a man, who, in turn, pointed her uncle and his helper toward robbery targets.



Accepted fact

DNA from a cigarette butt *confirmed* that the suspect, who was arrested last week, is the rapist wanted for attacks in four states.

Alvin Sann was arrested last year after DNA extracted from a glass he had used at a restaurant *matched* DNA from a series of high-profile murders and rapes.



Accepted fact

The cop busted for spying with a surveillance camera was actually peeping on his own stepdaughter for sick sexual gratification, officials *revealed* Monday.

A rising National Football League star, Aaron Hernandez, was slapped with a murder charge Wednesday as prosecutors *revealed* he ordered a friend out of a rental car, stood over him and then shot him five times with a .45 caliber handgun.

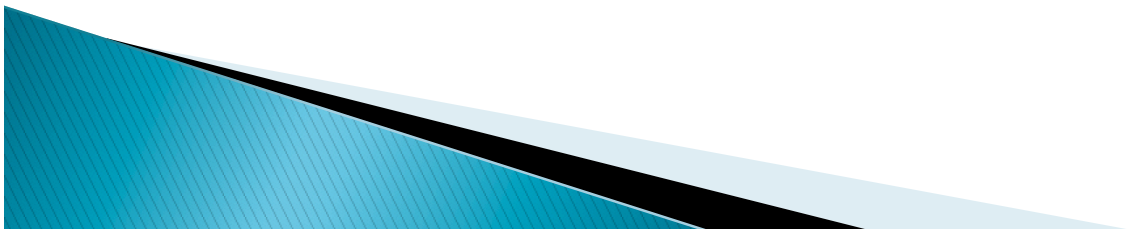
The man accused of gunning down three shopkeepers execution-style bizarrely told cops he was a CIA operative ordered to kill Jews by Arab men who paid him for his role in the murders, explosive court documents *revealed* yesterday.



Lurking libel

Many in Buffalo lustily cheered for someone who delivered blunt tirades about taking out the trash in Albany. But then another side of Carl Paladino came to the fore: someone who had forwarded racist and pornographic e-mails, who got into a violent argument with a reporter and who called gay pride parades “disgusting.”

“Absolutely, I was thinking of voting for him,” said Vera Fune, who works for the federal government in Buffalo. “But then he’s making gay slurs, he’s threatening to beat up that guy on camera, and people see all that. You don’t want a mobster as governor.”



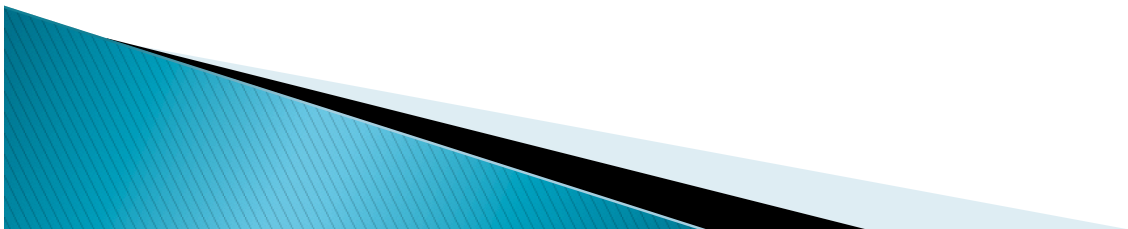
Peripheral libel

As early as last year, a cover story about Tom Cruise attracted not only the usual denials from the Church of Scientology but also an angry denunciation from Bert Fields, Mr. Cruise's lawyer and a longtime Hollywood fixer.



Peripheral libel

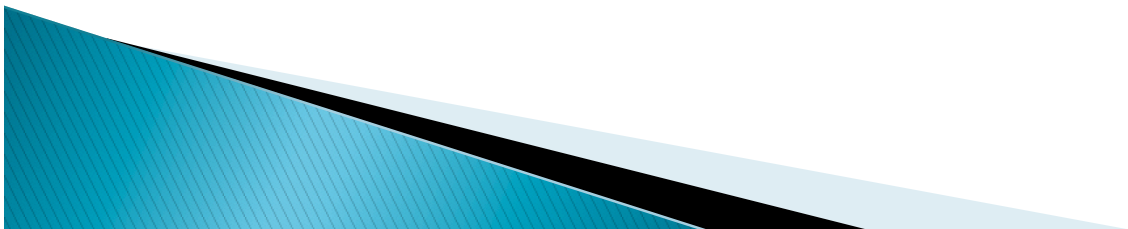
“The celebrities get into a mode where they’re making a lot of money and they just don’t have any conception about the fact that if they’re making \$10 million on a movie, \$5 million goes to taxes and \$2 million to managers or whoever,” said Namo Dropa, chairman of the estates division of High-Test California Realty, who has worked with Nicolas Cage, Ryan Seacrest, Harrison Ford, and Ozzy Osbourne, among others. “They end up with \$3 million and a lifestyle of \$200,000 a month and think they can afford a second or third house for \$5 million.”



Peripheral libel

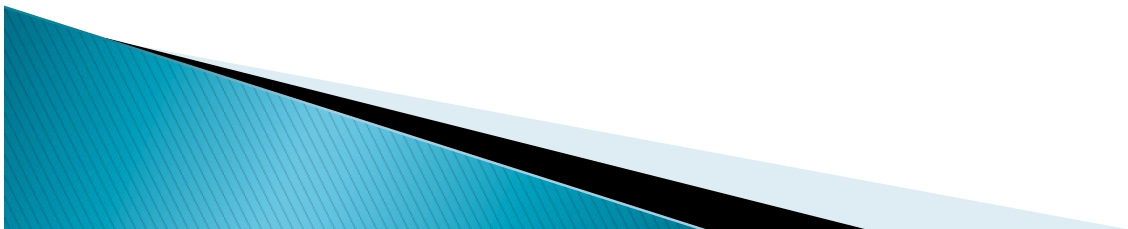
Mr. Dee was arrested in July 2004. He pleaded guilty to Kidnapping, murder and other crimes before turning state's witness, hoping for leniency. He said he made about \$600,000 from loan sharking over his life as a mobster, spending it on "clothes, cars, dinner, drinks."

After his arrest, Mr. Dee said, he, his girlfriend and his mother paid \$212,000 to a lawyer who refused to represent him when he began cooperating with the government. He was left with \$259 to his name, he said.



Plain error

A convicted killer could be freed soon, after using a 2000 Supreme Court decision to force a new trial that excludes most of the evidence against him – including the fact that he was carrying the murder weapon when he was arrested. Guy Bullit, who committed the crime, was serving time in prison when he read about a Supreme Court case that made it illegal for officers to stop and frisk someone based only on an anonymous 911 call – which is what happened to him. He used that decision to win a retrial – this one will not include the gun or ballistics evidence.



Plain error

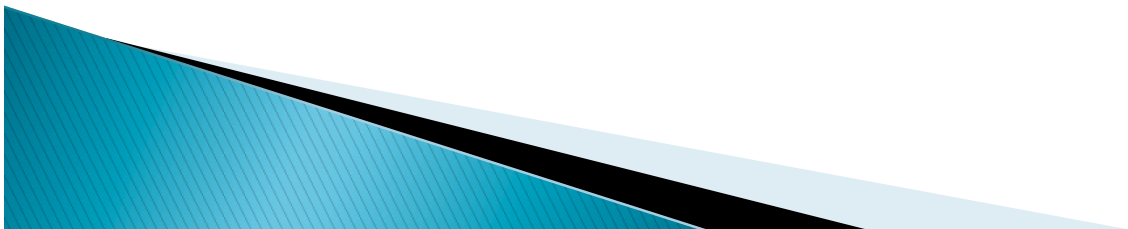
Mr. Vair runs a tight ship in his office, too. Post-it notes and highlighters are banned. Executives bring in their own pens. To illustrate his commitment to that principle, Mr. Vair produced two pens from his pocket, both stolen from hotel rooms.



Plain error

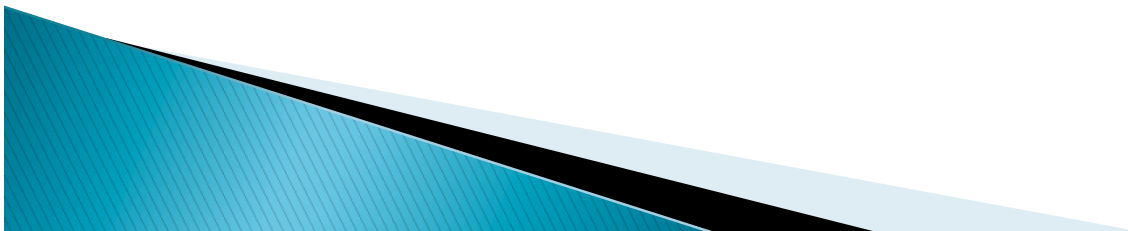
One of three men who murdered an on-duty officer was reportedly a police informant.

Lee Grain began working for the police in February 2007, five months before he and two others killed the officer during a car stop. Grain was convicted of murder, as was Octavio Boston. Both are serving life in prison, but the third man, Ellis Liberty, who shot and wounded the cop's partner, was convicted only of gun possession.



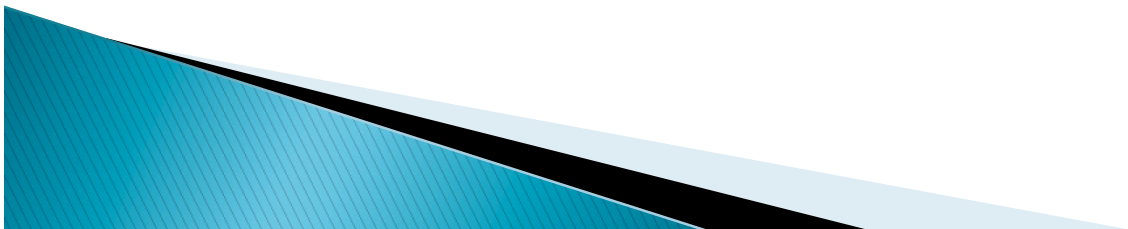
Implication

The Target store in the City Center could be looking for a few new honest cashiers after four employees were arrested Monday on theft charges.



Implication

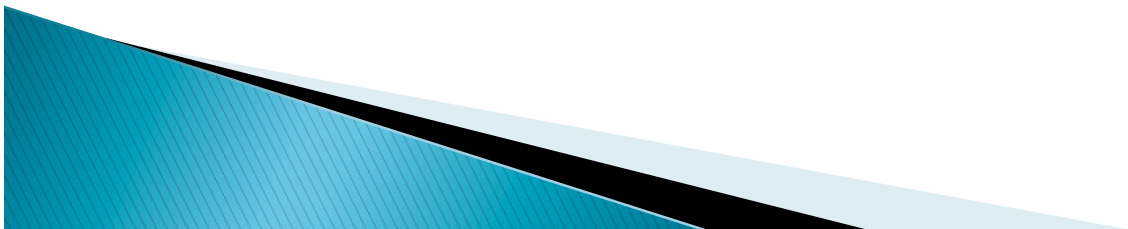
A black teenager is shopping for justice, charging snooty Barneys staff and city cops racially profiled him for credit card fraud after he bought a \$300 belt. He has filed a lawsuit.



Implication

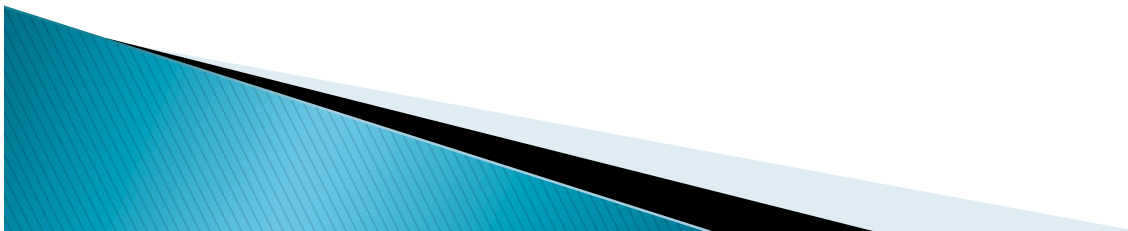
Extort–Case Lawyer Beats the Rap

An 81–year–old lawyer was found not guilty yesterday of helping a client extort \$11 million from his cousin.



Tone

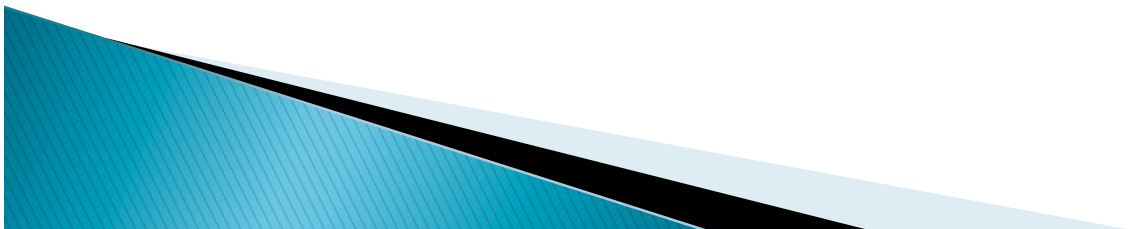
A religious school is under fire for planning to boot two dozen family members, including many elderly and disabled immigrants, from an apartment building. The school purchased the building in January. It is relying on a loophole in state housing law that allows non-profit groups to kick out tenants in rent-regulated apartments if they will use the apartments for educational purposes.



Tone

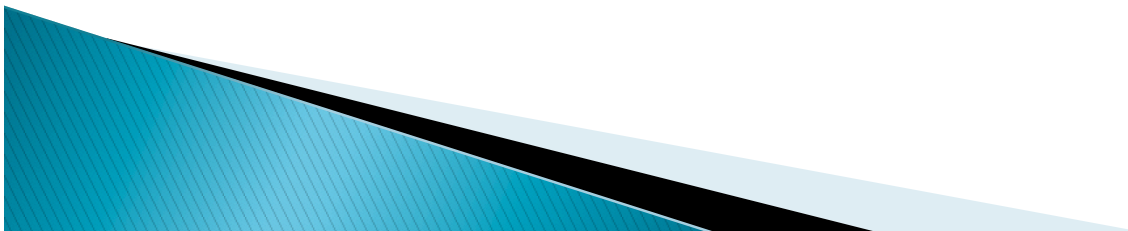
Woman, 93,
With Strokes,
Bad Leg, Gets
Eviction Notice

Alice Apple enjoys living in the apartment where she has been for more than 20 years. But Apple, who raised five children while working at a bakery, and later helped take care of her grandchildren and great-grandchildren, is on the verge of being evicted.



Tone

A&P corporate spokesman Denny All refused for the second day in a row to return calls seeking comment.



Ambiguity

The chief of one of the police departments involved in the wrongful fatal shooting of a college football player is retiring.



Ambiguity

A 25-year-old graduate student was struck and killed by a drunken driver early yesterday in a hit-and-run accident that occurred as she was crossing a street with friends, the police said.

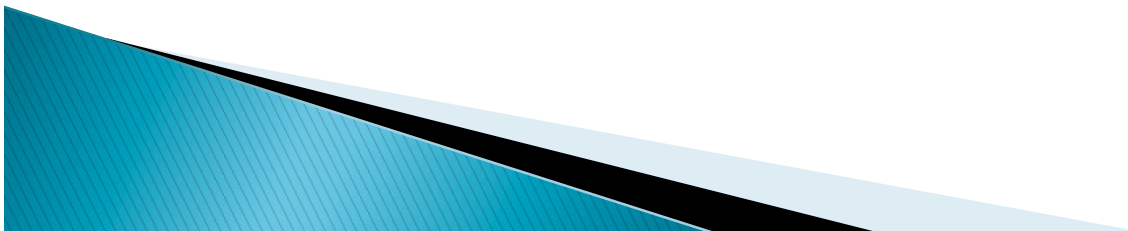
A drunken off-duty cop ran over and killed a photographer taking pictures on the Queensboro Bridge early yesterday, police said. Housing cop Sharpe Smith slammed his SUV into Julie Lebow at 3:40 a.m. Lebow died on the bridge while a friend, who had managed to leap out of the path of the drunken cop's SUV, stood helplessly nearby, police said.



Headlines

Pervert's Sour Note

An Oscar-winning songwriter played up his Hollywood connections to sexually prey on starry-eyed young beauties at his apartment, one of those women charged yesterday.



Headlines

House Speaker Denies Knowing Of Scheme To Kill a Bill

Christopher G. Donovan, the speaker of the Connecticut House and a candidate for Congress, strongly denied on Sunday evening that he had any knowledge of what the federal authorities say was a scheme to kill a piece of legislation.

In his first public comments about the scandal since the arrest of his campaign finance Manager, Robert Braddock Jr., in the case, Mr. Donovan said that “at no time did I know that anyone might have been trying to funnel illegal contributions to my campaign,” he said. “No one ever made a deal with me.”



Headlines

SEW GROSS Worker Sues Brooks Brothers, Claims Sex Harass

There's a wolf in sheep's clothing sexually harassing a seamstress at the venerable Brooks Brothers factory, a lawsuit charges.

An employee there is suing the oldest clothing company in the U. S. for \$30 million, alleging that she was ogled, fondled and threatened by a lecherous supervisor.



Headlines

Suspect Tries To Eat Drugs After Chase

A 34-year-old suspected heroin dealer swallowed his merchandise while he was being chased by Passaic County sheriff's detectives through the city's First Ward on Wednesday evening, authorities said.

