



Writing About Uncle Charlie

by Kathryn Page Camp

You're sitting at your computer with a dictionary and a thesaurus on one side and your brilliant plot outline for your novel on the other. But you stare at the blank screen as you wonder how to begin. The ache in your stomach isn't exactly writer's block. Instead, it's liticaphobia or, more specifically, the fear that someone will sue you for libel.

But if you don't overcome it, you will never write the great American novel. So you take a deep breath, drop you fingers to the keyboard, and start.

"Uncle Charlie slept with a lot of women before Aunt May caught him." *This should be okay because the character in the book is nothing like my real Uncle Charlie.* Then the pain in your gut gets worse. *But what if someone still wonders? Or what if Uncle Charlie has had affairs I don't know about?*

You get the picture.

Or maybe you have an uncle who sleeps around, but his name isn't Charlie. Are you okay because you changed the name?

Not necessarily.

By now you are wondering if you have to put your characters on another planet and name them "Mr. X-bot" and "Mrs. Y-lien" in order to keep from being sued for libel.

It isn't quite as bad as that.

So what can you do to avoid a lawsuit? First, you need to know that unless you are the Godfather of movie fame, there is no foolproof way to keep people from suing you. However, there are a number of things you can do to make it unlikely. But first you need to understand what libel is.

Definition

Generally speaking, libel is 1) a false statement 2) about a person 3) that is communicated to others 4) in a tangible form and 5) that harms the person's reputation. Let's take each element individually.

- 1) The statement must be false. One caveat: sometimes you can be sued for true words that carry a false implication (for example, “Uncle Charlie sleeps around a lot” may be literally true if he takes frequent overnight business trips to various locations, but that isn’t what people will think you mean).
- 2) The statement must be about a recognizable individual, business, or other entity. “Global warming is killing the planet” is not libelous even if it is false. But changing a person’s name isn’t enough if you can still recognize the person from the description.
- 3) The statement must be communicated to someone other than the person it is about. If you write something negative about your mother in your diary and she is the only one who sees it, it isn’t libel.
- 4) The statement must be in tangible form—printed, tweeted, put on You-Tube, and so on. If you say something at a party and lots of people hear it but no one records it, you are guilty of slander rather than libel. But this article is for writers, so it is about libel, not slander. (For those of you who care, you can be sued for slander for your statements at the party, but the damages will be less because of the small audience.)
- 5) Finally, the statement must harm the person’s reputation. If it refers to something inconsequential (“she can’t even boil water”) or is clearly an opinion (“all lawyers are crooks, so he must be a crook”), it is not libel. On the other hand, if you say “he took my money and spent it on alcohol rather than my case” when referring to your own lawyer, that could be a libelous statement.

So Who Can I Write About?

Dead people are good. George Washington. Jane Austin. Elvis Presley. You can’t libel the dead.

Amalgams are also good. If you use a few of Uncle Charlie’s traits but a different name and physical description and mix in several characteristics he doesn’t have, he is no longer recognizable. Or you have changed him enough so that the reader who knows him will realize the character is mostly fictional.

But People Still Write Non-fiction, Don’t They?

“Nooooooo,” you moan. “What about that autobiography I was going to write? I can’t wait until everyone is dead, or I’ll be dead, too.”

Obviously, lots of people write autobiographies, biographies, and other non-fiction books that say negative things about living people, and only a few of them get sued. These people take a calculated risk that they can defend against a libel charge—and they hope the validity of the defense is so obvious that the person won’t bother to sue. Here are the most common defenses (using my words rather than the more legal tests):

- Nobody in their right minds would believe it;
- What was said is clearly opinion rather than fact or is an expression of dislike rather than a reference to specific conduct;
- It is fair comment about a public person or a matter of public concern (political commentary often fits here);
- The person being talked about has given his or her consent; or
- The person making the statement got the information right. Theoretically, the person who claims to have been libeled should have to prove the statement is a lie, but it doesn't always work that way. Sometimes the writer needs to be able to prove it is true.

Is There Anything Else I Need to Know?

Libel laws vary from state to state, but the basics described above are fairly uniform. The First Amendment also limits actions for libel—particularly when the person suing is a public figure—but it doesn't give you free reign to say anything you want. If you know you are lying about specific conduct that can harm someone's reputation, neither the First Amendment nor any state law will protect you.

So you've passed all the tests, and you've laid your liticaphobia to rest. Is that all you need to worry about? Well, let's see. Are you willing to put up with the cold shoulder at family gatherings after you tell the truth about Uncle Charlie? And is what you said about your old college roommate worth losing her friendship? If it is, go for it. If not, disguise, disguise, disguise; get permission from the person you are writing about; or turn the computer off and walk away. Because there may be more than a lawsuit at stake when you write about Uncle Charlie.

For More Information

If you need legal advice, call your local bar association and ask them to refer you to an attorney who specializes in torts. (Torts are certain types of wrongful behavior that someone can sue you for. Six credit hours in law school devoted to the subject, and I still can't define the word any better than that. But I do know a tort when I see one, and libel is a tort.)