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Court Narrows Congress' Shield From Libel Suits

By Morton Mintz
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The Supreme Court ruled yesterday hat the Constitution does not shield a nember of Congress from a lawsuit if ie libels someone in a press release or newsletter—even though the defanatory statement may have been nade originally in the House or Sente.

Libelous remarks by members in phone calls to executive agencies and in broadcast interviews also are not protected, the court held, 8 to 1, in a case that began with one of the "Golden Fleece" awards made monthly by Sen. William Proxmire (D-Wis.).

The decision turned on the clause of the Constitution saying that "for any speech or debate" a senator or representative "shall not be questioned in any other place" but the Senate or House.

The immunity provided by the clause is not expanded by "such helpful facilities" on Capitol Hill as recording studios and postal franking privileges, Chief Justice Warren E. Burger wrote in the opinion for the court. The franking privileges commonly are used to send out the Congressional Record, among other materials.

Whether the press is liable when it publishes or broadcasts defamatory statements by legislators was not an issue in this case.

SEN. WILLIAM PROXMIRE
. . . 'Golden Fleece will go on'

The ruling was a defeat for the leadership on Capitol Hill. Separate briefs on behalf of the House and Senate, each signed by the top Democratic and Republican officers, had been filed in Proxmire's behalf. Both briefs expressed concern about decisions in the last several years that, as the leaders portrayed them, improp-

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erly intrude on the right of legislators to communicate with the public.

In a statement yesterday, House Speaker Thomas T. (Tip) O'Neill Jr. (D-Mass.) agreed with the dissenting opinion, in which Justice William J. Brennan Jr. said that public criticism by legislators of governmental expenditures is a legislative act protected by the Constitution.

"It is my opinion that it is important for members of Congress to feel free in communicating with their constituents," O'Neill said.

Proxmire said, "The Golden Fleece will go on . . . I will strive to be just as emphatic, vivid, and, if possible, humorous in my denunciation of waste as I can be."

By removing the immunity provided Proxmire by the clause, the decision opened him and an aide, Morton Schwartz, to a libel suit brought by scientist Roland R. Hutchinson. The court having done this, Proxmire said, "I feel no constraint—none—in continuing the fleece awards . . ."

Proxmire started the awards in 1975 to publicize what he deemed to be the most egregious examples of wasteful governmental spending. The second one involved Hutchinson, then research director of a Michigan state mental hospital in Kalamazoo and an adjunct professor at Western Michigan University.

Over the preceding seven years, he had received more than $500,000 from the National Science Foundation, Office of Naval Research and National Aeronautics and Space Administration, mainly to help select crewmen for submarines and spacecraft. It was the agencies to which Proxmire awarded the fleece.

Hutchinson was trying to find an objective measure of aggression, focusing on certain animal behavior, such as the clenching of jaws under stress.

After research by legislative assistant Schwartz, Proxmire made a Senate speech about the funding of "this nonsense," which "should make the taxpayers as well as his monkeys grind their teeth." He found in Hutchinson's study of "jaw-grinding and biting by angry or hard-drinking monkeys" a "transparent worthlessness," yet "the good doctor has made a fortune," he said.

An advance news release incorporating the speech went to 275 members of the press here and abroad. Later, Proxmire sent out 100,000 copies of a newsletter referring to the speech. He also appeared on the Mike Douglas Show on television, but without naming Hutchinson.

The studies then were dropped. "No more monkey business," Proxmire said in a 1976 newsletter. Schwartz, it turned out, had phoned the agencies.

Hutchinson sued for libel, alleging humiliation, extreme mental anguish, physical pain and loss of income. A trial court dismissed the suit, holding in part that speech-or-debate protected the speech and that the "informing function" of Congress and the franking privilege protected the mailed materials and the TV interview.

The 7th U.S. Circuit Court of Appeals affirmed, although it held that the First Amendment protected the broadcast. It was reversed yesterday.

Court Broadens Private Persons' Rights in Libel

By Morton Mintz
Washington Post Staff Writer

The Supreme Court made it easier yesterday for persons to file libel suits—particularly those who appear on the public stage unwillingly.

In one ruling, the court freed a man named Ilya Wolston of Arlington to seek damages as a result of being listed in a book "among Soviet agents identified in the United States."

In a second ruling, the court enabled scientist Roland R. Hutchinson to sue Sen. William Proxmire (D-Wis.), who had ridiculed his federally funded research as wasteful in awarding him a monthly "Golden Fleece."

The court decided both cases 8 to 1. The dissenter was Justice William J. Brennan Jr. In the Proxmire case, however, his objection related entirely to issues of congressional immunity.

In the book case and in one phase of the Proxmire case, the central libel issue was whether either Wolston, convicted long ago of criminal contempt, or Hutchinson was a private person or a "public figure."

Under previous court decisions, a private person may prevail by estab-

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lishing defamation and a degree of fault on the part of the defamer — unless the defendant shows that the defamation was truthful.

By contrast, a public figure, under a line of rulings starting in 1964, carries a heavy burden: he must prove that a damaging falsehood was published "with 'actual malace' — that is, with knowledge that it was false or with reckless disregard of whether it was false or not."

Justice Harry A. Blackmun, while agreeing with the judgment that neither Wolston nor Hutchinson was a public figure, demurred in the Wolston case. The court seems to hold 'that a person becomes a limited-issue public figure only if he literally or figuratively 'mounts a rostrum' to advocate a particular view," Blackmun said.

Other reactions were mixed.

First Amendment expert Floyd Abrams said, "The decisions will necessarily limit what the public learns about real criminals, about possible wasters of public funds, and about others whose conduct, and possible misconduct, affect all of us."

The Reporters Committee for Freedom of the Press said the rulings will encourage the filing of "harassing" libel suits and deter publication of news on public events.

But Wolston's lawyer, Sidney Dickstein, foresaw "the salutary effect of causing the media to be somewhat more careful in how they deal with private citizens." At the same time, however, he said he does not foresee "the impact on free and fair reporting that some are claiming."

Justice William H. Rehnquist, writing for the court in the Wolston case, said the majority was refusing to "create an 'open season' for all who sought to defame persons convicted of a crime." And, he said, "A private individual is not automatically transformed into a public figure just by becoming involved in or associated with a matter that attracts public attention."

Born in Russia in 1918, Wolston lived in four European countries before coming to the United States in 1939. The Army drafted him in 1942 and honorably discharged him, after he'd become a naturalized citizen, in 1946. He then worked as a government interpreter for several years.

The public-figure issue arose in 1957 and 1958, when his aunt and uncle, Myra and Jack Soble, pleaded guilty to being Soviet spies. Starting with the day of their arrest, he several times was interviewed by the FBI and summoned before a grand jury in New York City.

Finally, claiming mental depression, he tried to be excused from a grand jury appearance and, on July 1, 1958, disobeyed a subpoena to appear. When he was cited for contempt, his wife, called to testify about his mental condition, became hysterical on the witness stand.

Wolston then pled guilty. He drew a suspended sentence conditioned on future cooperation with the grand jury. These events were reported, over a six-week period, in 15 newspaper stories in Washington and New York. After that, Wolston—never indicted for espionage—returned to obscurity.

In 1974, Reader's Digest Association published—and two book clubs and a paperback house also issued—John Barron's "KGB: The Secret Work of Soviet Agents." In listing Wolston as an "identified" Soviet agent, Barron swore in an affidavit, he had relied, unquestioningly, on an FBI report.

Wolston sued. A trial judge, upheld by the U.S. Court of Appeals here, held that Wolston became a public figure by failing to appear before the grand jury and being convicted of contempt, and dismissed the suit summarily on the ground that Wolston couldn't prove "actual malice" motivated Barron. Justice Brennan, in dissenting yesterday, said the actual-malice issue should have gone to a jury.

For the appellate court, Judge Roger Robb wrote that "by his voluntary action, (Wolston) invited attention and comment in connection with the public questions involved in the question of espionage."

For the Supreme Court, Rehnquist —not dealing with the erosion of public-figure status by the passage of time—rejected Robb's classification of Wolston as "a limited-purpose public figure." Rather than getting into the spotlight voluntarily, he "was dragged unwillingly into controversy," the justice wrote.

"We decline to hold that his mere citation for contempt rendered him a public figure for purposes of comment on the investigation of Soviet espionage," Rehnquist said.

"A libel defendant must show more than mere newsworthiness to justify application of the demanding" actual-malice standard, Rehnquist said. The court will not "create an 'open season' for all who sought to defame persons convicted of a crime," he emphasized.

Similarly, in the Proxmire case, Chief Justice Warren E. Burger wrote for the court that scientist Hutchinson did not become a public figure by responding to the senator's announcement that he had awarded a "Golden Fleece" to federal agencies funding Hutchinson's research.