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In Sharon Verdict, the Press Lost the Most

In the case of Gen. Ariel Sharon versus Time Inc., it is being widely said that both sides won—and lost. So they did, but that's far from the most significant aspect of this case.

Sharon, in losing the overall libel case, won the most. An American jury—and, on the evidence, an exemplary one that deliberated with apparent textbook judiciousness and rendered a carefully honed verdict—found that Time had defamed the former Israeli defense minister by publishing a false statement about him and that "certain" of its employes had acted "negligently and carelessly in reporting and verifying the information" at issue.

Despite this, the jury found that Time had not willfully and knowingly published the material with an intent to damage the general's reputation. It believed what it printed to be true. Thus, in the classic definition, however wrong the information proved to be, it had acted with "an absence of malice." (Though not, as The New York Times felicitously commented, with "an absence of arrogance.")

Many aspects of this case lift it above the ordinary: its political nature, its international implications in the Mideast where the bellicose Sharon is expected to use his "victory" over the destructive American press as a device to help him become prime minister of Israel, its affirmation of the critical light in which the press is viewed by the public, its impact on the workings of the press at large hereafter.

How many news organizations would be willing, or could afford, to undertake the millions necessary for such a defense, no matter how important they believe their case to be in the public interest and how convinced of its correctness? How many might be dissuaded from taking the risk of publishing in the

first place, regardless of what they consider the merits and worthiness of their material?

Beyond all this lies a disturbing precedent, one that promises to become more troubling long after the Sharon case has faded into history.

From the beginning, this libel case has proceeded under extraordinary and complex

circumstances. The verdict has not resolved these problems; it has, if anything, left them dangling and more difficult for others to come.

Determining the truth of anything in a court of law is difficult enough, to say nothing of the thorny issues in so highly charged a libel case.

But consider this: Here is a foreign national, seeking redress in an American court, under American law, but whose own government refuses to permit vital evidence, and witnesses, to be entered, heard, and assessed by the jury. And the foreign government at all times controls crucial information that it accumulated through its own rigorous legal procedures by the calling of witnesses under oath during its own investigation of the matter at issue—whether or not, and to what degree, Gen. Sharon bore responsibility for the 1982 massacre of Palestinians in two refugee camps near Beirut at the time of an Israeli military occupation commanded by Sharon.

In this, Time's statement after the jury verdict Thursday surely is correct:

"Time's defense in this suit was severely hampered by the Israeli government. That government, citing security concerns, prevented key witnesses from testifying, threatened to prosecute them if they even talked with the magazine's attorneys and denied access to documents and testimony that Time felt would have proven its case. The result was a half-trial."

But a trial with a precedent, and a terrible one.

Think what mischief a Muammar Qaddafi of Libya or an Ayatollah Khomeini of Iran—to name only two of the world's more flagrant despots—could make in similar circumstances in an American libel case trial.

Assessing libel never has been easy, and the evidence of the growing number of such cases now indicates the public increasingly takes a harsher view of the press in rendering judgment. And certainly often with good reason. The danger—accentuated by the Sharon trial—is that the public forgets the reason the American press historically has been granted such wide latitude in its job of attempting to report on those who exercise great public power.

It has been 250 years since a

New York printer by the name of John Peter Zenger was arrested on a warrant from the royal governor on charges that his New York Weekly Journal had seditiously libeled the authorities by asserting that the liberties and property of the people were in danger from their government.

The case seemed hopeless until a white-haired old Philadelphia lawyer by the name of Andrew Hamilton, then almost 80, addressed his remarks to a jury after being told by the sitting chief justice: "You cannot be admitted, Mr. Hamilton, to give the truth of a libel in evidence."

But he addressed the jury anyway, and in words that led to a not-guilty verdict and set a legal foundation for the press that exists to this day, said:

"Power may justly be compared to a great river which, while kept within its due bound is both plentiful and useful; but when it overflows its banks, it is then too impetuous to be stemmed, it bears down all before it and brings destruction and desolation wherever it comes. If this then is the nature of power, let us at least do our duty, and like wise men use our utmost care to support liberty, the only bulwark against lawless power"

"As you see, I labor under the weight of many years, and am borne down with great infirmities of body; yet old and weak as I am, I should think it my duty, if required, to go to the utmost part of the land where my service could be of any use in assisting to quench the flame of prosecutions upon informations set on foot by the government to deprive a people of the right of remonstrating, and complaining, too, of the arbitrary attempts of men in power The question before the court and you gentlemen of the jury is not of small nor private concern; it is not the cause of the poor printer, nor of New York, alone. No! It may, in its consequence, affect every freeman that lives under a British government on the main of America. It is the best cause. It is the cause of liberty . . . the liberty both of exposing and opposing arbitrary power by speaking and writing truth."

In the aftermath of the Sharon case, a classic situation involving the use or abuse of power, determining what is true becomes even more difficult.