

STICKS AND STONES MAY BREAK YOUR BONES,

BUT WORDS WOULD NEVER HARM . . . ,

OR CAN THEY?

The First Amendment to the Constitution guarantees us the freedom of speech. This basically means we are allowed to say anything, unless of course that speech causes injury or harm, such as causing a riot. Another harm that can result from the exercise of your First Amendment right is defamation. Defamation is defined as spoken or written words that falsely and negatively reflect on a living person's reputation. For example, if a person says or writes something about you that is understood to lower your reputation, or that keeps people from associating with you, defamation has occurred. There are two forms of defamation: slander and libel. While slander is spoken defamation, libel is written defamation.

Title 14 of the Virgin Islands Code, section 1180, defines slander as a malicious utterance made by word of mouth in a public manner against a person, whereby such person is charged with the commission of a deed punishable by law; or a tale, or report maliciously made tending to injure the honor, reputation or worthiness of any person or any religious denomination or organization. Section 1181 adds that any slanderous statement made whether in the presence of the injured person or in his absence, is presumed to be malicious and shall constitute the crime of slander.

Under V.I. law, anyone who commits slander shall be fined not more than \$500.00 or imprisoned not more than 180 days, or both.

Title 14 of the V.I. Code defines libel as the malicious publication, by writing, printing, picture, effigy, sign or otherwise than by mere speech, which exposes any living person, or the memory of any deceased person to hatred, contempt, ridicule or obloquy, or which causes or tends to cause any person to be shunned or avoided, or which has a tendency to injure any person in his or their business or occupation.

Section 1173 adds that an injurious publication is presumed to have been malicious if no justifiable motive for making it is shown.

The punishment for libel is a \$500.00 fine or imprisonment of not more than one year, or both.

In addition to being charged with a crime, you can also be sued civilly and ordered to pay monetary damages to the injured

party. In order to prove defamation, the defamed person would have to prove that what was said or written about them was false. If the information is true, or if they consented to the publication of the material, the person will not have a case. However, the person maybe able to bring a defamatory action if the comments are so reprehensible and false that they affect the person's reputation in the community or cast aspersions on them.

Establishing truth is the single most effective defense against the charge and claim of defamation. If the remark is truthful, and it hurts, is embarrassing, or subjects a person to ridicule, there is little they can do. Truth is an absolute defense.

Another defense is claiming and proving that the statement was an opinion, not an assertion of a fact. However, this defense is not as effective as the truth, because it is only as good as the weakest misinterpretation. For example, there is a big difference in saying "I think she is a thief" and "She is a thief"; especially if a third party inadvertently omits the first two words when passing your message on. You have the right to express an opinion as long as the statement is just that - an opinion. However, a statement is not an opinion if it contains specific facts that can be proven to be false.

In civil court a defamed person can recover both actual damages (to recover the harm that was suffered), and punitive damages (to punish the person who made the remark) and to serve as an example to deter others. Additionally, if the defamation improperly accused the defamed person of a crime or reflected on their profession, the court or jury will assess the damages.

FOOD FOR THOUGHT

Too often we underestimate the power of a touch, a smile, a kind word, a listening ear, an honest compliment, or the smallest act of caring - all of which have the potential to turn a life around. Leo Buscaglia



THE LAUGHABLE ESQUIRE

A young lawyer, starting up his private practice, was very anxious to impress potential clients. When he saw his first visitor to his office come through the door, he immediately picked up his phone and spoke into it, "I'm sorry, but my caseload is so tremendous that I'm not going to be able to look into your problem for at least a month. I'll have to get back to you then". He then turned to the man who had just walked in and said, "Now, what can I do for you?" "Nothing," replied the man. "I'm here to hook up your phone".



NONPUNITIVE MEASURES VS. NONJUDICIAL PUNISHMENT

One of the most valuable disciplinary tools available to a commander is the option of imposing nonjudicial punishment. However, a commander is encouraged to use nonpunitive measures to the fullest extent possible in furthering the efficiency of the command without resorting to imposing nonjudicial punishment. AR 27-10, para 3-2.

Nonpunitive measures. Nonpunitive measures usually deal with misconduct resulting from simple neglect, forgetfulness, laziness, inattention to instructions, sloppy habits, immaturity, difficulty adjusting to disciplines military life, and similar deficiencies. AR 27-10, para 3-3. Nonpunitive measures are used primarily for teaching proper standards of conduct and performance and do not constitute punishment. Some examples of nonpunitive measures are denial of a pass or other privileges, counseling, administrative reduction in grade, administrative reprimands and admonitions, extra training, bar to re-enlistment and military occupational specialty (MOS) reclassification.

Admonitions and reprimands are two types of censures that may be either oral or written. An admonition is a warning that if the particular conduct is repeated, the consequences will be more severe. While on the other hand, a reprimand is a formal censure condemning the misconduct. With respect to commissioned and warrant officers, when admonitions and reprimands are given as nonjudicial punishment, they must be administered in writing.

Nonjudicial punishment. On the other hand, one of the reasons for imposing nonjudicial punishment is to correct, educate, and reform offenders who have shown that they cannot benefit by less stringent measures.

When an offense occurs, the commander should conduct an informal inquiry into the matter, prior to making a determination as to whether punishment under Article 15 is appropriate. The general rule is that an Article 15 should be given for minor offenses under the punitive articles of the Uniform Code of Military Justice (UCMJ). An offense is minor if the maximum authorized punishment for the offense does not include a dishonorable discharge or confinement for more than one year. AR 27-10, para 3-9. If the offense is a minor offense, the imposition of an Article 15 will bar any later court-martial for the same offense. (para 3-9). The circumstances of the offense might indicate that action under Article 15 would be appropriate for an offense other than a minor offense. However, nonjudicial punishment for an offense other than a minor offense is not a bar to subsequent trial by court-martial for the same offense.

There are two types of Article 15s: summarized and formal. **Summarized.** After a preliminary inquiry into an alleged offense by an enlisted soldier, a commander may use a summarized proceeding if it is determined that should punishment be found appropriate, it should not exceed extra duty for fourteen days, restriction for fourteen days, an oral reprimand or admonition, or any combination of these. (para 3-16).

Formal. A commander who, after a preliminary inquiry, determines that the soldier alleged to have committed an offense is an officer, or that punishment, if deemed appropriate, might exceed what can be imposed under a Summarized Article 15, will proceed with a formal proceeding. (para 3-17). Punishment could include correctional custody; confinement on bread and water or diminished rations; arrest in quarters; extra duty; reduction in grade; and forfeiture of pay.

Notary Public

Notaries Public hold an office which can trace its origins back to ancient Rome and is easily the oldest continuing branch of the legal profession that exists and known all over the world. However, in the U.S. notaries public does not necessarily have to be attorneys.

One of the duties of a Judge Advocate General (JAG) is to function as a notary and to perform notarial services. As sworn public officials, notaries public serve an important role in the prevention of fraud and the protection of parties involved by acting as an official, unbiased witness for certain documents. As a notary, we can be asked to serve as an official witness, administer an oath or affirmation, and take an acknowledgement. Once asked, we must read the notarial certificate on the document being notarized in order to know whether we are serving as an official witness, administering an oath or affirmation, or taking an acknowledgement. A notary is required to maintain a registry of all notarial acts performed. This requirement serves to protect the notary public. **Should you need notarial services, do not hesitate to stop by the JAG office, where it can be obtained on a walk-in basis.**