



Defamation: Defamatory Meaning

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Defamatory meaning

- “A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.”

Nuyen v. Slater (Mich. 1964)

Per se categories

- adverse to one's profession or business
- loathsome disease
- guilt of crime involving moral turpitude
- lack of chastity

Beyond per-se categories

Held defamatory to represent

- Mentally illness
- Substance abuse
- Criminal acts
- Sexual impropriety, extra-marital affairs
- Bankruptcy, financial irresponsibility
- Dishonesty

Beyond per-se categories

Courts “take the world as it is” when deciding what is defamatory, even if it might be considered wrong thinking

Status as a victim of rape

- Defamatory according to some courts

Gay, lesbian, or bisexual orientation

- Defamatory in most courts as of a few years ago

Beyond per-se categories

Gay, lesbian, or bisexual sexual orientation

- By one count in 2007, 47 states considered representation of non-heterosexual sexual orientation to be defamatory.
- Colorado, North Carolina, and Massachusetts courts have held that such a representation is not defamatory
- Trend is toward not recognizing as defamatory

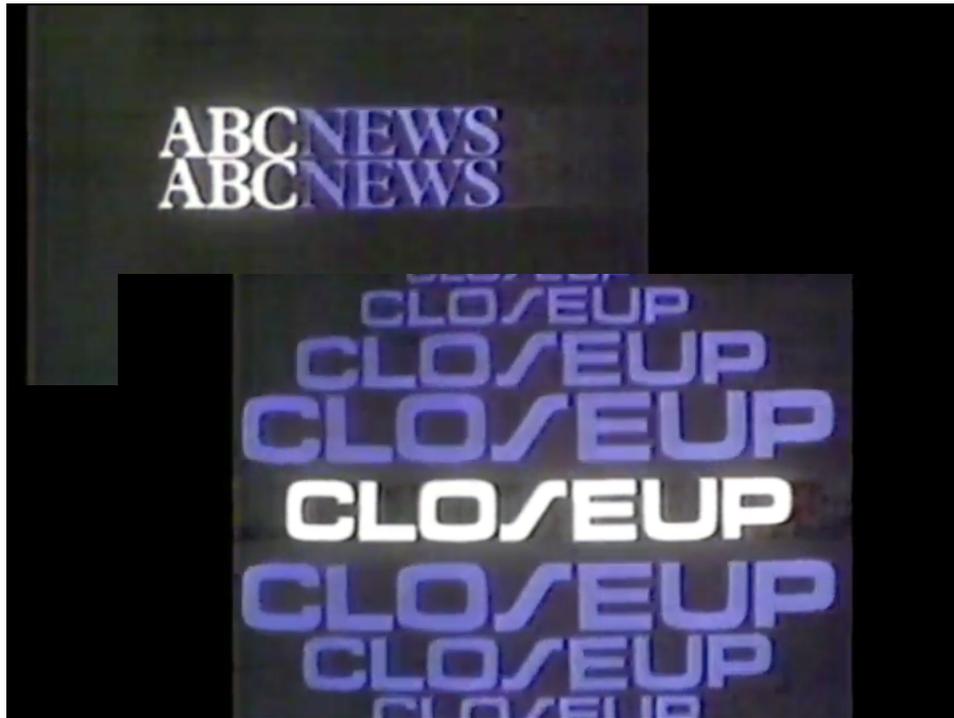
Beyond per-se categories

Being a Communist

- Generally not considered defamatory during World War II
- Generally considered defamatory during Cold War

Accident or implication

- Defamatory statements can be made by implication. An explicit statement is not necessary.
- Defamation can happen accidentally by juxtaposition - especially of words and images - creating perceived meaning unintended by the author.



Clark v. ABC

- “The Broadcast was reasonably capable of two meanings, one defamatory and the other non-defamatory. Consequently, it was for the jury to decide whether the Broadcast was understood as being defamatory.”