

CAROL BURNETT V. NATIONAL ENQUIRER (1981)

On March 2, 1976, the *National Enquirer* published a story that colored the wholesome public image of actress and comedienne, Carol Burnett. The *Enquirer* printed a story headlined “Carol Burnett and Henry K.[issinger] in Row.” The article read, in its entirety:

In a Washington restaurant, a boisterous Carol Burnett had a loud argument with another diner, Henry Kissinger. Then she traipsed around the place offering everyone a bite of her dessert. But Carol really raised eyebrows when she accidentally knocked a glass of wine over one diner and started giggling instead of apologizing. The guy wasn’t amused and “accidentally” spilled a glass of water over Carol’s dress.

Maintaining the item was entirely false, an attorney for Ms. Burnett, by telegram and by letter, demanded the article’s correction or retraction.

In response to Ms. Burnett’s demand for a retraction, the *National Enquirer* published the following:

An item in this column on March 2 erroneously reported that Carol Burnett had an argument with Henry Kissinger at a Washington restaurant and became boisterous, disturbing other guests. We understand these events did not occur and we are sorry for any embarrassment our report may have caused Miss Burnett.

Ms. Burnett was not satisfied with this and filed a complaint for libel. The trial court found in Carol Burnett’s favor for \$50,000 compensatory and \$750,000 punitive damages. The *National Enquirer* appealed.

As Ms. Burnett explained the evening and events reported by the *Enquirer*, she, her husband, and two friends were dining at a nice restaurant in Washington, D.C. Ms. Burnett had a couple of glasses of wine with dinner but was not drunk. She exchanged portions of dessert with couples seated close to her with whom she had been chatting. As she was leaving the restaurant, she was introduced by a friend to Henry Kissinger who was dining at another table. They had a brief conversation. There was no “row” with Mr. Kissinger, and their short conversation was not loud or boisterous. There was no factual basis for other allegations of rude or even unseemly behavior.

The *Enquirer* claimed that it had the information from a reliable social tipster. The story was generally verified by another reporter, and the “newspaper’s” editor composed the item and approved the headline. The *Enquirer* claimed that it was protected by the standard that shields newspapers from liability if they “publish, in good faith, items that are untrue but whose falsity they have neither the time nor the opportunity to ascertain.”

Also, the periodical asserted that because Ms. Burnett is a public figure, libel can only be proved if “malice” is proved--which the *Enquirer* insists must include evil motive and intent. Finally, the *Enquirer* claimed that the damages (the money awarded by the court) assessed were “grossly excessive” and disproportionate to the damage done.

DECISION

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The Second District Circuit Court found that malice and thus libel could be shown even without ill will or spite if the publication showed a willingness or motive to vex, harass, annoy, or injure. And this motive was true of the *National Enquirer* in this case. Also, the court, in deciding the proportionality of the damages, looked to the seriousness of the act and to the wealth of the particular defendant. The function of discouraging behavior or actions cannot be accomplished if the wealth of the defendant allows him to pay the court-awarded damages with little or no discomfort.

Because the *National Enquirer's* net worth was found to be \$2.6 million and its net income for the applicable period was \$1.56 million, the court felt \$50,000 in damages would be painful enough to fit the crime. The Circuit Court was not comfortable with the trial court's award of \$750,000 for punitive damages to punish the *Enquirer's* actions. It offered Ms. Burnett \$150,000 in punitive damages or to give the *Enquirer* a new trial on the punitive damage issue only.