

# Loss for Sheriff Joe Arpaio

By: Jack Greiner on August 13, 2019 on [graydon.law](http://graydon.law)

In 2018, Joe Arpaio, the former sheriff of Maricopa County, Arizona, filed a defamation lawsuit against *The New York Times* and author Michelle Cottle. Arpaio's suit sought damages arising from an article entitled "Well, at least Sheriff Joe Isn't Going to Congress—Arpaio's Loss in Arizona's Senate Republican Primary is a Fitting End to the Public Life of a Truly Sadistic Man." Last week, the United States District Court for the District of Columbia [dismissed the complaint](#). Which means Sheriff Joe is not only not going to Congress, he's not going to court either.

The article had some harsh things to say about Arpaio. Here's a representative sample:

**As "America's toughest sheriff," as Mr. Arpaio liked to call himself, prepares to ride off into the sunset, it bears recalling that he was so much more than a run-of-the-mill immigrant basher. His 24-year reign of terror was medieval in its brutality. In addition to conducting racial profiling on a mass scale and terrorizing immigrant neighborhoods with gratuitous raids and traffic stops and detentions, he oversaw a jail where mistreatment of inmates was the stuff of legend. Abuses ranged from the humiliating to the lethal. He brought back chain gangs. He forced prisoners to wear pink underwear. He set up an outdoor "tent city," which he once referred to as a "concentration camp," to hold the overflow of prisoners. Inmates were beaten, fed rancid food, denied medical care (this included pregnant women) and, in at least one case, left battered on the floor to die.**

But tough words don't necessarily translate to a defamation suit. Arpaio is a public figure, which means he would have to plead and prove "actual malice" to win. Actual malice means that the article was published with knowledge that it was false or with reckless disregard of whether it was false or not. But according to the court, Arpaio pleaded no facts to establish actual malice. In its view, he did nothing more than cite the legal standard. That is inadequate.

The court also noted that Arpaio tried to avoid pleading facts by alleging that "*The New York Times'* political partisanship and liberal bias know no reasonable bounds . . ." The court noted two problems with that approach. First, he offered no facts to support that supposition - he merely assumed that as a given. But second, even if he had pleaded some

facts to establish the alleged bias, that doesn't mean *The New York Times* or Ms. Cottle would lie. They are not the same thing.

As an example, I will fall back on my well established bias against The St. Louis Cardinals. I detest them. I boo Yadier Molina with gusto, whether I am watching him on TV or in person. And don't even get me started on my feelings about Tony LaRussa or Mike Metheny. But I've never lied about them. And frankly, given that I am more likely to get sued by someone I don't like than by someone I do like, I would tend to be way more careful about the facts with my enemies. So, the notion that bias in and of itself translates to falsity is a really flawed argument.

But I see that argument increasingly in libel litigation. It may be intellectually lazy, but plaintiff lawyers no doubt think it strikes an emotional chord with juries. And that's why trial courts need to be vigilant in these cases to dismiss cases on the facts and the law. Kudos to the trial court in this one.