

## Marlene Johnson

*By Bill Hobby*

Do our laws really mean that somebody who tries, anonymously, to defame another person gets a reward of \$700,000?

The United States Supreme Court will decide soon.

Late last year, the Court decided to hear an appeal from the Minnesota Supreme Court in a case in which Dan Cohen sued two newspapers for telling their readers that Cohen, while working for the Republican candidate for Governor, had tried some pretty sleazy campaign tactics against Marlene Johnson, the Democratic candidate for lieutenant governor.

The case is a sordid one that reflects no credit on anybody involved. There are no heroes in this story.

In 1982 Johnson was the Democratic candidate for lieutenant governor of Minnesota. Cohen worked for an advertising agency representing the Republican candidate for governor.

He told four reporters covering the campaign that, some years before, Johnson had been convicted for shoplifting. Cohen asked the reporters not to identify him as the source of the information, and they foolishly agreed. Two of the reporters ignored the story. The other two, without checking the public records where the arrest was duly recorded, reported the matter to their editors.

The editors of the two papers then made a decision even more irresponsible than the one made by their reporters. They decided to use the story without checking the facts and to identify Cohen as the source. As it turned out the story was correct, though incomplete. Had it not been correct, they would have exposed their papers to a libel suit from Johnson.

After the stories ran, Cohen was fired. He sued the papers for damages, saying that the papers had violated a contract with him not to reveal that he was the source.

Cohen won a \$700,000 judgment in the trial court. That judgment was reversed by the Minnesota Supreme Court, and Cohen is now appealing to the U.S. Supreme Court.

The jury decided that Cohen had suffered \$200,000 in actual damages, and then went on to order each newspaper to pay him \$250,000 in punitive damages. In other words, the jury was saying that not only was Cohen somehow damaged the tune of \$200,000 but the papers had committed a crime sufficiently evil that they deserved to be fined a quarter of a million dollars each.

If Cohen's employer wanted to use a teen-age conviction for shoplifting \$8 worth of sewing materials against Johnson that was, of course, his privilege. Such tactics are tasteless and demeaning to those who use them, but they are permissible. We Texans have certainly seen much sorrier tactics used by Jim Mattox and Clayton Williams in last year's race for governor.

But there is a right way and a wrong way even for a candidates to make a fools of themselves if they want to. The right way is to produce the arrest record in public and take full responsibility for doing so. That way the voters can make their judgments both about the candidate who put out the information and the candidate who was arrested for a teenage indiscretion.

There is a right way and a wrong way for news media to handle such a story. The wrong way is to promise confidentiality to someone who is passing out information that is a matter of public record. The right way is to check the record itself and report what the record says.

What was the result of these tactics in Minnesota? The same as in Texas--the voters elected Marlene Johnson. Cohen's candidate, one Wheelock Whitney, was buried in a landslide of votes.

In fact the whole episode turned out to be a blessing in disguise for Johnson. She had had anticipated that the conviction would come up in the campaign had not yet decided how to deal with it. Cohen, of course, had not bothered to mention, even anonymously, that the conviction was later vacated.

In fact the incident generated sympathy for Johnson that was an asset in her campaign. Now she is a fine public servant of the people of Minnesota, who used the judgment that their journalists lacked. Let us hope that the Supreme Court uses equally good judgment and does not reward sleaze because two newspapers used poor judgment.

*Written in 1991.*