

### **13-1013. Defense of truthfulness.**

[Truth is a defense to this action.

To establish the defense of truth, defendant must prove that the statement was substantially true, which means that the statement was true in all material particulars.]

#### USE NOTES

This instruction informs the jury that the defendant has the burden of proving truth as a defense to a defamation action. It is contradictory to UJI 13-1006 which assigns to the plaintiff the burden of proving falsity as part of plaintiff's prima facie case. This instruction is used instead of UJI 13-1006 when the judge determines that the plaintiff is a private figure who is suing a media defendant for publication of defamatory matter not of public concern. See *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 106 S. Ct. 1558, 89 L. Ed. 2d 783 (1986). When this instruction is given in lieu of UJI 13-1006, the court should modify UJI 13-1002(B), (C) and (D) to reflect the placement of the burden of proof of falsity upon the defendant.

The trial judge should determine whether a matter is one of private or public concern, just as the judge must determine whether a plaintiff is a public official or public figure as a matter of law. See *Marchiondo v. Brown*, 98 N.M. 394, 399, 649 P.2d 462, 467 (1982). Criteria for determining when the communication is a matter of public concern are contained in *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749, 105 S. Ct. 2939, 2947, 86 L. Ed. 2d 593 (1985).