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Defamation: Navigating the Actual Malice

Standard in Media and Celebrity Cases

Defamation: Navigating the Actual Malice Standard in Media and Celebrity Cases

Have you ever played a game of telephone, where a message gets passed around and changes along the way? Imagine if instead of harmless secrets, those messages were hurtful lies about you, spreading like wildfire and tarnishing your reputation. That's the playground definition of defamation, where false statements can damage someone's character and livelihood. Now picture yourself as the most popular kid in school, everyone knows your name and talks about you all the time. Suddenly, those lies about you become even more damaging, especially when people say them on purpose, just to hurt your reputation. Welcome to the world of defamation law and the concept of actual malice, where protecting reputations meets the Wild West of free speech. In the evolving world of media and celebrity culture, many challenges arise, however, the actual malice standard remains as a vital safeguard in defamation law creating a balance between protecting freedom of speech and preserving reputations.

Before navigating around the fields of defamation and the actual malice standard it is important to learn the history of this issue to understand the significance of it evolving to what it is today. Before 1964, the actual malice standard was not even a thing there was no difference between public vs. private defamation cases. The actual malice standard is now utilized to determine whether a public figure can seek compensation in legal actions to prove that whatever the defendant claimed was false. This came about because the Supreme Court heard the case of *New York Times Co. v. Sullivan* in 1964. This specific case was about an advertisement issued in the *New York Times* that criticized actions taken against civil rights protesters in Alabama and L.B. Sullivan, a city commissioner, sued the *Times* for libel. The main question with this case that changed the game for cases like these was if government officials could sue for being criticized without proving that the things said about them were done on purpose or without

genuinely ignoring the truth. In the end, The Court ruled in favor of the New York Times and this then established the actual malice standard. According to the Free Speech Center, “Under the actual malice standard, if the individual who sues is a public official or public figure, that individual bears the burden of proving that the media defendant acted with actual malice. The amount of proof must be clear and convincing evidence and the standard applies to compensatory as well as to punitive damages” (Free Speech Center, 2021, pg. 1). This case single-handedly changed the game. It significantly improved the First Amendment protections for the press and public discourse. It helped create that balance between protecting freedom of speech and preserving reputations. Which is a balance that has been used numerous times in cases since then and even in recent cases. This is an issue that has only gotten bigger due to the growth in media with public figures.

A recent case that showcases how public figures have to go that extra step to find actual malice to prove their defamation case is the McDougal v. Fox News case. This defamation claim against Fox News also showcases the balance between freedom of the press and protecting reputations. In this case, Karen McDougal, a former Playboy model, filed the lawsuit alleging that Fox News falsely portrayed her as an extortionist who threatened to extort Trump for their affair. She claims that she sold her story rights legally and that what Fox News host Tucker Carlson said on the show was false. As a public figure, McDougal must meet the actual malice standard in the defamation claim and prove that these statements were false and that the network knew that and disregarded the truth. Even in this case in 2024 the actual malice standard created from a defamation case in 1964 is still being heavily used.

This issue matters heavily to society because of the significance it plays in keeping the balance between freedom of speech and saving reputations. Along with that, it keeps all mass

media like journalists, reporters, and more in check. The public is always curious about what is going on in the lives of public figures. According to a recent study about Social Media by the University of Maine it states, “...there are 4.8 billion social media users worldwide, representing 59.9% of the global population and 92.7% of all internet users. There were 150 million new social media users between April 2022 and April 2023 - a 3.2% increase year-over-year.” (Social Media Statistics, 2023, pg. 1). With these large numbers of viewers in mind, media outlets must ensure what they are putting out into the world is true factual information. If it is not and the information is damaging and the figure has actual malice to prove it, that media outlet is in for one big lawsuit. Being able to navigate the actual malice standard in defamation cases keeps a balance between protecting freedom of speech and preserving reputations.

This has been an issue that has been heavily looked at over time since the first major case in 1964 and with the ever-changing landscape of media, the issue has also evolved. Throughout time there have been issues and challenges in distinguishing and interpreting the actual malice standard. Another case that helped further the distinction that actual malice is needed for public figures even when the publication is extremely offensive is the *Hustler Magazine v. Falwell* case of 1988. In this specific case, Reverend Jerry Falwell sued *Hustler Magazine* for producing a parody advertisement that showcased him in a fictional offensive situation. The court ended up ruling with *Hustler Magazine* due to the fact Falwell did not have actual malice. The parody may have been extremely offensive, but it was protected by the First Amendment. This case showcased the large scope of the First Amendment and the protection it has even in situations when the speech is offensive.

These cases started to help define what actual malice was and how it was crucial to have in proving a public figure defamation case. The *Milkovich v Lorain Journal Co.* case in 1990

helped define the difference between opinion and facts. This difference plays a key role in figuring out whether actual malice is present to prove the case. Milkovich was a high school wrestling coach who sued a newspaper that stated he lied under oath in an investigation. The Supreme Court ruled in favor of Milkovich because the paper's claim could be read as facts to readers and this allowed it to be subject to defamation laws. This case shows that even opinions implying false facts can lead to defamation lawsuits. After this case, the media had to start being even more careful about how they covered stories on public figures.

Once cases like those helped unveil the interpretation of actual malice standards and the balance between protecting freedom of speech and preserving reputations, it significantly helped solve numerous modern defamation cases. For instance, recently the Johnny Depp v. Amber Heard defamation case in 2022 gained an immense amount of media traction. Depp sued his ex-wife for defamation because of what she said about him in *The Washington Post*. Established from the *New York Times v. Sullivan* case in 1964 the court made Depp provide actual malice and prove that the statements Heard said were false and that she knew they were or she disregarded the truth. The court ended up ruling in Depp's favor because he was able to prove actual malice. This case reflected the modern challenges faced when trying to apply the actual malice standard when it is a defamation case between two public figures.

Surrounded by the age of social media and public opinion it can also be hard to apply the actual malice standard when it is a defamation case between a public figure and a private individual. In the *Paltrow v. Deer Valley Resort Co.* case in 2020, Gwyneth Paltrow was sued for \$3.1 million by Terry Sanderson because of a skiing accident. Sanderson claimed that Paltrow crashed into him and fled the scene leaving him with brain injuries. Drawing significant media attention Paltrow denied the allegation and countered for \$1 seeking damages for defamation.

The court ended up ruling in favor of Paltrow after the jury had just two hours of deliberation. This case showcases just how hard celebrities fight to protect their reputations against false claims and how difficult it can be to do that with the actual malice standard. However, because of the standard, there is a balance between protecting freedom of speech and preserving reputations.

As seen in these modern cases of defamation the role of social media is beginning to play a bigger role in this issue in the courts. This leads to some unanswered questions in the law that currently exist right now for defamation cases. Something that is becoming extremely popular is Artificial intelligence and with the growth of AI, there are questions to be made. An article produced by Olivia Mao at Seton Hall University, “AI Text-To-Image Tools: Evaluating Risks of Defamation” dives deep into this topic and states, “... creators can use various methods through AI Text-to-image tools to defame others, in order to harm the reputation of the victim and dissuade others from associating with the victim. These defamatory messages can be achieved by face-swapping the victim to an existing image, showing the victim with offensive items, or suggesting that the victim is in an inappropriate location. All these methods involve generating new images that communicate certain false messages about the victim” (Mao, 2024, pg. 7). With this evolving technology new challenges and unanswered questions are being presented to the previous law that exists. Can AI-generated photos be subject to defamation cases? Will this change the way of the actual malice standard?

As of right now, the overall current state of this issue in the court remains the same just with a few more unanswered questions as the media industry is continuously evolving. Even as it changes the laws still follow section 230 of the Communication Decency Act and according to Wake Forest Journal of Law and Policy, “The law provides immunity to website operators for user-generated content that is ‘created’ or ‘developed’ by third parties over the Internet. Given

that digital news websites receive some of the highest volumes of user-generated content, Section 230 has been vital in assuring that public discussion of public issues remains ‘robust and wide-open’”(Marshall, 2011, pg. 1). When looking at evolving the issues to go with the new AI technologies this section will be taken into large consideration. With social media having such an impact on society and so many individuals being a part of it, this law plays a significant role in this issue. This law is what helps ensure that even with all the challenges facing the world of media and celebrity culture, the actual malice standard remains a vital safeguard in defamation law creating a balance between protecting freedom of speech and preserving reputations.

All in all, these unanswered questions will play a key role in how this issue might evolve in the next five to ten years. Just as it can be noticed from 1964 to now there have been key changes in this issue, however, one thing remained the same throughout those years: ensuring the balance between protecting freedom of speech and preserving reputations. Even if this law evolves throughout the next year that mission will always remain the same.

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