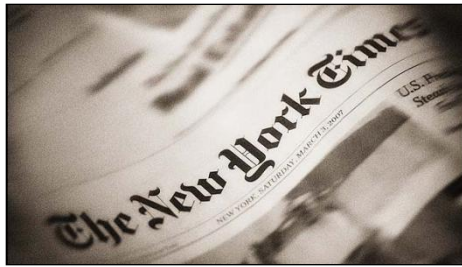


Assessing Courts' Definitions of Elements in Libel Law

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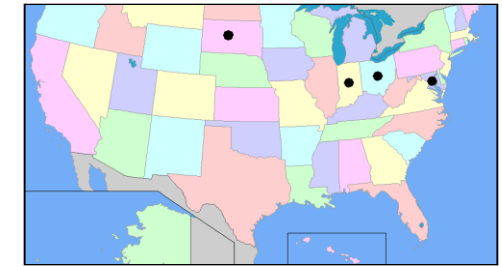
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Elements of Actual Malice

- The landmark case *New York Times Co v. Sullivan*, 376 U.S. 254 (1964) changed libel law standards and created the notion of separate classifications of individuals who file libel lawsuits and what they must prove.
- The Supreme Court and lower courts hold public figures, public officials and limited-purpose public figures most prove actual malice in order to win damages in libel suits. The Second and Ninth Circuit Court of Appeals base their definition of actual malice from the standard set in *New York Times Co.*
- *Curtis Publishing Co. v. Butts*, 388 U.S. 130 (1967) defined further the difference between individuals in terms of libel suits.
- The Second and Ninth Circuit Court of Appeals interpret actual malice as falsity or a reckless disregard for the truth. Furthermore, both courts look for 'clear and convincing evidence' that there is actual malice.
- The lower courts have determined and refined the classification of individuals through their own terms and interpretation.
- Due to the evolution of communication, it is necessary to reexamine and reevaluate the actual malice standard to ensure it is applicable still in today's legal world.

In U.S. libel law, courts have struggled to implement the various elements of libel into ruling standards. Specifically, they have sought to find consistency in classifying individuals to determine actual malice, in defining the meaning of defamatory words, and categorizing harm resulting from libel in cases involving the free press.



Definitions of Defamatory

- The court opinion of *Janklow v. Newsweek Inc.*, 788 F.2d 1300 (1986) reinforced the importance of implication, as Justice Arnold wrote, "A defamatory communication may consist of a statement in the form of an opinion, but a statement of this nature is actionable only if it implies the allegation of undisclosed defamatory facts as the basis for the opinion."
- In *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990), Chief Justice Rehnquist delivered a Supreme Court decision that supported the notion of determining defamatory meaning through implication of a statement of fact. Rehnquist noted that, "The falsity of the speaker's beliefs and opinions are not at issue; rather, it is the falsity of the implied defamatory statement of fact that is critical."
- A 1992 *Iowa Law Review* by C. Thomas Dienes and Lee Levine explained how the author can have varying states of awareness of the defamation, all which can still result in a libel action. "The defamatory meaning may arise innocently, negligently, knowingly, or deliberately. The publisher ... may not have even considered the meaning that the plaintiff seeks to attribute to the publication."

Definitions of Harm

- Both circuits define harm as result from statements about a plaintiff's alleged criminal conduct, loathsome diseases, misconduct in their personal professional or occupation, or sexual misconduct.
- Bodily harm: as sickness or disease, including required care, loss of services and death that results from the libelous statement.
- Pecuniary or special harm: intentional and improper interference with another's prospective contractual relation, whether the interference consists of inducing or otherwise causing a third person not to enter into or continue the prospective relation or preventing the other from acquiring or continuing the prospective relation. The statement in question would have to be considered defamation per quod.
- Emotional harm: encompasses distortion or discomfort caused by the defamatory statements. The harm done to the plaintiff's psyche must be considered extreme and severe in order to hold up in court.