



Analyzing the Actual Malice Standard in New York and Virginia Defamation Cases

Abraham Keller & Nathan Vicar

Advisor: Dr. Annette Taylor

Virginia Cases

Thesis:

The actual malice standard established in *New York Times v. Sullivan*, 376 U.S. 254 (1964) as applied to public figures has been interpreted by Virginia courts to mean that a plaintiff must demonstrate clear and convincing evidence that the defendant realized that his statement was false or that he subjectively entertained serious doubt as to the truth of his statement.

Supporting thesis:

- Within the last 20 years in Virginia, eight out of eleven libel cases where news media was involved have been decided in favor of the press. The reason for this trend in libel cases stems from *New York Times*, which defines actual malice as statements or publications that are made with "knowledge of falsity or with reckless disregard to the truth." The actual malice standard applies to states through the 14th Amendment and protects media for false statements made about public officials but without a high level of fault by the press. It is difficult for public officials to win such cases because the burden of proving that statements or publications were made with actual malice lies with them, as they initiated the libel suit.

- In *Jordan v. Kollman*, 269 Va. 569 (2005), a former mayor sued a city resident who placed ads in the newspaper opposing the mayor's candidacy for city council. The resident stated that the mayor allowed low-income housing to be built that led to various ills. Being a public official, the plaintiff had to prove actual malice, which he failed to do. The Supreme Court of Virginia's rationale was that the mayor found insufficient evidence that the ads were published with actual malice according to *New York Times*.

- In *Webb v. Virginian-Pilot Media Co.*, 85 Va. Cir. 6; Va. Cir. LEXIS 154 (2012) the newspaper published an article about Webb, who was at the time an assistant principal at a local high school, that led Webb to sue a libel suit against the Virginian-Pilot. He argued that the article portrayed that his son, who was involved in a physical altercation with another student, received preferential treatment due to Webb's position as an assistant principal within the school district. According to *Webb*, a public official has the burden to prove clear and convincing evidence that a defendant made defamatory statements with actual malice, that is, with knowledge that they were false or with reckless disregard to the truth. Webb failed to prove that the statements were made with actual malice and did not win the damages of \$3 million he sued for.

New York Cases

Thesis:

The New York State Supreme Court has begun to consider bloggers as journalists when it comes to the public concern of the people when facing actual malice in libel cases.

Supporting thesis cases:

- *Biro v. Conde Nast*, 1:11-cv-04442, (S.D.N.Y. 2012) The plaintiff Peter Biro, is a leader in a movement to scientifically authenticate art worldwide. He is known for having developed scientific approaches to art authentication through fingerprint analysis. In Grann's article, Grann quickly began to find cracks in Biro's initial story written by artfagcity.com, tracing a long history of purported fraud and manipulation of artworks he was employed to restore. Biro found the statements to be defamatory and actual malice. After review, the court decided throw out the case because Biro failed to meet the actual malice standard that is set for public

figures. Biro had failed to show that Grann and Gawker had acted with actual malice when it published allegations that he may be a fraud. Bloggers are held to the same standard as journalists when facing actual malice cases.

- *W.J.A. v. D.A.*, 205 N.J. 99 (2011) D.A. wrote a blog article accusing their "someone" of sexual assault. D.A. asked for the help of others who had possibly been in a similar situation with this person. The blog did give the name of the person that was accused of sexual assault. W.J.A. sued D.A. for libel and actual malice, because W.J.A. had charges dropped on them in the past from sexual assault. W.J.A.'s attorney asked D.A.'s attorney to shut down the site because it contained "per se defamatory statements" along with the same allegations made in the earlier lawsuit. He also threatened to file a defamation suit if D.A. did not close the blog. This is the case for many bloggers in our world today. However, blog sites are a way to get a message across and or create a following. Private individuals have the right to their opinion and have the freedom of speech. As writers, we are allowed to our opinion rather it is truth or not on what we write. The First Amendment in a public blog protects a private individual's words because it is a matter of opinion and is not factual based.

- *Borzellieri v. Lestch*, 2013 NY Slip Op 50624 (S.C.N.Y. 2013) Lestch posted a blog on the Daily News website calling a former school principal a "firebrand" and a "principal of hate." Judge McDonald threw out Borzellieri's 2012 claim of defamation and actual malice because the statements in question "are incapable of being objectively characterized as true or false," McDonald said in the decision. The judge also stated that Borzellieri is considered a limited purpose public figure under New York law because he has written racially divisive books and articles and thrust himself into the forefront of racial controversy. As a public figure, Borzellieri was required to show that the newspaper acted with actual malice, but McDonald ruled that he did not meet that requirement. The court ruled in the favor of Lestch and claimed it was only a matter of opinion and the statements were not defamatory. Lestch's comments are protected under the Media Law and Reporter's Privilege Act.