Duquesne Law Review

Volume 46 | Number 3 Article 6

2008

Republication as Proof of Actual Malice in a Previous Defamatory Publication: *Weaver v. Lancaster Newspapers, Inc.*

Diane M. Pisani

Follow this and additional works at: https://dsc.duq.edu/dlr

 Part of the Law Commons

Recommended Citation
Diane M. Pisani, *Republication as Proof of Actual Malice in a Previous Defamatory Publication: Weaver v. Lancaster Newspapers, Inc.*, 46 Duq. L. Rev. 509 (2008).
Available at: https://dsc.duq.edu/dlr/vol46/iss3/6

This Recent Decision is brought to you for free and open access by Duquesne Scholarship Collection. It has been accepted for inclusion in Duquesne Law Review by an authorized editor of Duquesne Scholarship Collection.

Republication as Proof of Actual Malice in a Previous Defamatory Publication: *Weaver v. Lancaster Newspapers, Inc.*

PUBLIC FIGURE DEFAMATION — ACTUAL MALICE — PROOF — The Supreme Court of Pennsylvania held that republication of a defamatory statement made by a defendant may be used to prove actual malice in the initial publication of the defamatory statement.

Weaver v. Lancaster Newspapers, Inc., 926 A.2d 899 (Pa. 2007).

Appellant, police officer Robin Weaver, filed a defamation action against Lancaster Newspapers, Inc. and the writer of a letter to the editor, Oscar Lee Brownstein, for publication of a letter claiming Weaver raped a murder suspect.[1] The trial court granted the defendants' motion for summary judgment.[2] The superior court affirmed the trial court's grant of summary judgment.[3] The Pennsylvania Supreme Court granted allocatur to determine whether defendant Brownstein's act of allowing republication of the letter, after notice of the defamatory nature of the material, was relevant to establish defendant's actual malice in the initial publication. [4]

In 1991, Weaver was involved in the investigation of the murder of a sixteen-year-old girl.[5] The United States District Court for the Eastern District of Pennsylvania granted the petition for a writ of habeas corpus of the woman convicted of the murder, Lisa Michelle Lambert.[6] In the course of the habeas corpus proceeding,

---

1. Weaver v. Lancaster Newspapers, 926 A.2d 899, 901 (Pa. 2007).
2. *Weaver*, 926 A.2d at 901.
3. *Id.*
4. *Id.* at 902. The court granted allocatur limited to the issue of republication, which pertains only to defendant Brownstein. *Id.* Therefore, Lancaster Newspapers was not involved in this proceeding. *Id.* at 902 n.2. Allocatur literally translates to: "[I]t is allowed. [It] formerly indicated that a writ, bill, or other pleading was allowed. It is still used today in Pennsylvania to denote permission to appeal." BLACK'S LAW DICTIONARY 83 (8th ed. 2004).
5. *Weaver*, 926 A.2d at 901. "Weaver was an East Lampeter Township police officer in Lancaster County, [Pennsylvania]." *Id.*
6. *Id.* Lambert's conviction was affirmed in the superior court. *Id.* The Supreme Court of Pennsylvania denied appeal. *Id.* A writ of habeas corpus is commonly filed in order to bring a party in front of a court to determine the legality of a party's imprisonment or detention. BLACK'S LAW DICTIONARY 1642 (8th ed. 2004).

Lambert alleged that Weaver and two other officers had raped her during the investigation.[7] In its opinion reversing Lambert's conviction, the district court made statements indicating that it believed Weaver and other officers had made up and tampered with evidence and had lied before the court.[8] No charges were filed concerning those allegations.[9]

Defendant Brownstein submitted a letter to the editor of the *Intelligencer Journal* alleging that Weaver had, in fact, raped Lambert and that he had been arraigned for the sexual abuse of women and children in the time since the Lambert case.[10]

In response to publication of this letter, Weaver filed defamation claims against both Brownstein and the publisher of the newspaper.[11] The trial court granted Brownstein's motion for summary judgment on the grounds that Weaver had failed to establish that Brownstein had acted with actual malice.[12] Three months after Weaver filed suit, Brownstein consented to the republication of his letter in its entirety on the "Free Lisa Lambert" website.[13]

The Pennsylvania Superior Court affirmed the trial court's grant of summary judgment.[14] The Pennsylvania Supreme Court then granted allocatur.[15] Review was limited to the issue of whether Brownstein's act of consenting to the letter's republication, while knowing of its probable falsity, was sufficient as circumstantial evidence of actual malice to withstand Brownstein's motion for summary judgment.[16]

Chief Justice Cappy wrote the opinion of the court.[17] The chief justice stated that it would be appropriate for a trial court to grant summary judgment only if there could be no dispute as to the material fact of actual malice in Brownstein's initial publication of

---

7. *Weaver*, 926 A.2d at 901.
8. *Id.*
9. *Id.*
10. *Id.* In his letter, Brownstein stated that Weaver had knowledge of a broken door at Lambert's apartment and led two other officers there, where they raped her at gunpoint. *Id.* He also stated that Weaver had been "arraigned for the sexual abuse of women and children." *Id.*
11. *Id.*
12. *Weaver*, 926 A.2d at 901.
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.* The court specifically wanted to evaluate the applicability of a 1947 decision, *O'Donnell v. Philadelphia Record Co.*, 51 A.2d 775 (Pa. 1947). *Id.*
17. *Weaver*, 926 A.2d at 900. Justices Castille, Eakin, Baer, and Baldwin joined in the opinion. *Id.* at 908. Justice Saylor concurred in the result. *Id.* Justice Newman did not participate in the decision. *Id.*

the letter.[18] Chief Justice Cappy also noted that a trial court must view the facts in a light most favorable to the non-moving party when considering a summary judgment decision.[19] The supreme court's standard of review was de novo on both the issue of whether a genuine issue of material fact existed and whether republication was relevant to a showing of actual malice in the original publication.[20]

The court discussed Pennsylvania defamation law in addressing whether republication of the letter indicated actual malice in the initial publication.[21] Because Weaver was a public figure, it was necessary for Weaver to set forth a prima facie case of defamation, as well as to present evidence that the defendant had acted with actual malice.[22] Chief Justice Cappy concluded that the superior court erred as a matter of law by deciding that the republication of allegedly defamatory material could not serve as circumstantial evidence of actual malice in the initial publication.[23] The court stated that, because republication may make the initial existence of actual malice more or less probable, republication is therefore relevant to whether malice was present in the first instance.[24] The court further reasoned that Brownstein had notice of the defamatory nature of his letter when republished, which may point

---

18. *Id.* at 902. A party may move for, and the court may grant, summary judgment "whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report." PA. R. CIV. P. 1035.2(1).

19. *Weaver*, 926 A.2d at 902.

20. *Id.* at 902-03.

21. *Id.* at 903.

22. *Id.* The burden of proof is on the plaintiff to go forward with evidence establishing a prima facie case for defamation. *Id.* The elements of a prima facie case of defamation are as follows:

> (1) The defamatory character of the communication; (2) Its publication by the defendant; (3) Its application to the plaintiff; (4) The understanding by the recipient of its defamatory meaning; (5) The understanding by the recipient of it as intended to be applied to plaintiff; (6) Special harm resulting to plaintiff from its publication; and (7) Abuse of a conditionally privileged occasion

42 PA. CONS. STAT. § 8343(a) (2007).
The court also noted that actual malice must be shown if the plaintiff is a public figure. *Weaver*, 926 A.2d at 903. A defendant acts with actual malice if he published the defamatory statement "with knowledge that the statement was false or with reckless disregard of its falsity." *Id.* (citing Curan v. Philadelphia Newspapers, Inc., 439 A.2d 652, 659 (Pa. 1981) (quoting New York Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964))).

23. *Weaver*, 926 A.2d at 905.

24. *Id.* at 904. "[R]epublication was relevant to the jury's inquiry because if there was abuse of privilege in the original publication, the jury may have found the republication convincing evidence of wrong motive of actual malice." *Id.* (citing *O'Donnell*, 51 A.2d at 779 (Pa. 1947)).

to indifference for the truth of the statements at the time the letter was first published.[25]

The court dismissed the superior court's determination that republication only indicated what Brownstein's state of mind was after the initial publication.[26] The court then found that, because republication was relevant to actual malice, a jury had to decide the correct weight to afford that evidence.[27] The court further held that the trial court erred when it granted summary judgment based upon statements by the defendant that he had made a mistake in good faith.[28] A jury should have had the opportunity to evaluate the credibility of the defendant's statements because evidence presented to support a motion for summary judgment must be considered in a light most favorable to the non-moving party.[29]

The court concluded by addressing Brownstein's argument that the trial court's role is of greater importance when granting summary judgment in defamation issues because of the First Amendment rights involved.[30] The court stated that the defendant had confused the trial court's role of "gatekeeper" in summary judgment proceedings with the role of appellate courts in assessing the constitutionality of issues of actual malice only *after* they have been before a jury.[31]

Defamation is a tort encompassing the smaller torts of libel and slander.[32] It is the making of an untrue statement that is damaging to the reputation of another.[33] Because the harm inherent in defamation is to the reputation of plaintiff in the opinion of others, communication of the defamatory statement must be made to a

---

25. *Weaver*, 926 A.2d at 906.

26. *Id.*

27. *Id.* The court determined that there was a genuine issue of material fact in dispute, as Brownstein's deposition showed that he first admitted to consenting to republication but later denied any memory of whether he consented or not. *Id.* at 907. Therefore, the issue of actual malice should have gone to the jury. *Id.*

28. *Id.* at 907.

29. *Id.* The lower court erred when it relied on the defendant's statements that he made a mistake in good faith. *Id.*

30. *Weaver*, 926 A.2d at 907.

31. *Id.*

32. W. PAGE KEETON, ET. AL., PROSSER AND KEATON ON TORTS § 111 (5th ed. 1984). Libel is a "defamatory statement expressed in a fixed medium, esp. writing but also a picture, sign, or electronic broadcast." BLACK'S LAW DICTIONARY 934 (8th ed. 2004). Slander is a "defamatory assertion expressed in a transitory form, esp. speech." *Id.* at 448.

33. KEETON, *supra* note 32, § 111. Defamation is the "act of harming the reputation of another by making a false statement to a third person." BLACK'S LAW DICTIONARY 448 (8th ed. 2004).

third party in order for the statement to be actionable.[34] The plaintiff has the burden of proof in defamation actions.[35]

At early common law, media publishers were subject to liability for all defamatory statements regarding public officials, unless some privilege existed or the truth of the statements could be proved.[36] In 1964, in *New York Times v. Sullivan*[37], the United States Supreme Court limited recovery possibilities for public official plaintiffs in defamation cases.[38] In *New York Times*, a County Commissioner brought a defamation action against the New York Times for publishing an advertisement that made false and inaccurate allegations about the police force in Montgomery, Alabama, which was under his control.[39] The Court considered whether the Alabama libel law, which required proof of actual malice only to award punitive, but not general damages, violated the First and Fourteenth Amendment guarantees of free speech and press.[40]

Writing for the majority, Justice Brennan held that the Alabama libel laws were unconstitutional.[41] He required public official defamation plaintiffs to show that the defendant acted with actual malice in the publication of defamatory statements as an element of a prima facie case for defamation.[42] Brennan emphasized the importance of lively public debate in which people are free to criticize their public officials.[43] He asserted that a law which, in effect, required a person who publicly criticized a public official to guarantee the truth of his statement, or else be subject

---

34. KEETON, *supra* note 32, § 111.

35. *Id.* § 113. In an action for defamation, the plaintiff has the burden of proving when the issue is properly raised:

> (1) The defamatory character of the communication; (2) Its publication by the defendant; (3) Its application to the plaintiff; (4) The understanding by the recipient of its defamatory meaning; (5) The understanding by the recipient of it as intended to be applied to the plaintiff; (6) Special harm resulting to the plaintiff from its publication; (7) Abuse of a conditionally privileged occasion.

42 PA. CONS. STAT. § 8343(a) (2007).

36. KEETON, *supra* note 32, § 113.

37. 376 U.S. 254 (1964).

38. *N.Y. Times*, 376 U.S. at 279-80.

39. *Id.* at 256. The ad was entitled "Heed Their Rising Voices" and spoke of violent responses targeted at Southern Negro students who conducted peaceful demonstrations. *Id.* In particular, the ad indicated that Montgomery police had taken excessive and violent measures to stop the demonstrations. *Id.* at 257. While the ad did not specifically mention Sullivan, he argued that because he was County Commissioner, in charge of the police, those reading the ad would understand him to have authorized the action of the police. *Id.* at 258. Some of the claims made in the ad were erroneous. *N.Y. Times*, 376 U.S. at 257-58.

40. *Id.* at 256.

41. *Id.* at 283-84.

42. *Id.* at 279-80.

43. *N.Y. Times*, 376 U.S. at 270.

to liability, would promote self censorship in derogation of First Amendment goals.[44] Brennan reasoned that dynamic public discussion, including harsh criticism of the conduct of public officials, should not lose its constitutional protection merely because it achieved its desired effect in lessening the reputation of those officials.[45] He stated that, in the course of lively public discussion, it is inevitable that an untrue statement will be made, but that those statements must be protected in order to preserve an uninhibited exchange.[46] Thus, the Court concluded it was necessary to forbid public officials from recovering damages in defamation actions unless it could be shown that the defendant acted with actual malice.[47]

Four years later, the Supreme Court decided the issue of what constitutes reckless disregard within the context of actual malice.[48] In *St. Amant v. Thompson*, St. Amant, who was running for public office, cited portions of an interview with a member of the local teamster's union during a televised speech.[49] St. Amant recited the teamster's accusation that Thompson, the Deputy Sheriff, had improperly accepted money from a union official.[50] The Supreme Court held that Thompson failed to establish that St. Amant had acted with actual malice, because he had not demonstrated that St. Amant had made the defamatory statements with sufficient recklessness to prove actual malice.[51] The Court stated

---

44. *Id.* at 278.

45. *Id.* at 273. Brennan looked to the events surrounding the Sedition Act of 1798, ch. 74, §§ 1-4, 1 Stat. 596, 596-97 (expired 1801), for support of his argument that harm to the reputation of public officials is no reason to limit public criticism of their official conduct. *N.Y. Times*, 376 U.S. at 272 (quoting 4 ELLIOT'S DEBATES ON THE FEDERAL CONSTITUTION 553-54 (1876)). The Act made it a crime to make false or outrageous statements regarding the government of the United States, Congress, or the President with the intent to defame or harm the public opinion of them. *Id.* The Act was held unconstitutional by the General Assembly of Virgina and was vigorously opposed by Thomas Jefferson and James Madison. *Id.*

46. *N.Y. Times*, 376 U.S. at 271-72.

47. *Id.* at 279-80.

48. St. Amant v. Thompson, 390 U.S. 727 (1968).

49. *St. Amant*, 390 U.S. at 728.

50. *Id.* at 729.

51. *Id.* at 730. The initial trial occurred before the decision in *New York Times* was issued, and the trial court issued judgment for Thompson. *Id.* at 729. By the time St. Amant moved for a new trial, *New York Times* had been decided, and the trial court factored that into consideration of St. Amant's motion, but decided that decision did not affect its holding, and denied the motion. *Id.* The Louisiana Court of Appeals reversed, finding that *New York Times* was applicable and that Thompson had not shown actual malice. *Id.* The Supreme Court of Louisiana reversed the court of appeals' decision, holding that *New York Times* was applicable but that Thompson had proved actual malice. *St. Amant*, 390 U.S. at 729.

that reckless disregard, in the context of actual malice, is not measured by the reasonable man standard and that the plaintiff must show instead that the defendant actually doubted the truth of the publication.[52] The Court recognized that its decision could encourage deliberate ignorance by publishers, but said that the public's interest in the conduct of its public officials is so great that the protection of some erroneous publications was worth the risk.[53] The Court provided that a mere assertion of good faith would not save a defendant from liability.[54] The finding of good or bad faith publication, the Court held, should be decided by the jury.[55] The Court found that Thompson had not produced evidence to show that St. Amant had acted with reckless disregard for the truth.[56]

Following the Supreme Court decisions on public official defamation cases, Pennsylvania courts adopted the Supreme Court's requirement and definition of actual malice. In *Curran v. Philadelphia Newspapers*,[57] the Supreme Court of Pennsylvania applied the *New York Times* and *St. Amant* standards for actual malice in public official defamation cases.[58] In *Curran*, a resigning United States Attorney brought two actions against a newspaper, one for an article regarding his resignation and another for an article concerning his activities while in office.[59] The newspaper moved for summary judgment on the grounds that actual malice could not be proven and the supreme court granted the motion as to the article regarding Curran's resignation, but ordered the case concerning Curran's successor's comments to go to the jury.[60] Quoting the language of the Supreme Court in *New York Times*, the court

---

52. *Id.* at 731. Justice White stated:

> Reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice.

Id.

53. *Id.* at 731-32.

54. *St. Amant*, 390 U.S. at 732.

55. *Id.*

56. *Id.*

57. 439 A.2d 652.

58. *Curran*, 439 A.2d 652.

59. *Id.* at 654. One article stated that he resigned because the Justice Department was going to ask for his resignation, and the other article incorrectly quoted his successor as claiming that Curran had not prosecuted white collar crimes when the defendants were politically connected. *Id.* at 655.

60. *Id.* at 653-54.

spoke of the necessity of showing actual malice.[61] The court stated that, in order for a public official defamation action to survive a motion for summary judgment, evidence of actual malice must be strong enough to create a genuine issue of material fact.[62] Applying *New York Times* and *St.Amant*, the court held that actual malice was not shown where the defendant received information regarding the defamatory statement from a reliable source, stating that the reliability of that source precludes the finding that the defendant published the statement with reckless disregard for its truth.[63] The court also applied the *St. Amant* rule that a defendant cannot escape defamation charges by stating that it believed the statements to be true due to some misunderstanding and that a jury must determine whether the defendant acted in good faith.[64]

In order for a publication to have been made with actual malice, the plaintiff must show that the defendant doubted the truth of the statement at the time of publication.[65] *Weaver* concerns how the defendant's state of mind regarding the truth of the publication may be proved.[66] The Pennsylvania Supreme Court considered whether republication of a defamatory statement may be used to indicate indifference for the truth of the statement at the time of the initial publication in *O'Donnell v. Philadelphia Record Co.*[67] In *O'Donnell*, the defendant published an article calling the plaintiff, a newspaper writer, a Naziphile.[68] The defendant republished the article after the plaintiff had filed suit, and the court held that evidence of improper motive in republication was relevant to the consideration of improper motive in the initial publication.[69] Like the court in *O'Donnell*, the *Restatement (Second) of*

---

61. *Id.* at 659.

62. *Id.* at 659.

63. *Curan*, 439 A.2d at 660. The newspaper had received word of the Justice Department's apparent dissatisfaction with Curran's performance and the likelihood that it would ask for his resignation from the Special Assistant to the Attorney General. *Id.* at 659. The court ruled that the action for the article regarding Curran's resignation presented no issue of material fact and granted summary judgment for the newspaper. *Id.* at 663.

64. *Id.* at 663. The newspaper argued that the article claiming that Curran did not prosecute white collar defendants who had political connections was the result of a misunderstanding. *Id.* at 662. The court refused to grant the newspaper's motion for summary judgment in this action and ordered that it go to trial. *Id.* at 663.

65. *St. Amant*, 390 U.S. at 731.

66. *Weaver*, 926 A.2d at 900.

67. 51 A.2d 775 (Pa. 1947).

68. *O'Donnell*, 51 A.2d at 775.

69. *Id.* at 779. "This republication was relevant in the jury's inquiry; if there was abuse of privilege in the original publication, the jury may have found the republication convincing evidence of wrong motive, of actual malice." *Id.* at 779.

Torts takes the position that republication of a defamatory statement, after the defendant has been notified that the statement is likely to be false, may be used as evidence of actual malice.[70] The Supreme Court, likewise, has indicated that both direct and indirect evidence tend to show the defendant's state of mind regarding the truth of statements made, including repetitions and later statements by the defendant.[71]

The element of actual malice protects defendants who make public statements regarding public officials which may place those public officials in an unflattering light. As Justice Brennan emphasized in *New York Times v. Sullivan*, the standard of actual malice preserves public discourse and criticism.[72] Consequently, public figure defamation plaintiffs have a difficult task in establishing a prima facie case. Recognizing this, courts have admitted circumstantial as well as direct evidence to prove actual malice.[73] The Pennsylvania Supreme Court's decision in *Weaver v. Lancaster Newspapers* further enables public figure defamation plaintiffs to establish a prima facie case of defamation.

The court's decision in *Weaver* gives public figure defamation plaintiffs the benefit of a logical presumption—that republication of defamatory statements after notification that the statements are likely to be untrue indicates a general attitude of recklessness or indifference for the veracity of the statements that likely factored into the initial publication as well. The holding is limited in its reach, extending only to those cases where the defendant has republished the defamatory statements after being notified that they are not true. This decision enables public figure defamation cases to overcome the obstacle posed by motions for summary judgment and will put more plaintiffs before juries who can weigh the facts and ultimately determine whether actual malice existed at the time of publication.

The holding in *Weaver* benefits public figure defamation plaintiffs. A significant burden is placed on those plaintiffs through the requirements of proving a prima facie case. Actual malice, as an element, is inherently difficult to prove because it pertains to the state of mind of the defendant regarding the truth of the state-

70. RESTATEMENT (SECOND) OF TORTS, § 580A cmt. d. (1977).

71. Herbert v. Lando, 441 U.S. 153, 164 n.12 (1979). However, in *Herbert*, the Court held that editorial processes were relevant to proving actual malice, and thus the extent to which that holding included republication is unclear. *Id.* at 176. *See also* Harte-Hanks Commc'ns v. Connaughton, 491 U.S. 657, 668 (1989).

72. *N.Y. Times*, 376 U.S. at 272.

73. *Harte-Hanks*, 491 U.S. at 668.

ment at the time of publication. Direct evidence of the defendant's state of mind regarding the truth of the statement is likely to be sparse. Therefore, circumstantial evidence is admissible to prove actual malice. Due to the evasive nature of actual malice evidence, a motion for summary judgment presents a substantial obstacle to a plaintiff's case. In order to overcome a motion for summary judgment, the plaintiff must establish that there is a genuine issue of material fact.[74] The plaintiff needs to muster evidence of a strength to establish that issue of material fact. Where there has been republication of defamatory statements after notification of their falsity, that evidence is strong enough to establish a genuine issue of material fact—actual malice—if admitted to show reckless disregard for truth in the initial publication. Admissibility of such evidence helps to bring the case before a jury.

Chief Justice Cappy set forth the proposition that defamation cases should be heard by a jury, and that it is inappropriate to dispose of them by way of summary judgment.[75] As the defendant's state of mind is at issue in establishing actual malice, a jury should hear the evidence presented by both sides and determine, as a factual matter, whether the defendant acted with reckless disregard for the truth.[76] The Supreme Court has held that juries, not judges, should make the ultimate decision whether a defendant made a publication in bad faith.[77] Because a jury, as a fact finder, is well suited to make such a determination, and the court's holding in *Weaver* serves to supply plaintiffs, in limited circumstances, additional strength in bringing their cases before a jury, the decision promotes fairness for plaintiffs.

Though the decision clearly issues a benefit to public figure defamation plaintiffs, it does not unfairly prejudice defendants. This decision affects the admissibility, but not the weight, of republication as evidence. The defendant is free to introduce evidence showing that the initial publication was not published with reckless disregard for the truth of the statements or to minimize the supposed link between republication and defendant's state of mind regarding initial publication. For example, a defendant can

---

74. PA. R. CIV. P §§ 1035.2-.3 (2003).

75. *Weaver*, 926 A.2d at 907 (citing Hutchinson v. Proxmire, 443 U.S. 111, 120 n.9 (1979)). "The proof of 'actual malice' calls a defendant's state of mind into question and does not readily lend itself to summary disposition." *Id.*

76. *Weaver*, 926 A.2d at 906-07. Chief Justice Cappy stated that while summary judgment may be an adequate remedy in some defamation cases, it is not suitable in cases where a material fact is in dispute. *Id.*

77. *St. Amant*, 390 U.S. at 732.

claim that the source of the defamatory statement was a credible one and that the statement was published in good faith. Should a jury find that to be the case, the impact of republication on the finding of actual malice will be diminished.

Indeed, the nature of the standard of actual malice issues a safeguard for defendants in public figure defamation cases. The great interest in free speech, public debate, and open criticism of public officials insulates those who make statements regarding public figures from liability each time they make statements placing public figures in a negative light.[78] Mere negligence in publication will not suffice to make a defendant liable. If a plaintiff cannot show that the defendant published the defamatory statement with something more than negligence, the case will not survive a motion for summary judgment.

If, however, it can be shown that there is a likelihood that the defendant published with knowledge of the falsity of the statement or with reckless disregard for its veracity, the defendant may be subject to liability. Because republication logically indicates indifference for the truth, a defendant who has such evidence presented against him is not being prosecuted unfairly. Whether that indifference extended back to the time of initial publication is a question for the jury to decide, given all of the facts. The decision in *Weaver* does nothing to lessen the protection that the standard of actual malice provides defendants. Rather, the decision makes it easier for a plaintiff to establish a genuine issue of material fact with regard to actual malice in public figure defamation cases, and it is likely to result in more defamation cases surviving summary judgment and proceeding to trial.

Diane M. Pisani

78. *N.Y. Times*, 376 U.S. at 271-72.