






- 1  **Proof of Fault**
 - Some level of fault is required to win a libel suit,
 - Proof of fault depends on “who you are.”
 - [New York Times v. Sullivan](#), 376 US. 254 (1964)
 - LANDMARK CASE-Know the story and be clear on the facts
 - Public officials must show actual malice by proving the media
 - Knew the information was false and published it anyways
 - or
 - Had a reckless disregard for whether it is true or false
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 - Understand the rationale for the ruling
 - Seditious Libel?
 - Free expression is central to the democratic process -it needs “breathing space”(one of the four values we discussed).
 - Public officials must expect to be scrutinized about their performance.
 - Courts since have said that plaintiff must show actual malice with “clear and convincing evidence” or that actual malice must be established with “convincing clarity.”
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 - This decision “constitutionalized” protection against libel - while some states had similar protection already in place, this made it so all states had to follow this standard for the media and public officials.
- 4  **Step one: Who is a public official...(job description)?**
 - Elected officials across the board are public officials for the purposes of defamation
 - Many appointed public sector positions, but not automatically all of them. (Rosenblatt v. Baer)
 - Pre-existing interest in job. (Beluga Whale case)
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 - Some examples of public officials as defined by state and lower federal courts who sometimes use different criteria than

the SCOTUS:

- Junior state social worker
- Administrator of a small county motor pool
- Police officers
- Research analyst for the WA state Senate Energy and Utilities Committee.
- There is disagreement in the courts about public school teachers being public officials.
- A consulting firm for a county was NOT ruled a public official although it was left open whether a individual in the consulting firm might qualify.
- The Court has said (in a footnote) that “public official” is not synonymous with “public employee” (Hutchinson v. Proxmire, 1979).

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- Summary:
 - Public official status seems to be shaped by:
 - Level of job responsibility
 - Kind of job responsibility
 - Authority to spend public funds without supervision
 - Nature of the job.
 - If not a public official, then only have to show negligence as proof of fault.
- Once a public official there is one more step before the level of fault becomes actual malice.

7  **Step Two: What is official conduct?**

- In other words the defamation has to be about your official capacity in some way. Defamations outside your role as a public official would only require evidence of negligence by the media.

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- Two kinds of comments that fall under public official’s official capacity:
 - The manner in which the plaintiffs conducts herself in office

- Plaintiff's general fitness for the job (this can bleed into private life pretty easily). And the more important the public position, the more into the private life a defamatory statement can go.
- Thus, journalists need to connect criticisms of private behavior to public responsibilities.

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- Justice Brennan said that few characteristics are more relevant to fitness for office than “dishonesty, malfeasance, or improper motivation.” *Garrison v. Louisiana*, 379 U.S. 64 (1964)
- SCOTUS held that a charge of criminal conduct against a present official, no matter how remote in time or place the alleged conduct, always is “relevant to fitness for office,” and actual malice must be proved. (*Monitor Patriot Co. v. Roy*, 401 U.S. 265 (1971)).

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- Extending New York Times definition of public official: the Public Figure
 - What happens if a person is not a public official or seeking elective office?
 - The courts have extended the actual malice requirement to persons labeled public figures:
 - Persons “who occupy positions of such pervasive power and influence that they are deemed public figures for all purposes.” (*Gertz v. Welch*, 418 U.S. 323 (1974))
(ANOTHER VERY IMPORTANT DECISION)

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- The challenge lies in classifying those who are
 - powerful but not well known (a fed court found the head of Mobil Oil to be a public figure)
 - Those who are well known but not powerful (Paris Hilton?)
 - Examples of all purpose public figures (not many cases):
 - Johnny Carson
 - Wayne Newton

- William Buckley
- Some courts have ruled that all purpose public figures can exist on a local level for defamation that is confined to the local area where they are well known.
- Some courts have also suggested that if the defamation extends beyond the area where they are well known, they can still be public figures if the person was known to a substantial portion of the readership.

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- Rosenbloom v. Metromedia (1971)
 - This idiosyncratic case suggested for a brief time that anyone involved in an issue of public concern/interest (whether a public or private person) must show actual malice in a defamation case against the media. The logic was circular in that mere publication became evidence of public interest and thus anything in the media required a showing of actual malice. The case was altered with the decision in....

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Gertz v. Welch 418 U.S. 323 (1974) (Landmark Case)

- Know the facts of the case
 - What kind of figure did they determine Gertz to be?
 - What was the court's reasoning for this determination?

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- Understand the way the Court clarified the criteria of a limited public figure in
 - Time v. Firestone, 424 U.S.448 (1976)
 - Public figure? Why or why not?
 - Hutchinson v. Proxmire, 443 U.S. 111 (1979)
 - Public figure? Why or why not?
 - Wolston v. Reader's Digest, 443 U.S. 157 (1979) (a NY case)
 - A public figure? Why or why not?

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- What are the three criteria used by the SCOTUS to determine this new category of public figure?

16  **Public Figure over time**

- If someone is a public official or public figure now, they will always be one with regard to the issues that generated their public person status.
 - Monica Lewinsky ? For what purposes?

17  **Private Persons**

- Default category if not a public official, all purpose public figure, limited purpose public figure.
- Does not need to prove actual malice
- Generally, only has to show “negligence” or that the defendant failed to exercise reasonable care in preparing and publishing defamatory material. (NY has an exception for private persons when the issue is of public concern...)

18  **Fault**

- Negligence:
 - General term in torts meaning failure to exercise ordinary/ reasonable care.
 - Average Person Standard or a Professional Standard
 - General means the defendant did not act with reasonable care in publishing the defamatory statement.
 - Court might consider if the defendant did everything reasonable to determine the truth of the statement:
 - Amount of research undertaken before publication?
 - Trustworthiness of sources?
 - Attempts by defendant to verify questionable statements or seek opposing views.
 - Whether established journalistic practices were followed.

19  **Fault**

- Actual Malice - two ways to show it:
- Knowledge of Falsity
- Masson v. New Yorker, 111 S. Ct. 2419 (1991)
- Know facts of this twisted case.
- Ultimately there was evidence that certain quotes were false,

one was defamatory, but there was not actual malice. The jury was convinced that Malcolm believed what she wrote was an accurate representation.

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2. Reckless Disregard for the Truth

- More difficult to define but courts have more consistent rulings than with public figure decisions.
- High degree of awareness of the probably falsity, or
- Evidence that the defendant entertained serious doubts about its truth
- Simple failure to investigate something that later turns out to be false is not actual malice on its own.
- Kozinski (9th Cir. Judge in *Eastwood v. National Enquirer*, 1997) asked what journalist is going to admit in court that she entertained serious doubts.
- State of a journalist's mind?
 - *Herbert v. Lando*, 441 U.S. 153 (1979). First A. doesn't not impede discovery regarding a reporter's state of mind (e.g. no constitutional privilege).

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- In *Curtis v. Butts* (1967), a merger of two cases, J. Harlan developed what some lower courts have adopted as a test for reckless disregard.
 - What are the difference between the two situations before the Court:
 - Butts case:
 - Walker case:

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- Three factors from *Curtis v. Butts*:
 - Was publication urgent (daily paper, breaking news, etc)?
 - How reliable was the source?
 - Was the story probable?
- Add to this requirement, the SCOTUS decisions:

- that actual malice must be shown with convincing clarity, not just preponderance of evidence. There can be little or no dispute about the evidence.
- Appellate courts are required to review the facts and make sure they support a finding of malice (so defendant has a second shot of winning on the basis of the facts and makes trial court more careful)

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- Additional considerations:
 - Subject of defamation denying the truth prior to publication does not constitute reckless disregard if the media still publishes.
 - Being more comprehensive in research and fact checking might be negligent, but not actual malice. Complete verification is not required for time sensitive news.
 - Because a reporter accepts some scientific results over others does not evidence of actual malice (Michael Moore case)
 - Libel Proof?
 - You can see why the press fights vigorously to have the defendant classified as ANYTHING but a private figure.

24  **New York State Libel Law**

- A false statement
- Published to a third party without privilege or authorization
- With fault amounting to at least negligence
- That caused special harm or defamation per se.

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- Standards for New York State:
 - 'Public figure (limited or all purpose)+ legitimate public concern = actual malice
 - Private figure + legitimate public concern = gross irresponsibility
 - Private figure + private matter = negligence.

26  **Intentional Infliction of Emotional Distress**

- Defendant's conduct
 - was intentional or reckless
 - was extreme or outrageous
 - caused the plaintiff emotional distress
 - Emotional distress was severe

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- *Hustler v. Falwell* 108 S. Ct. 876 (1988)
 - Very important case! Know facts
 - Invasion of privacy (dismissed) libel (jury ruled against-rhetorical hyperbole) and intentional infliction of emotional distress (jury awarded damages of \$200,000). Appealed to SCOTUS.
 - What did this tort allow Falwell to circumvent?
 - No public person classification in this tort
 - No need to show any fault, negligence or actual malice in this tort
 - Defense of opinion did not apply in this tort
 - This tort allowed an end run around the constitutional protections for libel.

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- Court ruled:
 - For a *public figure or official* to win this tort she must prove:
 - Parody or satire amounts to statement of fact, not opinion (overrides the opinion defense just like in libel)
 - It was a false statement of fact
 - The author acted with actual malice