Defamation and Public Figures

An Analysis of public figures vs private figures in regard to defamation

By Maria Consbruck

mconsbruck@unomaha.edu

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With the ever-growing presence of public figures in today's culture, there is an increase in the chance these public figures will face defamation or questioning of their reputation. Some questions arise when looking at this overall, such as what qualifies a person as a public figure and how does this affect the public figures who face this defamation, in reference to a private figure. Before answering these questions, it is important to understand the difference between public and private figures. Along with understanding the difference between public and private figures, it is also necessary to have a better understanding of defamation, as it is important to know what is necessary to claim something as defamatory. The purpose of this research is to discover what public figures and private figures are defined as within communication law and to uncover how these classifications can affect figures in a courtroom setting when claiming defamation.

Brief Legal History

To begin with, the libel law of a society suggests how a society balances importance of reputational concerns with freedom of speech. "Harm to reputation has been a criminal offense or a civil wrong since civilization's earliest days, but the social and cultural approach to reputation as a value varies from society to society," (Youm, 2021, p. 81). Defamation is defined as the publication of information that tends to hold someone up to hatred, ridicule, contempt or scorn. This can be seen through libel or slander. Libel is considered the publishing of defamatory matter through written or printed words. Slander is considered defamatory communication through words spoken or gestures. In today's world, libel has become more common because it

can cause greater harm. "Nearly all libel cases are civil actions, in which plaintiffs claim monetary damages for reputational harm from defamatory statements," (Youm, 2021, p. 111).

Public and private figures can be hard to distinguish in a federal court. Some questions may arise when attempting to differentiate between the two. Who qualifies as a public figure? "Public figures…tend to have access to the media and, therefore, have the ability to set the record straight when inaccuracies occur," (Youm, 2021, p. 97).Who qualifies as a private figure? "Private figures, on the other hand, usually have limited access to the media and are therefore more vulnerable to irreparable injury," (Youm, 2021, p. 97). And how does this affect the plaintiff in a defamation lawsuit? "Society places a high value in protecting private figures against libel, so the level of fault they are required to meet is less demanding than it is for public people," (Youm, 2021, p. 97).

Another thing to keep in mind, is that an appellant cannot be made public through the actions of the media. In other words, media defendants cannot attach themselves to their own defamatory media coverage of the plaintiff as evidence that the claimant is a public figure. The individual's prominence is important in establishing said person's public-figure status. It is important to note that a person may become of public-figure status within small publics but may return to being a private figure in larger spheres.

Statute Law

It is important to know what elements must be met to prove defamation has taken place for an individual in a libel sense. "A plaintiff must establish that: (1) a false *and* defamatory statement of fact concerning the plaintiff was published to a third party, (2) the publication was not privileged and was made with fault on the part of the publisher, and (3) the publication

caused actual injury," (Youm, 2021, p. 85). When it comes to public figures, they are required to prove actual malice before winning any libel case. Actual malice is, "…knowledge of falsity or reckless disregard for the truth…," (Youm, 2021, p. 90). When it comes to private figures, they usually need to prove negligence to win, but if they want to win punitive or presumed damages, they must plead actual malice. Depending on certain states, state law may vary in a negligence standard. For instance, in most states negligence is defined as, "…failure to act as a reasonably or ordinarily careful person would under certain circumstances," (Youm, 2021, p. 94). When it comes to states such as Iowa, Kansas, and Oklahoma, negligence is defined as 'journalistic malpractice', which is defined as, "…failure to adhere to standards of reporting and writing that are common to the news industry," (Youm, 2021, p. 94). One can take a look at past case laws to help further the understanding of actual malice and negligence.

To create a better understanding of actual malice, *New York Times Co. v. Sullivan* (1964) can be referenced. In this case, a commissioner of public affairs for the Montgomery police department sued the New York Times for libel. The New York Times published a paid advertisement explaining the maltreatment of black students protesting segregation, and against four others with names that appeared in the advertisement. The plaintiff was awarded damages of $500,000 against all defendants. The verdict was upheld because the statements in the advertisement were libelous and not privileged. The evidence showed malice on part of the newspaper. The defendants' objections were rejected because the First Amendment doesn't protect libelous publications.

The ruling was later reversed in favor of the newspaper by a unanimous 9-0 decision. In order to claim defamation or libel, the plaintiff must show that the defendant knew that a statement was false or reckless in publishing the information. An opinion wrote by Justice

Brennan ruled in favor of the New York Times. It was stated, "When a statement concerns a public figure, the Court held, it is not enough to show that it is false for the press to be liable for libel. Instead, the target must show that it was made with knowledge of or reckless disregard for its falsity," (Oyez, 2021 para. 5). This case helped determine that public figures must plead actual malice in order to win a defamation case.

To create a better understanding of negligence, *Gertz v. Welch* (1974) can be referenced. In this case, a police officer was convicted of murder and the attorney who represented the victim was discussed in a magazine article that inaccurately portrayed the attorney as a "Leninist" and "Communist-fronter". The plaintiff was awarded $50,000, but eventually lost his libel suit because the judge found that the magazine did not violate the actual malice test for libel.

The Court then reversed the lower court decision claiming that Gertz's rights had been violated. The final decision resulted in a 5-4 vote. It was said that the recklessness standard applies to defamation of public figures or public officials, not private figures. Justice Powell argued that "For private individuals, states may not impose strict liability on news media but any standard of fault lower than recklessness limits private individuals to awards for actual injury," (Oyez, 2021, para. 3). This case helped determine that private figures must prove negligence in order to seek damages for publication of false defamation.

It is important to keep these two cases in mind when looking into defamation cases, overall. These cases are both significant when establishing the importance of the First Amendment, according to each figure in defamation claims. *New York Times v. Sullivan* is important because it helped protect the right of the press and public to criticize public figures, while also helping to determine what public figures are to plead in a defamation case. *Gertz v.*

Welch is important because it helped protect the rights of private figures when it comes to defamation claims. These cases are excellent references and can be applied to more recent cases when determining the rights of different individuals.

Recent Case Laws

A case that can be reviewed is *McCafferty v. Newsweek Media Group* (2020). A young boy, referred to as C.M., received much attention during the 2016 presidential campaign by publicly endorsing Donald Trump by releasing videos that many people watched. Many of his videos were seen by people from all over which left many wanting to speak with Trump's biggest supporter. One magazine, *Newsweek,* saw his popularity and wrote an article entitled "Trump's Mini-Mes." This article featured pictures of C.M. and M.M., another Trump supporter. It included quotes from Professor Gitlin who touched on the topic of children as spokespersons. After the article was written and released, C.M.'s parents sued on his behalf, claiming that *Newsweek* had defamed C.M. and put him in a false light. The case deemed that *Newsweek's* statements were not defamatory because, "Every contested statement in *Newsweek's* article is an opinion, label, or speculation based on disclosed facts and alleges no specific wrongdoing," (p. 357). They said that other statements made throughout the article are uncontested speculations or are protected political characterizations because, "Everyone is free to speculate about someone's motivations based on disclosed facts about the person's behavior," (p. 359). They also claimed that C.M. failed to plead actual malice, which is required to show defamation. They stated that, C.M. does not, "plead that *Newsweek* made up Professor Gitlin's statements, used them to accuse him of breaking the law when it knows he was innocent, or published facts contrary to information it otherwise knew," (p. 360). They also held that C.M.'s false-light claim fails because, "Opinions based on true, disclosed facts cannot support a false-light claim unless they

create a false impression," (p. 360). C.M. was considered a public figure at the time, and as stated, in order for a public figure to win a libel case they must plead actual malice and since C.M. did not he lost the case.

Another case that can be reviewed is *Verity v. USA Today* (2019). This is an example of defamation by implication. This case revolved around a schoolteacher, James Verity. He was a teacher in Oregon who had lost his teaching license because he engaged in an inappropriate relationship with an eighteen-year-old female student. He eventually acquired a teaching license in Idaho and started to teach there, again. He and his wife had filed a lawsuit alleging defamation by implication. USA Today, KTVB, KGW, Tami Tremblay, and Steven Reilly published articles and broadcasted news reports explaining what Verity did. The district court ruled, "…that despite the actual truth of the statements, reasonable minds could find that the media impliedly defamed the Veritys," (p. 658). The court decided that Verity was not a public figure or official. The court affirmed, "It is true that a teacher's inappropriate relationship with a student is a matter of public concern, but that conduct does not elevate the teacher to the status of a figure…", (p. 663). Verity did not hold a position of power and influence; therefore, he could not be qualified as a public figure.

Law Reviews

Krieger (2021) discussed how plaintiffs cannot evaluate the financial merit of a defamation lawsuit. This removes the main benefit of presumed damages. He explained that "This is especially problematic for plaintiffs relying on presumed damages to their reputations to justify the costs of litigation for defamation per se cases, which are the most egregious types of defamation, and why reputational damages are presumed," (p. 642). He suggested that instead of eradicating the doctrine of presumed damages, "a better approach was to set a guaranteed

minimum damages floor associated with presumed damages for plaintiffs who are successful in a per se defamation claim," (p. 645).

He determined that the damages and standards of proof in defamation cases vary depending on the plaintiff. He explained that because of the wide spectrum of presumed damage awards, it can cause difficulty for plaintiffs to adequately assess the merits of their defamation claim. He concluded, "While a minimum financial damages award floor will not provide a perfect solution in every case, it is certainly better than abolishing the presumed damages doctrine or perpetuating the current state of uncertainty related to presumed damages awards," (p. 676).

Garry (2020) discussed how privacy and reputation is at stake because of new technologies, the general communications practices of society, and the changing journalism environment. He explained, "A major reason for this shortcoming is that the common law does not give enough weight to privacy and reputation when balanced against speech interests," (p. 280). He argued that privacy and reputation were vital foundations. He said that courts should reconsider the common law's overweighing of speech in both privacy and defamation offenses. He also argued that privacy and reputation serve important social roles and important individual interests.

He said that courts have not had to address constitutional principles but have instead created a common law that protects the privacy and reputation of a person while not excessively disrupting speech. He claimed that courts have gone too far in protecting speech and as a result, has reduced privacy and reputation as individual interests. He explained that 'a greater understanding of and appreciation for the values of privacy and reputation,' was needed for democratic society and that the decline of common law actions of privacy and defamation

indicated the decline of individual dignity. He concluded, "Without any privacy, an individual can hardly possess their own life," (p. 324).

Conclusion: Interpretation, Limitation, and Future Research

In conclusion, it is important to understand the difference between public figures and private figures. This is important because it will help when it comes to defamation claims. By understanding what classifies a person as public or private, one can start to look into the First Amendment when establishing what rights of the person are protected. Once the Court defines a figure as public or private, they can begin to look at the qualifications of a defamation case in regard to that particular figure's classification. When it comes to a defamation case with a public figure, the plaintiff must prove actual malice. When it comes to a defamation case with a private figure, the plaintiff must prove negligence; however, this will vary throughout certain states. This leads to understanding the libel plaintiffs burden of proof. This includes proving identification of the person in defamatory material, publication of material by a defendant and the defamatory nature of the material. This then leads to looking at the damages, falsity, and fault of the derogatory material.

With these research findings, there are potential limitations when looking into defamation and public or private figures, overall. Some of these limitations include establishing what differentiates a person as a public figure or a private figure and being able to prove someone's intent for the libel or slander. To begin with, establishing the difference between a public figure and private figure is not the easiest. It is extremely difficult to create a solid definition of public and private figure because they are subject to change. This change is a result of social media. Social media has become more popular among people today. Through this prominence, it creates a bigger platform for people to potentially become a public figure. This is seen in the *McCafferty*

v. Newsweek Media Group case. This little boy was considered a public figure because he was thrust into the spotlight because of the videos he posted. With social media available for anyone, it becomes more likely for anyone to become a public figure. But the question arises; "Does an overnight viral video make the person who posted it a public figure? Or are they still considered a private figure?" These are things to keep in mind when looking at public vs private figures in regard to defamation. The second limitation is being able to prove someone's intent for publishing or saying defamatory claims. No one can be sure of the intent someone has for publishing or saying something that could be qualified as defamatory. The nature of the words should be considered when looking at these. Not to mention people interpret things differently, so what one person thinks may not be what another person thinks. This can limit the understanding of why and how it was done. This can potentially lead to accidentally accusing someone of libelous claims and if this occurs it can lead to wrongful conviction.

There are a few things that can be further examined in the future regarding this type of research. As mentioned, it is difficult to distinguish between a public figure and private figure. As time moves on, it will be interesting to see if the Court will come up with a better definition of these two figures. This would be something to keep an eye on, especially as social media becomes more and more prevalent. Another thing that could be explored further is how society defines these figures now and in the near future. This would also be interesting to further discuss because people are influenced by a multitude of things. These influences can affect the way people perceive what they come across. This could provide a different viewpoint of what people consider a public figure and a private figure.

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