

# Libel Outline

## **NYTimes v. Sullivan (1964)**

Public officials must prove actual malice (knowing falsity or reckless disregard for the truth)

Actual malice also must be shown by:

--ex-public officials

--candidates for office

--public figures (**Gertz-1974**)

The two types of public figures are: pervasive (for all purposes) and vortex (those who voluntarily inject themselves into public controversies)

**Gertz** was applied in **Time (1976)** and **Wolston (1979)** and both individuals were found to be private people whose burden of proof was negligence (not taking reasonable care)

What constitutes malice? Having serious doubt about a story (**St. Amant-1968**)

## **Herbert (1979)**

Asking journalists state-of-mind questions is allowable to determine "serious doubt"

## **Ollman (1984)**

Test for distinguishing fact from opinion:

1) meaning of words,

2) susceptibility to proof,

3) context in the article itself,

4) larger context for the article in question

## **Hustler (1988)**

Even outrageous opinion protected

## **Milkovich (1990)**

Opinions that imply fact may not be protected

# **Libel Outline**

- I. Is the material libelous? That is determined by the presence of five elements:**
  - A) Defamatory falsehood**
  - B) Identification**
  - C) Publication**
  - D) Fault (actual malice for a public person and negligence for a private person)**
  - E) Injury (compensatory, actual and/or punitive damages)**
  
- II. If the material is libelous, is there a defense?**
  - A) Constitutional defense**
    - 1. Applies to public officials, ex-public officials, candidates and pervasive/vortex public figures**
    - 2. They must prove the media guilty of actual malice (knowing falsity or reckless disregard for truth)**
  - B) Traditional defenses**
    - 1. Truth**
    - 2. Privilege**
    - 3. Fair comment**