Chapter 62
Historic Times v. Sullivan and Gertz v. Welch Supreme Court Decisions and Online Social Media Libel Law

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ABSTRACT

This article re-examines two historic Supreme Court's decisions—the 1964 Times v. Sullivan and the 1974 Gertz v. Welch—as they apply to the digital era. The Court's decision in Sullivan established the federal legal guidelines for a victim to prove a libel case including actual malice. In Gertz v. Welch the Court established three categories of public figures who must prove actual malice in a libel claim. The article reviews both cases within the context of social media defamation claims. The authors conclude that the Supreme Court decisions in Times v. Sullivan and Gertz v. Welch are still relevant in the era of online communication and social media.

INTRODUCTION

In January 2014 a Los Angeles, California Superior Court jury ruled that musician and actress Courtney Love was not guilty of libeling her former attorney on Twitter. *Gordon and Holmes v. Love* (2014) was the first "twibel" case to be heard before a jury. Love was sued by her former attorney, Rhonda Holmes, for damaging her reputation with the tweet, "I was (expletive) devastated when Rhonda J Holmes Esq of San Diego was bought off ..." (cited in McCoy, 2014). Love previously hired Holmes to pursue her allegations that former attorneys and accountants stole money from her late husband Kurt Cobain's estate.

This was the second time Love was sued for allegedly damaging someone's reputation on Twitter. Previously she was sued by fashion designer Dawn Simorangkir. Love tweeted that the fashion designer was a felon, had a history

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of assault and burglary, and was an illegal drug addict. That lawsuit was settled out of court for $430,000. Despite the lawsuits directed at her, Love is a trailblazer in this legal area of "twibel." With the Superior Court jury finding her not guilty of libel, there is the beginning of a legal precedent of applying traditional libel law to social media. Despite the rampant use of social media in society including Twitter, Facebook, and other sources, judges across the United States are applying traditional libel law precedents to this communications medium.

Love's lawsuit in 2014 coincides with the 50th and 40th anniversaries of two U.S. Supreme Court decisions that played a paramount role in American libel law. In the 1964 *Times v. Sullivan* (1964) decision, the Court issued a ruling that defined the actual malice burden of proof public officials need in proving a libel claim against the media. Ten years later in *Gertz v. Welch* (1974), the Court expanded upon *Sullivan's* public official status and recognized three distinct categories of public figures who require the same actual malice standards. Taken together, the Court in both Sullivan and Gertz crafted important areas of libel law pertaining to public figures and their need to prove actual malice against a media organization that harmed their reputation.

In 1997 in *Reno v. ACLU*, the Court clarified the First Amendment status of the Internet. Justice John Paul Stevens wrote that the Internet is an online communications medium "that constitutes a vast platform from which to address and hear from a world-wide audience of millions of readers, viewers, researchers, and buyers" (Reno v. ACLU, 1997, p. 853). Before its use for blogging and other forms of social media, Justice Stevens noted the vast potential of the Internet for an exchange of information and ideas —where anyone can publish including "governments, educational institutions, businesses, advocacy groups, and individuals" (p. 853). Noteworthy in this opinion is the Court's accurate depiction of how individuals can use the Internet:

> *Publishers may either make their material available to the entire pool of Internet users, or confine access to a selected group, such as those willing to pay for the privilege. No single organization controls any membership in the Web, nor is there any centralized point from which individual Web sites or services can be blocked from the Web. (Reno v. ACLU, 1997, p. 853)*

Stevens discussed in 1997 how email subscriber groups provided a wide range of information to its followers: "There are thousands of such groups, each serving to foster an exchange of information or opinion on a particular topic" (p. 851). His perspective is similar to how social media operates within the present day Internet environment.

In the early 21st century, society's use of online communication and specifically social media reflects how the Court in 1997 accurately portrayed how the Internet would be used with ease. People use social media to communicate with friends, family, and colleagues. Social media websites such as Twitter, Facebook, and blogs allow us to publish our own thoughts on any subject. Increasingly, these same communication outlets are used as forums to disparage individuals, companies, and organizations. The ease by which one can blog, tweet, or post opinions increases the likelihood that someone's reputation may be harmed (Azriel, 2011). In this electronic environment, where anyone or any company may be instantly targeted by a libelous publication, it is important to analyze the relevance of the 50 year old *Times v. Sullivan* and 40 year old *Gertz v. Welch* Court decisions within the current era of social media.

This article provides a timely re-evaluation of the two historic decisions in the context of the digital era. The authors first provide an overview of recent research related to social media and applying actual malice standards in libel claims. Following is an analysis of three lower profile decisions by lower federal district courts in the last two years where social media was the primary communications medium for publishing