

## **In the Name of Public Debate: Fact, Opinion, and Falsehood Treated as One. US Approach.**

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Checks and Balances are an integral part of any democratic government. Journalists function as a check on government officials by communicating government action to the general public. Journalists ensure that the public will be informed about the actions of their government, thus acting as a “check” to ensure that before acting, government officials are aware that the public eye will hold them accountable for their actions. Traditionally, “opinions” have been treated as ideas, and are thus guaranteed protection under freedom of expression, whereas misstatements of facts were treated as grounds for a lawsuit. During the 1960s in the U.S., this changed, and the Supreme Court granted protection to false statements of facts as well.

To ensure that journalists are able to fulfill their function to check government officials, they must be allowed to publish things that they believe to be true, even if the statements are in fact false. The actual truth value should be determined and evaluated by the public who reads the article. If a journalist prints something about a public figure that he reasonably believed to be true, then that journalist is remaining faithful to his function as a check on government officials. However, if a journalist publishes something about a public figure that the journalist knew was false, then he is acting with malice and should be held legally responsible for any damages incurred. In the U.S., there is significant allowance granted to journalists. Freedom of the press is held with highest regard to ensure that the opportunity for public debate of government action will always be present. Presently, American jurisprudence does not make a distinction between whether something is a “fact” or “opinion.” However, if the published statements are false, then the publisher is only liable if it knew the statements were false.

During the 1960s, the United States was facing many conflicts between government policy and black citizens. Journalists provided the entire country with details of how certain officials were behaving, which fueled the Civil Rights Movement. In the U.S., the leading Supreme Court opinion regarding freedom of expression and libel law is *New York Times Co. v. Sullivan*. This case involved an editorial posted by the *New York Times* that provided stories about how southern government officials were treating black citizens. Some of the stories were

true while others were false; however, all of them were presented as statements of fact. The Court was not concerned with whether the statements were true or false; they examined whether the journalist had done a reasonable amount of research and believed the statements to be true. The Court set two critical standards. The first was a distinction between public officials and private persons. The court held that “public officials are expected to bear a certain level of harsh, even inaccurate, criticism in order protect the public’s right to open debate.” Second, the public official must prove that the journalist knew that the statement was false (i.e. acted with malice), or acted with reckless disregard of the truth (recklessness standard). However, if a journalist took reasonable precautions to ensure that the information was true, then he cannot be held responsible.

This does not mean that journalist have free range to publish whatever they come across or fabricate. The courts hold them to a “reasonable person” standard (i.e. would a reasonable person functioning in the same capacity have made the same conclusion if presented with similar facts). This is a softer standard to encourage journalist to publish *all* stories that affect the public. Professional ethics and reputation should define standards of professionalism, and not fear of persecution or prosecution.

As mentioned before, one of the primary functions of journalists it to act as a check on government officials; to serve this function, they must have freedom to publish what they believe to be the truth. *Times* reiterated that, from time to time, erroneous statements are inevitable in free debate. This decision treats opinion and fact with the same protection. This potential for unavoidable error must be protected if freedoms of expression are to have the ‘breathing space’ that they need to survive.