



The Gist of It: The Uneasy Triangle of Sports Journalism, Deadlines & Defamation Law

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ABSTRACT

This Article examines how structural pressures in contemporary sports media, particularly the continuous competition for clicks and the rapid adoption of artificial intelligence (“AI”), expose fault lines in defamation law doctrines of substantial truth and public figure status. Using two contemporary disputes, Spears v. New York Times Co. and Taylor v. ESPN, this Article reveals how the “gist” standard can insulate technically false yet reputationally-damaging reporting, and how an expansive conception of who qualifies as a “public figure” can leave relatively obscure college athletes with diminished protection despite limited access to meaningful self-help. Situating these disputes within ongoing transformations of sports journalism, the Article argues that getting the gist right is not enough when inaccuracies materially worsen an individual’s perceived legal culpability or moral blameworthiness. This Article urges courts to apply substantial truth more rigorously, resist overbroad public figure findings particularly in the name, image, and likeness era of quasi-professional college sports and recognize that process journalism and AI amplification can magnify the harm of initial errors. To that end, the Article recommends that media organizations realign incentives toward accuracy over speed and that courts recalibrate defamation doctrine to better safeguard both robust debate and individual dignity in an evolving sports media ecosystem.

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INTRODUCTION

Media companies operate in an increasingly intense and rushed environment, a phenomenon that likely contributes to reporting errors and may elevate the risk of defamation lawsuits.¹ This Article explores the contemporary framework for journalism in the context of two ongoing defamation actions arising from sports reporting by the *New York Times* and ESPN and offers insights on how a sensible legal system ought to regard reporting errors in light of the First Amendment.

In *Spears v. New York Times Co.*, a former University of Alabama student-athlete accused the *Times* of defamation on account of the publication falsely stating he was present at a fatal shooting.² Former Stanford University head football coach Troy Taylor similarly brought a defamation claim against ESPN, accusing the so-called “World Wide Leader in Sports” of publishing articles that misstate and exaggerate allegations that he bullied and belittled female Stanford athletics staffers.³

In both *Spears* and *Taylor*, the defendant media companies maintain that even if their reporting was technically inaccurate, the essence of their reporting was sufficiently correct.⁴ This defense relies on the doctrine of substantial truth. As explained by the Supreme Court in *Masson v. New Yorker Magazine, Inc.*, this doctrine calls for judicial review of defamation claims in media reporting to focus on “the substance, the gist, the sting” of reported material.⁵ Substantial truth doctrine thus insulates speakers from defamation liability for their errors so long as the overarching coverage is accurate. Though these errors may seem small, they still make the reporting inaccurate and may still cause reputational harms to individuals. For readers already skeptical of mainstream media and “fake news”—which we define as false, exaggerated, or biased reports—the idea that outlets can publish untrue and

¹ The propensity of journalists to make mistakes while rushing is, of course, neither new nor revelatory. In 1999, an American Society of Newspaper Editors study found that “rush to deadlines” was the reason most often blamed by journalists for errors. See Jerry Finch, *Hearing from the Journalists on Press Credibility Concerns*, RICH. TIMES DISPATCH, May 30, 1999, at F2.

² Complaint at 13, *Spears v. N.Y. Times Co.*, No. 23-cv-00692 (N.D. Ala. May 30, 2023).

³ *Taylor v. ESPN, Inc.*, No. 25-cv-06384, 2026 WL 758474, at *1–4 (N.D. Cal. Mar. 17, 2026).

⁴ *Id.* at *4; Answer to Complaint at 17, *Spears*, No. 23-cv-00692.

⁵ 501 U.S. 496, 517 (1991) (internal quotation marks and citation omitted).

reputationally damaging statements without liability because the “gist” of their reporting is true may further erode public trust.⁶

This Article weighs the substantial truth and public figure doctrines as legal defenses in a sports media landscape that prioritizes breaking news and often assumes that “news” can be updated—sometimes a euphemism for *corrected*—as additional, sometimes contradictory, details flow in.⁷ The capacity of journalists to publish a story, continue their reporting and then, if necessary, update or correct the story with developments has been coined “process journalism.”⁸ A story published multiple times in different and increasingly accurate versions has both positive and negative ramifications for readers, authors, editors, and story subjects. Beneficial to authors and editors, updating provides opportunity and incentive to stay on top of a story, especially since many contemporary readers anticipate that updates will be made. However, reliance on the opportunity to get the facts right at a later date means that stories based on preliminary or emerging information that has not been fully developed are more likely to be published. At the same time, First Amendment principles indicate that erroneous statements, when they are honestly made and not uttered with actual malice, are tolerated by the law.⁹ Without that tolerance, freedom of expression might not survive in a media landscape that prizes speed. In a world where the highest levels of college sports increasingly resemble professional sports and some student athletes are covered by media as professional athletes,¹⁰ these issues take on added resonance in the context of sports journalism.

⁶ See Udo Fink & Ines Gillich, *Fake News as a Challenge for Journalistic Standards in Modern Democracy*, 58 U. LOUISVILLE L. REV. 263, 267–69 (2020) (discussing differing legal definitions of “fake news”).

⁷ See Sophia Scolman, *Correcting the Record: Experts Weigh In On Ethical News Corrections*, U. WIS. CTR. FOR JOURNALISM ETHICS (Dec. 13, 2024), <https://ethics.sjmc.wisc.edu/2024/12/13/correcting-the-record-experts-weigh-in-on-ethical-news-corrections/> [https://perma.cc/64GG-87CH].

⁸ See Steve Myers, *Were CNN & Fox News' Mistakes on Supreme Court Ruling Part of 'Process Journalism'?*, POYNTER (June 29, 2012), <https://www.poynter.org/reporting-editing/2012/were-cnn-fox-news-mistakes-on-supreme-court-ruling-part-of-process-journalism/> [https://perma.cc/6X2A-4ERS].

⁹ See *New York Times v. Sullivan*, 376 U.S. 254, 271–272.

¹⁰ See Ben Strauss, *Covering College Sports Was Once 'The Scandal Beat.' Then Amateurism Became The Scandal.*, WASH. POST (July 1, 2021), <https://www.washingtonpost.com/sports/2021/07/01/media-coverage-ncaa-amateurism/> [https://perma.cc/46NA-QGPV] (noting that more college sports journalists now see college sports and the multibillion-dollar industry behind it as a professional topic).

This Article recommends that media companies prioritize accuracy over urgency and that courts cautiously apply the doctrine of substantial truth. This recommendation acknowledges that media companies that take the time to ‘get it right’ might lose some readers who impatiently turn to less reputable, but faster, sources—namely, social media accounts—for their news.¹¹ We also recognize that some scholars have pushed for stricter regulation of social media companies to improve accuracy, while others warn such restrictions could raise compliance costs that disadvantage smaller platforms and create tension with First Amendment protections.¹² There is no perfect solution, but we contend that accuracy builds public confidence, which is a winning strategy in the long run. To that point, trust in mass media is at an all-time low, with Gallup reporting in late 2025 that only twenty-eight percent of Americans expressed “a ‘great deal’ or ‘fair amount’ of trust in newspapers, television, and radio to report the news fully, accurately, and fairly.”¹³ In fact, some commentators regard diminishing trust in media as contributing to destabilization of democratic institutions.¹⁴ Meanwhile, many people are turning to social media for their information,¹⁵ where conspiracy theories and

¹¹ See Nic Newman, *Traditional Media Faces a New Wave of Online Disruption*, INPUBLISHING (Aug. 22, 2025), <https://www.inpublishing.co.uk/articles/traditional-media-faces-a-new-wave-of-online-disruption-25663> [<https://perma.cc/8ZQ9-NGJ3>] (“[Y]ounger groups have become less likely over time to go directly to a news website or app—and more likely to consume news via social media or video networks.”).

¹² The topic of regulating social media companies is important and relevant to this Article but beyond its scope. Also, even if social media companies were more strictly regulated, resulting in improved quality and reliability of social media, our concerns about traditional media outlets and their reporting would remain unaddressed. For more information on regulating social media, see generally Jack M. Balkin, *How to Regulate (and Not Regulate) Social Media*, 1 J. FREE SPEECH L. 71 (2021); Jack M. Balkin & Jonathan Zittrain, *A Grand Bargain to Make Tech Companies Trustworthy*, ATLANTIC (Oct. 3, 2016), <https://www.theatlantic.com/technology/archive/2016/10/information-fiduciary/502346> [<https://perma.cc/NR4X-TD97>]; Leah Plunkett, *To Stop Sharenting & Other Children’s Privacy Harms, Start Playing: A Blueprint for a New Protecting the Private Lives of Adolescents and Youth (PPLAY) Act*, 44 SETON HALL LEGIS. J. 457 (2020).

¹³ Megan Brenan, *Trust in Media at New Low of 28% in U.S.*, GALLUP (Oct. 2, 2025), <https://news.gallup.com/poll/695762/trust-media-new-low.aspx> [<https://perma.cc/W8DR-5UGS>].

¹⁴ See, e.g., Suzanne Nossel, *The Fate of American Democracy Depends on Free Speech*, 6 J. FREE SPEECH L. 275, 282–83 (2024) (observing that manipulation of media has contributed to disinformation that undermines democracy).

¹⁵ Dave Chaffey, *Global Social Media Statistics Research Summary*, SMART INSIGHTS (Feb. 14, 2025), <https://www.smartinsights.com/social-media-marketing/social-media-strategy/new-global-social-media-research/> [<https://perma.cc/633T-BAXL>] (noting several data points showing wide usage of social media).

misinformation can thrive.¹⁶ Social media and aggregated content generated by artificial intelligence (“AI”), which has become harder to identify as distinct from human-written content and sometimes contains errors,¹⁷ only add to the chaos. For example, in 2025, Apple disabled its AI-infused aggregating and summarizing news system because of erroneous reports, such as claiming that accused-murderer Luigi Mangione shot himself.¹⁸ Likewise, mainstream generative AI platforms “have been found to provide users with fabricated data that appears authentic,” known as “hallucinations.”¹⁹ It remains unclear how courts will assess liability when erroneous information originates from AI-assisted reporting tools. If there was ever a time for accuracy to matter and for the law to encourage accuracy, it is now.

Today is also a time of substantial change in public perception of celebrities, especially in the new era of college sports, where college athletes—few of whom will actually become professional athletes—are paid in ways that previously triggered NCAA ineligibility.²⁰ Presently, athletes can receive compensation through name, image, and likeness (“NIL”) and revenue-sharing deals and can garner further acclaim through social media influencing.²¹ Consequently, college athletes have become increasingly recognizable in the public

¹⁶ Emma Thompson, *Study Shows 81% of American Teens Believe in Conspiracy Theories and Rising Distrust in News Media*, EDTECH INNOVATION HUB (Oct. 23, 2025), <https://www.edtechinnovationhub.com/news/study-shows-81-of-american-teens-believe-in-conspiracy-theories> [https://perma.cc/X8GF-TUE4].

¹⁷ Ambuj Tewari, *Why It's So Hard to Tell if a Piece of Text Was Written by AI—Even for AI*, CONVERSATION (Dec. 18, 2025, 08:33 AM), <https://theconversation.com/why-its-so-hard-to-tell-if-a-piece-of-text-was-written-by-ai-even-for-ai-265181> [https://perma.cc/WW95-LPVX]. This content, one commentator notes, not only misinforms but “can reinforce bias, amplify moral outrage, and deepen echo chambers.” Lindsay Sain Jones & Tim R. Samples, *On the Systemic Importance of Digital Platforms*, 25 U. PA. J. BUS. L. 141, 187 (2023) (internal citations omitted).

¹⁸ Tripp Mickle, *Apple Plans to Disable A.I. Features Summarizing News Notifications*, N.Y. TIMES (Jan. 17, 2025), <https://www.nytimes.com/2025/01/16/technology/apple-ai-news-notifications.html> [https://perma.cc/KF72-WSS2].

¹⁹ *When AI Gets It Wrong: Addressing AI Hallucinations and Bias*, MIT SLOAN TEACHING & LEARNING TECHS., <https://mitsloanedtech.mit.edu/ai/basics/addressing-ai-hallucinations-and-bias/> [https://perma.cc/Z8WR-RX5N] (last visited Apr. 3, 2026).

²⁰ *In re Coll. Athlete NIL Litig.*, No. 20-cv-03919-CW, slip op. at 31 (N.D. Cal. Nov. 3, 2023) (discussing how the NCAA’s interim NIL policy in 2021 allowed college athletes to receive NIL compensation without losing their eligibility).

²¹ *See Athletes and Social Media: A Double Edged Sword*, BSNSPORTS (Oct. 15, 2025), <https://blog.bsnsports.com/bsn-story/athletes-and-social-media-a-double-edged-sword> [https://perma.cc/Z9HJ-TBYH].

sphere.²² This development necessitates renewed scrutiny of the public figure doctrine, which determines when individuals must prove “actual malice” to prevail in defamation cases.²³ This doctrine’s operation in a world where fame is more diffuse and rules for athlete compensation by third parties and their schools continue to expand is ripe for confusion.

This Article suggests concrete guidance for courts and media organizations as they navigate a sports industry that is undergoing tectonic change at the collegiate level and in a technological environment where AI is an unpredictable tool for news reporting and distribution. To that end, this Article promotes greater discipline in applying the substantial truth doctrine and a narrower approach to public figure status under the First Amendment. These measures intend to enhance accuracy and fairness in defamation adjudication, mitigate the distortive effects of algorithmic amplification, and reduce the chilling impact of legal uncertainty on responsible journalism.

I. STRUCTURAL PRESSURES IN MODERN NEWSROOMS

A. *Economic and Technological Disruption Reshaping Incentives*

Journalism, statutorily defined as “reporting, publishing, or distributing news or information to the public,” has become an increasingly challenging profession.²⁴ Through news aggregation, Big Tech and social media networks capture advertising revenue previously enjoyed by online and traditional news platforms, including newspapers.²⁵ In 2005, U.S. newspapers generated yearly advertising revenue totaling nearly fifty billion dollars.²⁶ By 2020, however, that revenue dropped to ten billion dollars as internet companies

²² Karen Dooley, *Beyond the Field: New Research Highlights How NIL Is Reshaping College Athlete Identity*, UF NEWS (July 29, 2025), <https://news.ufl.edu/2025/07/college-athletes-roles-and-identities/> [<https://perma.cc/X7XY-929P>].

²³ *New York Times v. Sullivan*, 376 U.S. 254, 279 (1964).

²⁴ See, e.g., 12 V.S.A. § 1615 (a)(2)(A) (“‘Journalism’ means: (A) investigating issues or events of public interest for the primary purpose of reporting, publishing, or distributing news or information to the public, whether or not the news or information is ultimately published or distributed . . .”).

²⁵ Courtney C. Radsch, *Making Big Tech Pay for the News They Use*, CTR. FOR INT’L MEDIA ASSISTANCE (July 7, 2022), <https://www.cima.ned.org/publication/making-big-tech-pay-for-the-news-they-use/> [<https://perma.cc/5KT3-T55U>].

²⁶ Jesse Holcomb, *Media Mistrust Has Been Growing for Decades—Does It Matter?*, TREND MAG., Fall 2024, at 23, 25.

“began supplanting services such as classified ads offered by newspapers.”²⁷ A concurrent pressure point is the increase in private equity firms purchasing media companies.²⁸ While such investment can provide much-needed capital and short-term stability, it can also intensify commercial pressures that shape editorial priorities and reduce resources for original reporting.²⁹ This trend is associated with cost-cutting in newsrooms and, critics charge, a focus on clickbait stories instead of sophisticated, in-depth analysis.³⁰ Some sports news platforms have struggled in this environment of diminished advertising opportunities and heightened financial pressures.³¹

AI, which has social benefits but can replace the work of human journalists, is an important factor, too.³² AI tools may supplement or replace journalistic functions, including drafting and data summarization. AI has exacerbated a decades-long decline in journalism jobs. From 2004 to 2024, newspapers eliminated seventy-seven percent of their headcount, more than any other industry studied by the Bureau of Labor Statistics.³³ This trend continues, including in 2026 when the *Washington Post*—one of the most influential publications in the United States—ended its sports department and terminated its sports writers.³⁴ Among the reasons cited for the *Post*, which reported a loss of nearly \$100 million in 2024, to reduce headcount were “the upheaval in the media

²⁷ *Id.*

²⁸ Jack Shafer, *The Investment Firms Leave Behind a Barren Wasteland*, POLITICO (Feb. 18, 2024), <https://www.politico.com/news/magazine/2024/02/18/is-wall-street-to-blame-for-the-collapse-of-newspapers-00141920> [https://perma.cc/HTY4-YA86].

²⁹ Camille Bromley, *Megan Greenwell on How Private Equity Is Devastating the Media*, COLUM. JOURNALISM REV. (July 9, 2025), <https://www.cjr.org/the-interview/megan-greenwell-interview-how-private-equity-is-devastating-media.php> [https://perma.cc/RZ5A-XSCN].

³⁰ Holcomb, *supra* note 26, at 25.

³¹ David Ertischek, “*Sports Illustrated* Fall Could Lead to New Sports Journalism, Says Rodzvilla,” EMERSON TODAY (Jan. 25, 2024), <https://today.emerson.edu/2024/01/25/sports-illustrated-fall-could-lead-to-new-sports-journalism-says-rodzvilla/> [https://perma.cc/Q75N-W9HQ].

³² See Neelanjana Gautam, *Unraveling the Social Impacts of Artificial Intelligence*, U.C. DAVIS OFF. RSCH. (Aug. 7, 2024), <https://research.ucdavis.edu/unraveling-the-social-impacts-of-artificial-intelligence/> [https://perma.cc/7RGP-WC2K] (proposing that AI can help decision-making and identifying other alleged societal benefits of AI).

³³ Andrew Van Dam, *Wait, Does America Really Still Employ a Ton of News Reporters?*, WASH. POST (July 12, 2024), <https://www.washingtonpost.com/business/2024/07/12/news-reporters-journalism-jobs-census/> [https://perma.cc/4JR7-DYJ4].

³⁴ Dan Shanoff, *The Washington Post Eliminates Sports Section as Part of Wider Layoffs*, ATHLETIC (Feb. 4, 2026), <https://www.nytimes.com/athletic/7019090/2026/02/04/washington-post-sports-layoffs/> [https://perma.cc/D5SS-PLKF].

ecosystem and the advent of artificial intelligence.”³⁵ Despite well-founded concerns about AI mistakes, media companies have become more accepting of using AI to generate content.³⁶ AI provides substantial cost savings, which makes the technology attractive to media companies and the businesses that fund them.³⁷ Even venerable media brands like the *Associated Press*, *BBC*, and *Sports Illustrated* have turned to AI to augment, if not generate, content.³⁸

As AI has become more prevalent in internet searches, established media companies are losing referral traffic, too. For instance, in Google search results, website rankings now appear farther down and “below a long AI Overview and invitation to ‘dive deeper’ in AI Mode.”³⁹ According to the Authoritas analytics company, in 2025, a website “previously ranked first in a search result could lose about seventy-nine percent of its traffic for that query if results were delivered below an AI overview.”⁴⁰ Worse yet for media companies, AI-infused chatbots eliminate “the need to click on blue links,” effectively “tanking referrals to news sites.”⁴¹ *The Huffington Post*, for example,

³⁵ Piotr Smolar, *The ‘Washington Post,’ Legendary American Daily, Is Shaken by Mass Layoffs*, LE MONDE (Feb. 5, 2026), https://www.lemonde.fr/en/international/article/2026/02/05/the-washington-post-legendary-american-daily-is-shaken-by-mass-layoffs_6750173_4.html [https://perma.cc/6EL7-5G7L].

³⁶ Courtney C. Radsch, *Can Journalism Survive AI?*, BROOKINGS (Mar. 25, 2024), <https://www.brookings.edu/articles/can-journalism-survive-ai/> [https://perma.cc/T5SG-D5X3].

³⁷ *How AI Benefits—and Threatens—the Entertainment Industry*, MORGAN STANLEY (July 17, 2025), <https://www.morganstanley.com/insights/articles/ai-in-media-entertainment-benefits-and-risks> [https://perma.cc/J8Z9-2KCV].

³⁸ See Clark Merrefield, *AI in the Newsroom: What Researchers Learned from the AP and the BBC*, JOURNALIST’S RES. (Mar. 4, 2025), <https://journalistsresource.org/home/ai-in-the-newsroom-what-researchers-learned-from-the-ap-and-the-bbc/> [https://perma.cc/C4AG-BQGM]; see also Austin Murphy, *The Fall of ‘Sports Illustrated’*, ATLANTIC (Dec. 2, 2023), <https://www.theatlantic.com/ideas/archive/2023/12/sports-illustrated-media-layoffs-ai-articles/676211/> [https://perma.cc/JY4T-33A9] (discussing the loss of jobs at *Sports Illustrated* as it tried to evolve in a new economy for sports journalism).

³⁹ Dominic Ponsford, *Forbes Cuts Contributors Amid Falling Google Traffic | Freelances Offered Less Than 10p a Word*, PRESS GAZETTE (Dec. 9, 2025), <https://press-gazette.substack.com/p/forbes-cuts-contributors-amid-falling> [https://perma.cc/H8HR-2VPB].

⁴⁰ Michael Savage, *AI Summaries Cause ‘Devastating’ Drop in Audiences, Online News Media Told*, GUARDIAN (July 24, 2025), <https://www.theguardian.com/technology/2025/jul/24/ai-summaries-causing-devastating-drop-in-online-news-audiences-study-finds> [https://perma.cc/3XBH-ANAL].

⁴¹ Isabella Simonetti & Katherine Blunt, *New Google AI Tools Bruise News Sites*, WALL STREET J. (June 11, 2025), <https://www.wsj.com/tech/ai/google-ai-news-publishers-7e687141> [https://perma.cc/W2DY-2XF7].

saw its traffic from organic searches plummet by over half from 2022 to 2025, with chatbots blamed as a key reason.⁴²

B. Speed, Competition, and the Erosion of Verification Norms

The twenty-four-hour news cycle and persistent fear among journalists of being “scooped” or overshadowed by competitors or social media influencers only amplifies worries among journalists and their editors.⁴³ As longtime journalist Paul Hutchinson recently wrote, “the pressure to publish quickly has never been greater,” as winning the battle for “clicks” has elevated in priority.⁴⁴ Many journalists are under intense pressure to break news, as news-breakers tend to generate more clicks and thus more revenue for their employers.⁴⁵ This pressure continues to rise even while media companies have reduced positions for editors, fact checkers, and other gatekeepers against untrue reporting and misinformation.⁴⁶

Commentators suggest that the risk of errors has become more tolerated by media companies and even baked into reporting as a feature rather than a

⁴² *Id.*

⁴³ Jessica Machado, ‘Look for the Patterns’: Where Journalists Can Focus During a Firehose of News, NBCU ACAD. (Mar. 5, 2025), <https://nbcuacademy.com/newsworthy-nonstop-news/> [<https://perma.cc/5DRG-YUEB>]; see generally LEAH A. PLUNKETT, SHARENTHOOD: WHY WE SHOULD THINK BEFORE WE TALK ABOUT OUR KIDS ONLINE 55–57 (David Weinberger ed., 2019) (exploring legal issues in influencing, including in how influencers shape viewpoints about news).

⁴⁴ Paul Hutchinson, *Fast News, Slow Truth: Why Responsible Journalism Waits to Get it Right*, BEDFORD INDEP. (Apr. 3, 2025), <https://www.bedfordindependent.co.uk/fast-news-slow-truth-why-responsible-journalism-waits-to-get-it-right/> [<https://perma.cc/D5XR-A7S7>].

⁴⁵ See Steve Daly, *Q: How Do Journalists Fix Mistakes after Spreading Fake News?*, NEWS LITERACY MATTERS (Sept. 4, 2019), <https://newsliteracymatters.com/2019/09/04/q-how-do-journalists-fix-mistakes-after-spreading-fake-news/> [<https://perma.cc/V5NC-JBRT>]; see also Richard Pérez-Peña, *The Top Player in This League? It May Be the Sports Reporter*, N.Y. TIMES (Dec. 24, 2007), <https://www.nytimes.com/2007/12/24/business/media/24sportswriters.html> [<https://perma.cc/JN7Q-RL85>] (discussing high salaries of sports journalists who break news).

⁴⁶ Earl Lane, AAAS Kavli Lecture: Carl Zimmer on Science Reporting in Age of Fake News, AM. ASS’N FOR ADVANCEMENT SCI. (Oct. 18, 2017), <https://www.aaas.org/news/aaas-kavli-lecture-carl-zimmer-science-reporting-age-fake-news> [<https://perma.cc/DZ3T-D2Z6>]; see also *Crafting Compelling Op-Eds: Insights from Industry Experts Peter Stanton and Donna Leinwand Leger*, STANTON COMM’NS (Jan. 2, 2024), <https://stantoncomm.com/crafting-compelling-op-eds-insights-from-industry-experts-peter-stanton-and-donna-leinwand-leger/> [<https://perma.cc/CQY2-SJJS>] (noting that “[m]ost publications no longer employ fact-checkers.”).

bug. This phenomenon is called “process journalism,” which, as described by Poynter’s Steve Myers, means to “publish what you have now, figure out the story as you go, correct your mistakes as you update.”⁴⁷ The term was coined by academic and journalist Jeff Jarvis in 2009.⁴⁸ Jarvis explained that while “newspaper people see their articles as finished products of their work,” journalists who publish through blogs and social media sometimes “see their posts as part of the process of learning.”⁴⁹ Implicit in process journalism is the idea that updates and corrections work hand-in-hand as more information becomes available.⁵⁰ Courts have neither addressed process journalism nor fully grappled with how this evolving reporting model affects defamation liability.

Despite the lack of attention to process journalism by courts, process journalism can arguably still cause harm to individuals when the first report has a defamatory statement. It can because with so many publications and updates, it’s not certain that everyone who saw the first report will see the update; this means that some people in the community will continue to believe the initial, erroneous publication, and thus the reputational harm to the individual can continue.⁵¹ Cognitive biases and heuristics compound this harm as people may place more emphasis or weight on the first or most salient piece of information, especially if coming from an authoritative source like a large, well-established media company.⁵² Ultimately, process-journalism-corrected updates should not be a safe harbor for a lack of reporting accuracy in the first place.

⁴⁷ Myers, *supra* note 8.

⁴⁸ See Jeff Jarvis, *Product v. Process Journalism: The Myth of Perfection v. Beta Culture*, BUZZMACHINE (June 7, 2009), <https://buzzmachine.com/2009/06/07/process-journalism/> [https://perma.cc/7AVS-5D6L].

⁴⁹ *Id.*

⁵⁰ Mark Coddington, *This Week in Review: Journatic and Outsourcing Local News, and Twitter’s Tension with Developers*, NIEMAN LAB (July 9, 2012), <https://www.niemanlab.org/2012/07/this-week-in-review-journatic-and-outsourcing-local-news-and-twiters-tension-with-developers/> [https://perma.cc/5E9F-A399].

⁵¹ See Adam Slavny, *The Normative Foundations of Defamatory Meaning*, 37 L. & PHIL. 523, 527 (2018) (“a person’s reputation [is] the beliefs and attitudes that others hold about her”); LAWRENCE McNAMARA, REPUTATION AND DEFAMATION 21 (1st ed. 2007) (“An individual’s reputation is a social judgment of the person based upon facts which are considered relevant by the community.”).

⁵² See ENCYCLOPEDIA OF SOCIAL PSYCHOLOGY 697–98 (Roy F. Baumeister & Kathleen D. Vohs eds., 2007) (“Thus what someone first sees, hears, or reads about a person tends to serve as a primary reference point or anchor for later judgments, so that later judgments are overly influenced by a person’s initial judgment. In essence, first impressions count.”); Lauren Braithwaite, *Why Do We Always Trust the Doctor, Even Though They Might Be Wrong?*, THE DECISION LAB, <https://thedecisionlab.com/biases/authority-bias> [https://perma.cc/UVN2-AHDM].

C. Error as a Structural Feature: Case Studies and Consequences

Given the pressure this landscape places on newsrooms, it is unsurprising that reporting errors sometimes happen. Journalists, like all human beings, have always been susceptible to error. Long before the internet, the *Chicago Daily Tribune* erroneously reported that New York Governor Thomas Dewey defeated President Harry S. Truman in the 1948 presidential election.⁵³ It led to a famous photo of Truman holding up the front page of the November 3, 1948, *Chicago Daily Tribune* with the caption “Dewey Defeats Truman.”⁵⁴ Fast forward to 1981, and the desire to speedily make sense of a frightening situation led to false reports that President Ronald Reagan escaped injury in an assassination attempt and that his aide, press secretary James Brady, died from a gunshot wound. ABC News anchor Frank Reynolds assured Americans that “the president was not hit” while CBS News anchor Dan Rather shared the tragic news that Brady died.⁵⁵ Neither piece of information was correct; a bullet struck Reagan in the left lung while Brady, though seriously injured by the assassin’s bullet, survived.⁵⁶ Years later, reporter Judy Woodruff wrote about the serious “mistakes” made by high-profile journalists that day.⁵⁷ However, she cautioned that the reporting occurred during an era where there were no cell phones that might have assisted in conveying accurate information.⁵⁸

But modern technologies haven’t immunized journalists from inaccurate reporting on high-profile matters. In 2012, journalists from CNN and Fox News wrongly summarized Chief Justice John Roberts’s majority opinion in *National Federation of Independent Business v. Sebelius*.⁵⁹ They reported that

⁵³ Will Lester, ‘Dewey Defeats Truman’ Disaster Haunts Pollsters, L.A. TIMES (Nov. 1, 1998), <https://www.latimes.com/archives/la-xpm-1998-nov-01-mn-38174-story.html> [<https://perma.cc/33AD-XUHC>].

⁵⁴ Arthur Henning, *Dewey Defeats Truman*, CHI. DAILY TRIB. (Nov. 2, 1948).

⁵⁵ Carrie Hagen, *The Media Learned Nothing After Misreporting the Reagan Assassination Attempt*, SMITHSONIAN MAG. (Aug. 11, 2016), <https://www.smithsonianmag.com/history/media-learned-nothing-after-misreporting-reagan-assassination-attempt-180960091/> [<https://perma.cc/L5AX-PLXH>].

⁵⁶ *Id.*

⁵⁷ Judy Woodruff, *Judy Woodruff on Covering Reagan Assassination Attempt*, PBS NEWS (Mar. 30, 2011), <https://www.pbs.org/newshour/politics/woodruff> [<https://perma.cc/W8DN-RQTP>].

⁵⁸ *See id.*

⁵⁹ 567 U.S. 519 (2012); Korva Coleman, *CNN, Fox Mistakenly Report Health Care Law Overturned*, NPR (June 28, 2012), <https://www.npr.org/sections/thetwo-way/2012/06/28/155916373/they-got-it-wrong-cnn-fox-mistakenly-report-health-care-law-overturned> [<https://perma.cc/D77J-MEAT>].

a majority of the Supreme Court struck down the individual mandate in the Affordable Care Act (also known as Obamacare) on the basis that it violated the Commerce Clause of the U.S. Constitution.⁶⁰ The description was accurate in the sense that a majority had determined the individual mandate violated the Commerce Clause, but it was contextually inaccurate since the Court did not strike down the mandate and upheld it on other grounds.⁶¹ One Fox News correspondent said “the mandate is gone” while a CNN correspondent similarly voiced “it appears as if the Supreme Court justices have struck down the individual mandate, the centerpiece of the health care legislation.”⁶² The reporters failed to review or accurately synthesize the rest of the opinion, where a majority found the mandate was constitutional on the basis that it was a tax authorized by the General Welfare Clause.⁶³ Obamacare was upheld by the Court, not invalidated as CNN and Fox had reported.

Commentators blamed the “rush to get the news out” for the misreporting.⁶⁴ CNN and Fox News compete with NBC, ABC, CBS, and other news networks for viewers, and the Obamacare decision was highly anticipated.⁶⁵ It would have been a glaring omission for major news networks to fail to report on the most significant news of the day in a timely manner, particularly when audiences expect real-time updates and breaking-news banners. Yet the commercial and reputational incentives to be first do not erase the professional and democratic imperative to be accurate, especially when reporting on consequential Supreme Court decisions. To that point, by reporting the news *incorrectly*, CNN and Fox News ultimately lost the very credibility they were racing to protect.⁶⁶ As New York University journalism

⁶⁰ Coleman, *supra* note 59.

⁶¹ A. E. Dick Howard, *The Changing Face of the Supreme Court*, 101 VA. L. REV. 231, 281 (2015).

⁶² Myers, *supra* note 8.

⁶³ *Sebelius*, 567 U.S. at 576.

⁶⁴ See Brian Stelter, *CNN and Fox Trip Up in Rush to Get the News on the Air*, N.Y. TIMES (June 28, 2012), <https://www.nytimes.com/2012/06/29/us/cnn-and-foxs-supreme-court-mistake.html> [<https://perma.cc/Z72F-KR67>].

⁶⁵ See Diane Alter, *Prepare for the Obamacare Ruling Aftermath*, MONEYMORNING (June 28, 2012), <https://moneymorning.com/2012/06/28/prepare-for-obamacare-ruling-aftermath/> [<https://perma.cc/5BCL-7MTK>] (“The stock market, down sharply . . . in anticipation of the Supreme Court Obamacare ruling, fell further after the decision was announced.”).

⁶⁶ Paul Farhi, *CNN, Fox Botch Supreme Court Health-Care Decision in Latest Media Misstep*, WASH. POST (June 29, 2012), https://www.washingtonpost.com/lifestyle/style/cnn-fox-botch-supreme-court-health-care-decision-in-latest-media-misstep/2012/06/28/gJQA7tU19V_story.html [<https://perma.cc/3LVA-TXVD>].

professor Michael Norman opined at the time, the prioritization of speed in contemporary journalism invites exactly this kind of error. “What’s the value in getting part of the story out at 10 a.m. and getting it wrong,” Norman asked, “instead of getting it at 10:06 a.m. and getting it right?”⁶⁷

Beyond reporting errors due to rushing, some journalists have gone further by inventing settings that were reported as real, albeit sometimes tongue-in-cheek. In 1835, the *New York Sun* published six articles about the discovery of life on the Moon through a new and enhanced telescope.⁶⁸ Supposed author Andrew Grant told readers the Moon featured unicorns and humanoids, among other fantastical features.⁶⁹ While the series was intended as satire, many readers didn’t recognize it as such and believed it to be hard news.⁷⁰ Both contemporary readers and seasoned editors have been duped as well. Former *New York Times* reporter Jayson Blair concocted scenes, conversations, and people for articles published on serious topics, including “the anguish of families grieving for loved ones killed in Iraq.”⁷¹ The invention of news has also occurred in sports reporting, albeit with much lower stakes. In 2023, Amazon Prime Video and Fox Sports anchor Charissa Thompson admitted to fabricating reports on her sideline interviews in NFL games.⁷² These examples illustrate that reporting errors predate recent technological and industry changes in media and that these errors are not necessarily owed to speed and urgency in getting news out.

With heightened demands to publish quickly in the contemporary era, errors appear to be occurring with greater frequency.⁷³ Writing for the

⁶⁷ *Id.*

⁶⁸ “*The Great Moon Hoax*” Is Published in the “*New York Sun*”, HISTORY.COM (May 27, 2025), <https://www.history.com/this-day-in-history/august-25/the-great-moon-hoax> [<https://perma.cc/5U7A-J2T7>].

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Dan Barry, David Barstow, Jonathan D. Glater, Adam Liptak & Jacques Steinberg, *Correcting the Record: Times Reporter Who Resigned Leaves Long Trail of Deception*, N.Y. TIMES (May 11, 2003), <https://www.nytimes.com/2003/05/11/us/correcting-the-record-times-reporter-who-resigned-leaves-long-trail-of-deception.html> [<https://perma.cc/3M6Q-7GKL>].

⁷² Tom Jones, Opinion, *A Former Sideline Reporter Stunningly Admitted That She Made Things Up*, POYNTER (Nov. 17, 2023), <https://www.poynter.org/commentary/2023/charissa-thompson-sideline-reporter-fabricated-commentary/> [<http://perma.cc/MV5T-LXJV>].

⁷³ Scott Finn, *Four Reasons You May Be Seeing More Mistakes in the Media*, WUSF (June 6, 2012), <https://www.wusf.org/culture/2012-06-06/four-reasons-you-may-be-seeing-more-mistakes-in-the-media> [<http://perma.cc/VS6U-Z6GM>].

Harvard University T.H. Chan School of Public Health Center for Health Communication in 2024, former Pro Publica president Richard Tofel observed “it is almost certainly the case that the rate of errors in journalism is increasing” especially due to the “increased pace of publishing” and because “most jobs dedicated to fact-checking and copy-editing have been eliminated.”⁷⁴ Readers seem to be noticing a diminished product and regard it as undermining their ability to rely on news. According to a 2020 Pew Research Center study, readers identify “thinner reporting” along with “fewer journalists” and “increasingly desperate advertising content” as reasons for being more “cynical” about news.⁷⁵ The increased reliance on digital media for news consumption is an important factor, too.⁷⁶ One recent study found that with “ease of access and use, speed of information diffusion, and difficulty in correcting false information” in digital media, “rumors, misinformation, disinformation, and mal-information” become harder to prevent and remedy.⁷⁷ These problems are prevalent on social media feeds, which in turn can influence *real* news. One commentator noted “fictional stories whip from Facebook feeds onto front pages.”⁷⁸ The market is paying attention, too. According to Nieman Lab, social media surpassed television as the leading way Americans get news in 2025, with Nieman Lab observing that social media rewards speed, virality, and immediacy over deliberation.⁷⁹ For large media companies competing for clicks and shares on these platforms, the pressure

⁷⁴ RICHARD J. TOFEL, HARV. T.H. CHAN SCH. PUB. HEALTH CTR. FOR HEALTH COMM’N, ENGAGING WITH THE PRESS: A GUIDE FOR PERPLEXED READERS AND SOURCES 66 (2024), <https://hsph.harvard.edu/wp-content/uploads/2024/10/Engaging-with-the-Press-A-Guide-for-Perplexed-Readers-and-Sources.pdf> [https://perma.cc/6EU6-HCFN].

⁷⁵ Holcomb, *supra* note 26.

⁷⁶ Theresa Schempp, *The Impact of Social Media on Reading*, UNIV. MD. GLOB. CAMPUS (Mar. 10, 2025), <https://www.umgc.edu/blog/impact-social-media-on-reading> [http://perma.cc/PT44-J3FK].

⁷⁷ See Sadiq Muhammed T & Saji K. Mathew, *The Disaster of Misinformation: A Review of Research in Social Media*, 13 INT’L J. DATA SCI. & ANALYTICS 271, 271 (2022).

⁷⁸ See *The War on Fake News*, B.U. COLL. OF COMM’N (Apr. 1, 2018), <https://www.bu.edu/com/articles/the-war-on-fake-news/> [http://perma.cc/36E6-VE2W]; see also Jonathan Zittrain, *Engineering an Election*, 127 HARV. L. REV. F. 335, 335–36 (2014) (discussing the power of Facebook and other social media platforms to influence attitudes and beliefs).

⁷⁹ Joshua Benton, *For the First Time, Social Media Overtakes TV as Americans’ Top News Source*, NIEMAN LAB (June 18, 2025), <https://www.niemanlab.org/2025/06/for-the-first-time-social-media-overtakes-tv-as-americans-top-news-source/> [http://perma.cc/LFV5-GV8U].

to publish first is not merely professional instinct; it may be an economic imperative.

More discouragingly, the downside for media acknowledging errors is that corrections appear to make readers *less* trusting of the news source.⁸⁰ This finding was made in a 2023 study conducted jointly by researchers at Arizona State and Dartmouth College, and it suggests that instead of admitting one's error, ignoring the mistake or doubling-down might prove less damaging to the journalists and their media company.⁸¹ These disincentives to correct errors coupled with the longevity of online media raise genuine and increased concern for the potential impact of defamatory errors on an individual's reputation.

II. WHEN THE "GIST" GOVERNS: SUBSTANTIAL TRUTH AND MODERN SPORTS DEFAMATION

A. *The Doctrine of Substantial Truth and the "Gist" Standard*

The challenges described above are apparent in two ongoing defamation controversies involving factual errors by the *New York Times* and ESPN in reporting on high-profile sports scandals.⁸² Both media companies invoke the doctrine of substantial truth, which calls for defamation claims in media reporting to focus on "the substance, the gist, the sting" of reported material.⁸³ As courts have held, the substantial truth doctrine advances core First Amendment values.⁸⁴ It safeguards open discourse by preventing liability for inconsequential misstatements, which are sometimes "unavoidable" when

⁸⁰ Dan Gillmor, *The Corrections Dilemma: Admitting Your Mistakes Increases Accuracy but Reduces Audience Trust, a New Study Finds*, NIEMAN LAB (Mar. 27, 2023), <https://www.niemanlab.org/2023/03/the-corrections-dilemma-admitting-your-mistakes-increases-accuracy-but-reduces-audience-trust-a-new-study-finds/> [https://perma.cc/ZDX9-VKYC].

⁸¹ *Id.*

⁸² Some of the analysis draws from one of the author's Sportico columns on these cases. See Michael McCann, *Ex-Stanford Football Coach and ESPN Battle Over 'The Truth'*, SPORTICO (Nov. 11, 2025), <https://www.sportico.com/law/analysis/2025/troy-taylor-espn-lawsuit-legal-analysis-stanford-1234876196/> [http://perma.cc/T9F7-WDSW].

⁸³ *Masson v. New Yorker Mag., Inc.*, 501 U.S. 496, 517 (1991) (citing *Heuer v. Kee*, 59 P.2d 1063, 1064 (1936)).

⁸⁴ See, e.g., *Tarkington v. Fireman's Fund Ins. Co.*, No. A077091, 1998 Cal. App. Unpub. LEXIS 3, at *61 (June 17, 1998).

conveying a message that is, in all material respects, true.⁸⁵ The appropriate approach for determining falsity is to “overlook minor inaccuracies” and “concentrate” on “substantial truth.”⁸⁶ Jurors are thus expected to consider “whether the reader would think differently of the plaintiff if the literal truth had been communicated.”⁸⁷ In other words, under this standard, a media company could make an inaccurate and reputationally harmful statement, and it may be found not liable for defamation so long as the inaccuracy is peripheral to the locus of the story.

B. Two Contemporary Controversies: The New York Times and ESPN

The *New York Times* story, “A Shooting That Ensnared Alabama Players Could Have Been Deadlier,” was published on March 15, 2023, right as the University of Alabama was set to start as a No. 1 seed in the 2023 NCAA Division I men’s basketball tournament.⁸⁸ The story’s timing was opportunistic, given public interest in the tournament and especially a No. 1 seed.⁸⁹ Authored by Billy Witz, the story incorrectly claims that Alabama basketball player Kai Spears was present at a deadly shooting in Tuscaloosa, Alabama, in January 2023.

Spears was a freshman walk-on, meaning he lacked an athletic scholarship, and he had not played in any games. Not surprisingly, this unheralded member of the Crimson Tide wasn’t the focal point of a story published by the *New York Times*—a prestigious publication with a “vast international audience.”⁹⁰ The story instead discussed how star Alabama player Brandon Miller, who a few months later would be the second overall pick in the 2023 NBA draft, played a key role in the shooting. A former Alabama player, Darius Miles, allegedly took a gun from Miller’s car. That gun eventually was possessed by another person, Michael Davis, who shot and killed Jamea

⁸⁵ *Id.*

⁸⁶ Masson, 501 U.S. at 516.

⁸⁷ Erin Daly, *The Incremental Harm Doctrine: Is There Life After Masson?*, 46 ARK. L. REV. 371, 376–77 (1993).

⁸⁸ Billy Witz, *A Shooting That Ensnared Alabama Players Could Have Been Deadlier*, N.Y. TIMES (Mar. 15, 2023), <https://www.nytimes.com/2023/03/15/sports/ncaabasketball/alabama-shooting.html> [<https://perma.cc/98WY-V6YL>].

⁸⁹ Des Bieler, *Alabama State Stunner Gets March Madness Off to a Frolicking Start*, WASH. POST (Mar. 18, 2025), <https://www.washingtonpost.com/sports/2025/03/18/alabama-state-buzzer-beater/> [<http://perma.cc/LUS6-ATUF>].

⁹⁰ Anne Dailey, *Law and the Unconscious: A Psychoanalytic Perspective*, 31 YALE J.L. & HUMANS. 1, 9 (2020).

Harris, a 23-year-old mother from Birmingham.⁹¹ Miller was not charged with a crime, as his attorney maintained that Miller was unaware of the gun, which was allegedly concealed under clothing, and Miller never touched it.⁹²

The *Times* boasted it had a scoop, noting that though the shooting had garnered previous media coverage, Spears's "presence at the scene had not been previously reported."⁹³ Building on the Spears angle, the story references how "two bullets struck the windshield of Miller's car" and that "neither struck Miller or Spears."⁹⁴ When the *Times* reached out to Spears to discuss the shooting, he said, "I'm sorry, I'm not going to be able to speak about that."⁹⁵ The placement of Spears at the shooting, Witz wrote, was made through the information of "a person familiar with the case."⁹⁶ That person was not named and spoke to the *Times* "on condition of anonymity to discuss sensitive matters in the case."⁹⁷

Witz's source was wrong. Spears was not at the shooting. Instead, the young man presumed to be Spears turned out to be Cooper Lee, the team's manager. The *Times* issued a correction a couple of months following the story's publication after Spears sued for defamation.⁹⁸ The newspaper said it "regrets the error in the initial report."⁹⁹ In his Complaint, Spears insists that he was approached for comment only a few hours before the story's publication, and that he was under instructions from his school's athletic director to

⁹¹ In May 2025, Davis was convicted of capital murder and sentenced to life in prison. John Weinstein, *Michael Davis Found Guilty of Capital Murder, Closing Arguments Delivered*, CRIMSON WHITE (May 9, 2025), <https://thecrimsonwhite.com/121331/news/michael-davis-found-guilty-of-capital-murder/> [http://perma.cc/8HSB-HQ8C]. As of this writing, Miles has yet to go to trial for capital murder charges. His trial has been postponed until at least 2026. See *Former Alabama Player Darius Miles' Trial Delayed Amid Defense's Push for Judge's Recusal*, ABC 33/40 (Nov. 7, 2025, 6:37 PM), <https://abc3340.com/news/local/former-alabama-player-darius-miles-trial-delayed-amid-defenses-push-for-judges-recusal-november-2025-jamea-harris-the-strip-shooting> [http://perma.cc/P8RJ-5ERP].

⁹² Mike Rodak, *Brandon Miller 'Never Touched the Gun' Used In Darius Miles Capital Murder Case, Attorney Says*, ADVANCE LOCAL (Feb. 22, 2023, 6:57 PM), <https://www.al.com/alabamabasketball/2023/02/attorney-says-brandon-miller-never-knew-illegal-activity-would-occur.html> [https://perma.cc/6RSG-MX62].

⁹³ Witz, *supra* note 88.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

refrain from commenting.¹⁰⁰ The Complaint also details how Spears and a group of advocates—his father, university officials, and an attorney—notification the *Times* that it had the facts wrong.¹⁰¹ In addition, the Complaint alleges that Fox News, ESPN Pittsburgh, and other media outlets rebroadcast the *Times*'s inaccurate reporting and contends that Spears was “bombarded with texts, calls and mentions on social media” about his reported connection to the shooting.¹⁰² The repetition of the error by other outlets illustrates the amplification risks inherent in modern media ecosystems. Spears, who later transferred to Marshall University, says that being wrongly linked to a shooting caused him anxiety and stress when “managing and processing” social media comments that falsely link him to a “criminal event.”¹⁰³

The *Times* admits its reporting error but insists it is not liable for defamation. Central to the *Times*'s defense is that Spears was in close proximity to Miller for much of the evening of the shooting, even if he wasn't in the car or otherwise present at the shooting. To that end, Spears “was with Miller minutes before Miller delivered a gun to the teammate who would later be charged with murder” and with Miller when he “received key information about a fight and the teammate's need for the gun.” Spears also saw “bullet holes in Miller's windshield,” though he wasn't there when the shots were fired. In short, the *Times* maintains that the near-accuracy of its reporting should be sufficient to preclude liability for defamation. As of this writing, the case is scheduled to go to trial on August 10, 2026, at the Richard Shelby Federal Building and Courthouse, Tuscaloosa, Alabama.¹⁰⁴

ESPN offered a similar defense in response to former Stanford football coach Troy Taylor suing for defamation based on four articles concerning Taylor's alleged bullying and belittling of female Stanford athletics staffers.¹⁰⁵ Stanford fired Taylor after the publication of three of the articles,

¹⁰⁰ Complaint at 9, *Spears v. The New York Times Co.*, No. 7:23-cv-00692-ACA (N.D. Ala. May 30, 2023).

¹⁰¹ *Id.* at 11.

¹⁰² *Id.*

¹⁰³ *Id.* at 12.

¹⁰⁴ Pretrial Scheduling Order at 1, *Spears v. N.Y. Times Co.*, No. 23-cv-00692 (N.D. Ala. Feb. 23, 2026).

¹⁰⁵ Xuan Thai, *Reports Find Stanford's Taylor Bullied, Belittled Female Staffers*, ESPN (Mar. 19, 2025, 05:11 PM), https://www.espn.com/college-football/story/_/id/44319805/stanford-football-coach-accused-reports-bullying-belittling-female-staffers [https://perma.cc/Y2VC-2RRK]; Dan Wetzel, *Wetzel: Bad Behavior Is on Stanford Coach Taylor, but This Is Andrew Luck's Program*, ESPN (Mar. 22, 2025, 07:30 AM), https://www.espn.com/college-football/story/_/id/44347700/bad-behavior-stanford-coach-taylor-andrew-luck-program [https://perma.cc/H872-VKXK]; Kyle

and Taylor believes the articles were responsible for the school's decision (though his coaching record of six wins and eighteen losses over two seasons was likely a factor, too).¹⁰⁶ The central problem with ESPN's stories, Taylor alleges, is that they conflate the findings of two separate workplace investigations and claim that both investigations were launched because "multiple employees" accused him of "hostile and aggressive behavior, as well as personal attacks."¹⁰⁷ Taylor asserts that this description is wrong as the first investigation was not launched in response to "multiple employees" and "made no findings at all" regarding his interactions with co-workers. As Taylor sees it, these statements are "provably false" and ESPN used its "false reporting" to inflict harm on Taylor, namely, "to make it difficult for Taylor to defend himself, maximizing his reputational harm and making it nearly impossible for him to find a new job."¹⁰⁸ He also accuses ESPN of falsely asserting investigators corroborated gender-based complaints.¹⁰⁹

Like the *New York Times*, ESPN asserts its reporting was "substantially true" and sufficient to defeat a defamation lawsuit.¹¹⁰ ESPN argues that Taylor's "word parsing" and "quibbling about specific numbers" don't get around the overarching assertion and thesis of its articles: He is accused of wrongful workplace behavior.¹¹¹ ESPN also maintains that case precedent makes clear that "truth" in reporting on events does not have to mean "literal truth."¹¹²

Bonagura & Xuan Thai, *Stanford Football Needs "Reset," Fires Football Coach Troy Taylor*, ESPN (Mar. 25, 2025, 01:41 PM), https://www.espn.com/college-football/story/_/id/44402806/stanford-fires-football-coach-troy-taylor-says-gm-andrew-luck [https://perma.cc/K5DD-8K8B]; Xuan Thai, *Ex-Stanford Coach Troy Taylor Takes Issue with Investigation*, ESPN (Apr. 16, 2025, 03:41 PM), https://www.espn.com/college-football/story/_/id/44702265/ex-stanford-coach-troy-taylor-takes-issue-investigation [https://perma.cc/2JR9-C3VL].

¹⁰⁶ Shehan Jeyarajah, *Andrew Luck Makes Decision to Fire Stanford Coach Troy Taylor After Reports Taylor Mistreated Female Staffers*, CBS SPORTS (Mar. 25, 2025, 01:15 PM), <https://www.cbssports.com/college-football/news/andrew-luck-makes-decision-to-fire-stanford-coach-troy-taylor-after-reports-taylor-mistreated-female-staffers/> [https://perma.cc/FA2T-UWXU] (discussing how Taylor's team lost eight of its last nine games).

¹⁰⁷ See Complaint at 2, Taylor v. ESPN, Inc., No. 25-cv-06384, 2026 WL 758474 (N.D. Cal. July 30, 2025).

¹⁰⁸ Plaintiff's Opposition to Defendant's Motion to Dismiss at 1–2, Taylor, 2026 WL 758474 (No. 25-cv-06384).

¹⁰⁹ *Id.*

¹¹⁰ Defendant's Motion to Dismiss at 10–19, Taylor, 2026 WL 758474 (No. 25-cv-06384).

¹¹¹ *Id.*

¹¹² *Id.* at 10.

The company cites *Summit Bank v. Rogers* for the proposition that “the law does not require [the defendant] to justify the literal truth of every word of the allegedly defamatory content, nor must we parse each word written by [the defendant] to determine its truthfulness.”¹¹³ ESPN also stressed *Vogel v. Felice*, where a California court found that “minor inaccuracies” don’t amount to defamation provided “the gist” of the account is true.¹¹⁴

On March 17, 2026, U.S. Magistrate Judge Virginia K. DeMarchi granted ESPN’s motion to dismiss Taylor’s complaint.¹¹⁵ Invoking the doctrine of substantial truth, Magistrate Judge DeMarchi reasoned that Taylor failed to identify statements that rose to the level of serious error required for a viable defamation claim.¹¹⁶ For example, although the word “bully” did not appear in the first investigation’s findings and ESPN incorrectly referred to “investigations” (plural) as having made that finding, the first investigation referenced “super aggressive” conduct and that Taylor allegedly attempted to silence a staff member.¹¹⁷

Similarly, the court was not persuaded that a headline, incorrectly referring to “reports” (plural) concluding there was bullying, amounts to defamation—even if a reader might be more inclined to believe Taylor partook in bullying if multiple reports made that claim.¹¹⁸ Magistrate Judge DeMarchi stressed that there is an absence of corroborating precedent “for the proposition that defendants are required to report about each investigation separately, or that the article’s headline must disaggregate the findings from each investigation.”¹¹⁹ The court emphasized that “minor inaccuracies do not amount to falsity so long as the substance, the gist, [or] the sting” is correct.¹²⁰

C. When Substantial Truth Shields, and When It Fails

The doctrine of substantial truth has proved significant elsewhere in sports, offering instructive lessons along the way. In 2017, boxing champion Floyd Mayweather Jr. defeated a defamation claim brought by his ex-girlfriend, Shantel Jackson.¹²¹ Jackson accused Mayweather of falsely asserting

¹¹³ 142 Cal. Rptr. 3d 40, 61 (Ct. App. 2012).

¹¹⁴ 26 Cal. Rptr. 3d 350 (Ct. App. 2005).

¹¹⁵ *Taylor*, 2026 WL 758474, at *1 (order granting defendant’s motion to dismiss).

¹¹⁶ *Id.* at *14–16.

¹¹⁷ *Id.* at *14.

¹¹⁸ *Id.* at *13.

¹¹⁹ *Id.* at *13.

¹²⁰ *Id.* at *11 (quoting *Masson v. New Yorker Mag., Inc.*, 501 U.S. 496, 517 (1991)).

¹²¹ *Jackson v. Mayweather*, 217 Cal. Rptr. 3d 234, 250 (Ct. App. 2017).

that she had plastic surgery performed on her face and various other parts of her body during a radio interview.¹²² Mayweather insisted the doctrine of substantial truth applied: Jackson, a model, tacitly conceded that she underwent plastic surgery on some body parts, though not all the parts claimed by Mayweather.¹²³ Judge Dennis M. Perluss of the California Court of Appeal found this defense persuasive, writing that Mayweather's "exaggerated description of the extent of Jackson's cosmetic surgery was, in substance, truthful."¹²⁴ Judge Perluss surmised that Jackson failed to explain how Mayweather's description—which included both accurate and inaccurate information—"created a different and negative effect on the radio audience from that which the truth would have produced."¹²⁵ The judge added that, while "it is certainly conceivable that surgical enhancement of the face is different for the reputation of an actress or model from the augmentation or sculpting of other parts of her body," Jackson failed to raise that distinction in her pleadings.¹²⁶ For the *Times* and ESPN, *Jackson v. Mayweather* supports the legal defense that the relative accuracy of an assertion can be sufficient to succeed in court. *Taylor v. ESPN* extends that lesson to newsroom coverage of internal investigations in college sports, signaling that media outlets will often be protected so long as their reporting captures the essential gist of alleged misconduct, even if some details are imprecise.

Other case law examining the gist defense paints a more complicated story. Courts have at times disfavored media companies—including when they claim that published content is non-defamatory opinion rather than a defamatory factual assertion. For instance, in *Milkovich v. Lorain Journal Co.*, a sports columnist incorrectly wrote that a high school wrestling coach "lied" in sworn testimony.¹²⁷ The Supreme Court reasoned that, while media companies are accorded some latitude in reporting, designating a story as "opinion" does not shield underlying false factual assertions.¹²⁸ Another failure of the substantial truth doctrine is reflected in *Memphis Publishing Co. v. Nichols*.¹²⁹ In 1971, the *Memphis Press-Scimitar* accurately reported on a shooting but was nonetheless denied summary judgment on a defamation

¹²² *Id.* at 243.

¹²³ See Defendant's Motion to Dismiss, *supra* note 110, at 10.

¹²⁴ *Mayweather*, 217 Cal. Rptr. 3d at 256.

¹²⁵ *Id.* at 254.

¹²⁶ *Id.* at 255.

¹²⁷ 497 U.S. 1, 3–4 (1990).

¹²⁸ *Id.* at 18–19.

¹²⁹ 569 S.W.2d 412 (Tenn. 1978).

claim.¹³⁰ The Tennessee Supreme Court found that, by omitting facts, the publication skewed readers' perception of the incident and who to blame.¹³¹ This case provides an important lesson for media companies like the *New York Times* and ESPN: The "gist" is shaped not only by express statements, but also by what is left unsaid. Omissions can materially alter the defamatory meaning of otherwise accurate statements.

Jackson and *Milkovich* illuminate that while the doctrine of substantial truth does not compel literal, word-for-word accuracy and tolerates minor errors, the denial of the underlying truth to a reasonable reader, listener, or viewer falls outside the doctrine. In other words, the law gives speakers some leeway on details so long as the "sting" of the statement accurately reflects reality. However, it does not permit a version of events that meaningfully worsens the plaintiff's reputational position relative to the actual facts. To that end, when a defendant's distortions—whether affirmative statements or material withholdings of fact—cause a plaintiff to appear significantly worse than the truth would, substantial truth becomes a far less persuasive, and often unavailable, defense. At that point, the inaccuracy is no longer a trivial embellishment but a substantive misrepresentation. Courts are thus more inclined to view the statement as crossing the line from protected rough approximation into actionable falsehood.

III. DEFAMATION DOCTRINE AND THE CONSTITUTIONAL BALANCE IN SPORTS MEDIA

A. Core Elements of Defamation and the Fact-Opinion Boundary

Defamation claims arising from alleged factual inaccuracies in sports reporting—such as the claims brought against the *Times* and ESPN—hinge on whether the plaintiff can satisfy the traditional elements of defamation as applied to media coverage. In general, defamation claims require the plaintiff to prove there was a false communication about the plaintiff that was published and resulted in damages.¹³² A communication is defamatory if it exposes the plaintiff "to public hatred, contempt, ridicule, or disgrace."¹³³

¹³⁰ See *Memphis Publ'g Co.*, 569 S.W.2d at 414.

¹³¹ *Id.* at 420–21.

¹³² *Overcast v. Billings Mut. Ins. Co.*, 11 S.W.3d 62, 70 (Mo. 2000) (citing *Nazeri v. Mo. Valley Coll.*, 860 S.W.2d 303 (Mo. 1993)).

¹³³ *Miller Mendel, Inc. v. City of Okla. City*, No. CIV-18-00990, 2024 WL 4940553, at *8 (W.D. Okla. Dec. 2, 2024).

Critically, the First Amendment draws a boundary between actionable false statements of fact and protected expressions of opinion. As the Supreme Court explained in *Gertz v. Robert Welch, Inc.*, “there is no such thing as a false idea . . . however pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.”¹³⁴ The Court’s reference to “ideas” encompasses the range of subjective interpretations and pointed viewpoints that commentators and journalists sometimes express about sports figures and their controversies. This type of content remains protected so long as it does not falsely assert or imply specific, defamatory facts.

B. Public Figures, Actual Malice, and Constitutional Limits

Of note, the standard to recover in a defamation suit is different for public figures than for private individuals. In *New York Times Co. v. Sullivan*, the Supreme Court enunciated that plaintiffs who are public officials must meet a heightened “actual malice” standard to recover in suits involving falsehoods about their official conduct.¹³⁵ Then, in *Curtis Publishing Co. v. Butts*, the Court extended the *Sullivan* rule to “public figure” cases, reasoning that the distinction between public *officials* and public *figures* had become increasingly blurred.¹³⁶ Private individuals, by contrast, have only ever been required to show negligence to prevail in defamation suits.¹³⁷

¹³⁴ 418 U.S. 323, 339–40 (1974).

¹³⁵ 376 U.S. 254, 279 (1964) (“The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with ‘actual malice’ — that is, with knowledge that it was false or with reckless disregard of whether it was false or not.”).

¹³⁶ 388 U.S. 130, 155 (1967); see *id.* at 164 (Warren, J., concurring) (“Increasingly in this country, the distinctions between governmental and private sectors are blurred. . . . ‘public figures,’ like ‘public officials,’ often play an influential role in ordering society. And surely as a class these ‘public figures’ have as ready access as ‘public officials’ to mass media, both to influence policy and to counter criticism of their views and activities. Our citizenry has a legitimate and substantial interest in the conduct of such persons, and freedom of the press to engage in uninhibited debate about their involvement in public issues and events is as crucial as it is in the case of ‘public officials.’”).

¹³⁷ See *Sullivan*, 376 U.S. at 301 (Goldberg, J., concurring) (explaining that actual malice standard does not apply to private defamation cases because “[p]urely private defamation has little to do with the political ends of a self-governing society” and that defamatory statements of public figures’ private conduct are not necessarily constitutionally protected either).

The “actual malice” standard presents a high bar to recovery. To satisfy it, a public-official or public-figure plaintiff must show clear evidence that a statement was made “with knowledge that it was false or with reckless disregard of whether it was false or not.”¹³⁸ Although “reckless disregard” cannot be encompassed fully in one definition,¹³⁹ a plaintiff can generally demonstrate reckless disregard to satisfy actual malice¹⁴⁰ by showing that the defendant “entertained serious doubts as to the truth of the publication” and was thus aware of the likelihood that they were circulating false information. Direct evidence can be effective for proving actual malice, but it is rare.¹⁴¹ Therefore, actual malice is often proved using circumstantial evidence.¹⁴² Importantly, because a plaintiff often has less access to evidence of a defendant’s mental state or knowledge that the statement was false, the actual malice standard permits recovery in fewer public figure than private figure defamation cases.¹⁴³

The heightened difficulty that public figures face in recovering for defamation compared with private individuals can appear asymmetrical at first glance. After all, defamatory falsehoods are categorically excluded from First Amendment protection for lacking social value.¹⁴⁴ Yet, the constitutional requirement that public figures prove “actual malice” rests on compelling democratic considerations that remain salient in the context of sports reporting. By affording breathing space for robust, uninhibited discussion of matters and personalities of public interest, the standard protects the press’s ability to inform the public while preserving liability for knowingly or recklessly false statements. Predating *New York Times Co. v. Sullivan*, there has been a “profound national commitment to the principle that debate on public

¹³⁸ *Id.* at 279–80.

¹³⁹ *St. Amant v. Thompson*, 390 U.S. 727, 730 (1968) (“‘Reckless disregard,’ it is true, cannot be fully encompassed in one infallible definition.”).

¹⁴⁰ *Id.* at 730; see *Times, Inc. v. Pape*, 401 U.S. 279, 291–92 (1971) (citing *St. Amant*, 390 U.S. at 731).

¹⁴¹ *Biro v. Condé Nast*, 963 F. Supp. 2d 255, 277 (S.D.N.Y. 2013) (quoting *Levesque v. Doocy*, 560 F.3d 82, 90 (1st Cir. 2009)).

¹⁴² *Id.* at 277–78 (providing examples of actual malice proven by circumstantial evidence, including when a “story is fabricated or based wholly on an unverified source,” when the “defendant fabricates a statement made by a source,” when “the defendant has motive for defaming the plaintiff,” and when “the defendant knows or suspects that it has committed an error and refuses to acknowledge it”). Because even circumstantial evidence needed to prove actual malice often concerns statements and contexts uniquely private to the defendant, a plaintiff is not in an advantageous situation to access this evidence and use it to support its case.

¹⁴³ See *St. Amant*, 390 U.S. at 730.

¹⁴⁴ See *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964).

issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on public officials.”¹⁴⁵ People have always been, and will continue to be, interested in the conduct and controversies surrounding public officials and figures, including those in the sports industry. In fact, for many, community discussion regarding prominent sports figures and teams is one of the greatest benefits and sources of entertainment in sports culture. Since its founding, this nation’s constitutional guarantee has included an “inalienable right” to opine on such matters of public interest.¹⁴⁶

Though false statements of fact have no constitutional or social value, they are “inevitable in free debate.”¹⁴⁷ Despite this unfortunate reality, erroneous statements made honestly must still be protected for freedoms of expression to have the “breathing space” they require to survive.¹⁴⁸ Where reporting typically depends on speed for views, relevance, and advertising revenue, requiring all publishers to guarantee the accuracy of their assertions before publishing would significantly delay reporting. It would also lead to “intolerable self-censorship,” undermining First Amendment liberties.¹⁴⁹ As much as other disciplines, sports reporting benefits from robust discussion from all sides, and a stricter liability regime would undermine these benefits.

Finally, beyond supporting democratic discourse and reducing the risk of self-censorship, the Supreme Court has justified the actual malice standard on remedial grounds. It characterizes the first remedy for defamation as “self-help—using available opportunities to contradict the lie or correct the error and thereby to minimize its adverse impact on reputation.”¹⁵⁰ Public figures typically have greater access to effective means of communication with which to undertake such corrective speech than private individuals do.¹⁵¹ Additionally, by stepping into government office or achieving fame, public

¹⁴⁵ *Id.* at 270.

¹⁴⁶ *Curtis Publ’g Co. v. Butts*, 388 U.S. 130, 149 (1967) (“The dissemination of the individual’s opinions on matters of public interest is for us, in the historic words of the Declaration of Independence, an ‘unalienable right’ that ‘governments are instituted among men to secure.’”); see *Sullivan*, 376 U.S. at 282–83 (“It is as much his duty to criticize as it is the official’s duty to administer.”) (quoting *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring)).

¹⁴⁷ *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340 (1974).

¹⁴⁸ *Sullivan*, 376 U.S. at 271–72.

¹⁴⁹ *Gertz*, 418 U.S. at 340–41 (“the First Amendment requires that we protect some falsehood in order to protect speech that matters”); see *Sullivan*, 376 U.S. at 279.

¹⁵⁰ *Gertz*, 418 U.S. at 344.

¹⁵¹ See *id.*

figures invite public scrutiny that private individuals do not.¹⁵² Even for the rare instances where a person becomes a public figure involuntarily, their position as a public figure still invites scrutiny as they occupy positions with privileges and power that private individuals do not have.¹⁵³ These considerations supply a normative basis for maintaining distinct standards for public figures and private individuals.

The heightened, yet still present, actual malice standard for public figures also reflects a compromise between these democratic free speech interests and the competing interest of compensating harmed individuals for defamatory statements.¹⁵⁴ If avoiding self-censorship—an important democratic free speech interest—were the only concern undermining this doctrine, publishers would have an unconditional immunity from liability for defamation of public figures. But that situation would be contrary to the inherent value of defamation law, which still allows for compensation to individuals harmed by defamatory falsehoods.¹⁵⁵ Furthermore, the compromise relegates the actual malice standard only to public officials and figures, which is a small subset of individuals as defined by case law. This distinction between private and public figures is of paramount importance in sports reporting defamation cases because athletes and other individuals may rise to prominence at many different levels of sport.

C. *Modern Pressures and Doctrinal Strain in Sports Reporting*

Although the actual malice standard can be said to reinforce democratic and free speech interests, it is critical to recognize its shortcomings, especially in the modern internet age characterized by process journalism. Requiring knowledge of, or reckless disregard for, the truth could encourage willful ignorance by publishers. After all, if publishers simply fail to inquire into the accuracy of their assertions, actual malice cannot be proven, as ignorance of the truth is distinct from publishing with knowledge of falsity or with reckless disregard for the truth.¹⁵⁶ Under this standard, “reckless disregard”

¹⁵² See *id.*

¹⁵³ See *id.* at 345 (imagining that, in rare instances, an individual can come to be an involuntary public figure when they “have assumed roles of especial prominence in the affairs of society . . . [and] occupy positions of such persuasive power and influence that they are deemed public figures for all purposes.”).

¹⁵⁴ See *Curtis Publ’g Co. v. Butts*, 388 U.S. 130, 147 (1967); *Gertz*, 418 U.S. at 342.

¹⁵⁵ See *Gertz*, 418 U.S. at 341.

¹⁵⁶ See *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968).

requires that the publisher actually entertained serious doubts about the truth of the statement or had a high degree of awareness of its probable falsity but published it anyway.¹⁵⁷ Stated another way, a publisher who never asks the question cannot be said to have doubted the answer, a point that is captured by the proverb “hear no evil, see no evil, speak no evil.”¹⁵⁸ The knowledge requirement has arguably led to an erosion of journalistic investigation and fact-checking.¹⁵⁹ The justification for these negative consequences is the avoidance of self-censorship,¹⁶⁰ but the reality is a news cycle that rewards fast publishing, combined with the eroding incentive to fact-check, means that more factual errors are likely to be published, and damages for the real harm these errors cause to public figures are less likely to be awarded. While avoiding self-censorship is a worthwhile goal, it is not a sufficiently compelling justification for permitting swift and erroneous sports reporting. Given how popular and heavily consumed sports news is, taking the time to fact-check or investigate would not diminish its appeal or, hopefully, much of its audience.¹⁶¹ Yet the time needed to perform those steps may carry a price that media companies are not willing to pay: delay. Despite resulting in more accurate journalism and minimizing the risk of harm to athletes, coaches, and other individuals in sports, such a delay would also cause sports news to break

¹⁵⁷ Rodney A. Smolla, *Let the Author Beware: The Rejuvenation of the American Law of Libel*, 132 U. PA. L. REV. 1, 78–81 (1983).

¹⁵⁸ Miriam D. D’Jaen, *Breaching the Great Firewall of China: Congress Overreaches in Attacking Chinese Internet Censorship*, 31 SEATTLE U. L. REV. 327, 327 n. 1 (2008).

¹⁵⁹ See *Berisha v. Lawson*, 141 S. Ct. 2424, 2428 (2021) (Gorsuch, J., dissenting from denial of certiorari) (arguing that “over time the actual malice standard has evolved from a high bar to recovery into an effective immunity from liability. . . . It seems that publishing *without* investigation, fact-checking, or editing has become the optimal legal strategy. . . . Combine this legal incentive with the business incentives fostered by our new media world and the deck seems stacked against those with traditional (and expensive) journalistic standards—and in favor of those who can disseminate the most sensational information as efficiently as possible without any particular concern for truth.”).

¹⁶⁰ See *id.*; *St. Amant v. Thompson*, 390 U.S. 727, 731–32 (1968).

¹⁶¹ See, e.g., Bron Maher, *How Paris Olympics Led to Traffic Boost for Leading News Publishers*, PRESS GAZETTE (Aug. 20, 2024), https://pressgazette.co.uk/media-audience-and-business-data/media_metrics/olympics-website-traffic-boost/ [<https://perma.cc/7SWL-RLEW>] (reporting that news sites saw a pike in traffic during the 2024 Olympic games, particularly on Olympic articles); *Mail Reports Record US Sports Traffic*, INPUBLISHING (Feb. 12, 2025, 08:26 AM), <https://www.inpublishing.co.uk/articles/mail-reports-record-us-sports-traffic-25050> [<https://perma.cc/Z3B3-EMQU>] (reporting that The Mail Sport saw the most traffic its ever seen over its coverage of Super Bowl LIX).

later than it does, which is not preferable in a world where breaking news gets the first and most clicks.

It is worth noting that process journalism has been used by media companies to defend against defamation lawsuits, notably in *Giduck v. SOCNET.com*.¹⁶² The case involved alleged defamatory statements made in a chat room about the credentials of an attorney and terrorism expert. The expert was described as a “fraud” and a “poser” who pretended to have special forces experience and who “exploited the trust” of and “deceived” others.¹⁶³ Part of the defense centered on process journalism, which, the defendants asserted, allows for “pure, unadulterated rumors (which may have no truth, some truth or considerable truth)” that “are posted as a means of generating additional information to ultimately get to the ‘absolute truth.’”¹⁶⁴ The defendants also argued that “courts should be wary about wading into a widespread social phenomenon as a referee over each and every aspect of this ‘process.’”¹⁶⁵ Ruling for the Defendants, the Colorado Court of Appeals emphasized the fact that the challenged statements “were placed in an online community where anonymous individuals can express highly biased opinions weighs in favor of finding these statements to be opinion.”¹⁶⁶

Moreover, the internet age and modern media complicates the self-help justification for the actual malice standard. It is true that many athletes and prominent sports figures do have better access to effective communication channels than private figures, either through established sports reporting sites or large personal social media followings. For these public figures, then, combatting a published falsehood may be as easy as posting on their account or getting an interview published. But not all athletes and figures in sports have the same fame or access to effective communication channels. Someone like Kai Spears, for example, could be viewed as a relatively famous person because he was on the basketball team at the University of Alabama, a sports powerhouse in the Southeastern Conference. Yet, in reality, he was a freshman walk-on who had not played any games and at the time of the suit had just over three thousand Instagram followers.¹⁶⁷ By comparison, better-known

¹⁶² See No. 12CV128, 2012 Colo. Dist. LEXIS 2243 (Sept. 25, 2012); *Giduck v. Niblett*, 408 P.3d 856 (Colo. App. 2014).

¹⁶³ Amended Complaint and Jury Demand at 9, *SOCNET*, 2012 Colo. Dist. LEXIS 2243 (No. 12CV128).

¹⁶⁴ Answer Brief of Defendants-Appellees at 11–12, *Niblett*, 408 P.3d 856 (No. 13CA0775).

¹⁶⁵ *Id.* at 12.

¹⁶⁶ *Niblett*, 408 P.3d at 868.

¹⁶⁷ See Kai Spears (@kjspears0), INSTAGRAM, <https://www.instagram.com/kjspears0/?hl=en> [<https://perma.cc/5C4Y-MWTJ>].

college basketball players sometimes have tens of thousands or even several hundred thousand Instagram followers.¹⁶⁸ In this way, Spears's ability to effectively combat the published falsehood was more akin to that of a private individual than a public figure, making the question of whether he should be treated as a public figure or a private individual of paramount importance to his ability to recover.¹⁶⁹

IV. DETERMINING PUBLIC FIGURE STATUS IN SPORTS REPORTING CONTROVERSIES

The Supreme Court recently denied certiorari to revisit the actual malice standard,¹⁷⁰ which means public figures must still meet this high bar to recover for defamation. However, the Court has elaborated on who qualifies as a public figure and has distinguished between an all-purpose public figure and a limited-purpose public figure.¹⁷¹ Courts typically consider voluntariness, access to channels of communication, and the plaintiff's role in a public controversy when determining limited-purpose public figure status.¹⁷² In this era of process journalism, it is more important than ever to keep the bar for public-figure status high; if it slips, Spears and others labeled 'public figures' will find it even harder to recover for harmful defamatory statements.

Being classified as an all-purpose public figure is rare, and rightfully so. To be an all-purpose public figure, there must be a clear showing of an individual's "general fame or notoriety,"¹⁷³ such that they are a celebrity or household name who the public "recognizes [] and follows [their] words and

¹⁶⁸ See Lev Akabas, *College Basketball's Biggest Stars on Social Media Are Women: Data Viz*, SPORTICO (Mar. 31, 2024, 10:54 AM), <https://www.sportico.com/leagues/college-sports/2024/march-madness-2024-angel-reese-caitlin-clark-instagram-1234773233> [<https://perma.cc/RGE4-LAXN>].

¹⁶⁹ See Eugene Volokh, *Alabama Basketball Player's Libel Lawsuit Against New York Times Can Go Forward*, THE VOLOKH CONSPIRACY (Dec. 6, 2023, 03:40 PM), <https://reason.com/volokh/2023/12/06/alabama-basketball-players-libel-lawsuit-against-new-york-times-can-go-forward/> [<https://perma.cc/R9ZN-2SB3>] (noting that Spears's case is still relatively early, but as of yet, The N.Y. Times has not argued Spears to be a public figure); Memorandum Opinion and Order at 8–9, *Spears v. N.Y. Times Co.*, No. 23-cv-00692 (N.D. Ala. Oct. 7, 2025).

¹⁷⁰ *Berisha v. Lawson*, 141 S. Ct. 2424 (2021).

¹⁷¹ See *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345 (1974).

¹⁷² See, e.g., *Carr v. Forbes, Inc.*, 259 F.3d 273, 280 (4th Cir. 2001); *Fitzgerald v. Penthouse Int'l, Ltd.*, 691 F.2d 666, 668 (4th Cir. 2001).

¹⁷³ *Id.* at 352.

deeds.”¹⁷⁴ It is not enough to be well known in just some circles, even if the individual is involved in community and societal affairs.¹⁷⁵ Few people achieve this general notoriety,¹⁷⁶ though it can be common in the sports industry for athletes, coaches, commentators, and other important individuals.¹⁷⁷ In some rare cases, an individual involuntarily becomes a public figure.¹⁷⁸ More often, however, individuals are determined to be limited-purpose public figures when they voluntarily place themselves at the “forefront of particular public controversies in order to influence the resolution of the issues involved.”¹⁷⁹ These dynamics were apparent in Magistrate Judge DeMarchi’s order to dismiss Taylor’s complaint. Although she conceded that Taylor has elements of fame—he’s a retired NFL quarterback who coached a top college football program that is part of a prestigious university—she could not “conclude definitively” that Taylor is a public figure under applicable precedent.¹⁸⁰

In the context of limited-purpose public figures, a public controversy is not merely anything of public interest but rather refers to matters which the Court views as a legitimate subject of public discussion or debate.¹⁸¹ As

¹⁷⁴ See *Waldbaum v. Fairchild Publ’ns*, 627 F.2d 1287, 1294 (D.C. Cir. 1980).

¹⁷⁵ See *Gertz*, 418 U.S. at 351–52.

¹⁷⁶ See *Waldbaum*, 627 F.2d at 1296.

¹⁷⁷ See ROBERT D. SACK, *SACK ON DEFAMATION: LIBEL, SLANDER, AND RELATED PROBLEMS* 5-57 to -58 (4th ed. 2010) (explaining that celebrities, like professional athletes, are public figures as imagined in *Gertz* in part because they voluntarily devote themselves to the public arena for profit and reap those benefits); see generally John Newell, *Athletes as Brands: Caitlin Clark and LeBron James Lead as America’s Favorites*, BEE (Sept. 23, 2025, 09:37 PM), <https://www.sacbee.com/sports/article309725745.html> [<https://perma.cc/F9M9-8YYK>] (reporting that forty-seven percent of U.S. sports fans say they trust endorsements from athletes more than from other celebrities); cf. *National Survey of Kids (and Their Parents) About Famous Athletes as Role Models: Summary of Findings*, KAISER FAM. FOUND. (Sept. 30, 2000), <https://www.kff.org/hiv-aids/kaiser-family-foundation-national-survey-of-kids/> [<https://perma.cc/J5F3-MFFS>] (reporting that athletes are commonly admired and followed by children aged ten to seventeen years old).

¹⁷⁸ *Gertz*, 418 U.S. at 345–46 (imagining that in rare instances, an individual can come to be an involuntary public figure when they “have assumed roles of special prominence in the affairs of society . . . [and] occupy positions of such persuasive power and influence that they are deemed public figures for all purposes.”).

¹⁷⁹ *Id.*

¹⁸⁰ *Taylor v. ESPN, Inc.*, No. 25-cv-06384, 2026 WL 758474, at *9 (N.D. Cal. Mar. 17, 2026) (granting defendants’ motion to dismiss).

¹⁸¹ See SACK, *supra* note 177, at 5-58; *Waldbaum*, 627 F.2d at 1296 (“a dispute that in fact has received public attention because its ramifications will be felt by persons who are not direct participants”); SACK, *supra* note 177, at 5-59 to -61 (explaining that a public controversy does not have to necessarily be a debated situation, rather simply

a result, plaintiffs who are accomplished athletes and other public-facing individuals in the sports industry are often considered to have placed themselves within public controversies because they and their work are socially and culturally popular. Many cases have determined that professional and collegiate athletes and coaches are at least limited-purpose public figures.¹⁸² Limited-purpose public figures are only public figures for a limited range of issues relating to a controversy.¹⁸³ This means the heightened actual malice standard only applies to defamatory statements pertaining to their public character and performance related to the public controversy, which in many cases is separate from their private lives.¹⁸⁴

At the same time, courts are wary of deeming individuals limited-purpose public figures when they did not voluntarily inject themselves into the relevant controversy. In Taylor's case, Magistrate Judge DeMarchi rejected ESPN's characterization of him as a limited-purpose public figure. While she acknowledged that Taylor voluntarily accepted the role of head football coach at a high-profile program and was accused of workplace misconduct, she found that the public controversy surrounding that alleged misconduct stemmed from the unauthorized leak of a confidential personnel file to ESPN.¹⁸⁵ That conclusion warrants scrutiny. The alleged misconduct raises broader public considerations—including how male college football coaches treat female staff members and whether universities have put sufficient safeguards in place to deter such misconduct—that exist independently of how

a preexisting situation of public interest in which the individual becomes involved by their voluntary and public actions).

¹⁸² See, e.g., *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 162 (1967) (determining Coach Wally Butts, the University of Georgia Athletic Director and former coach, to be a public figure); *Brewer v. Memphis Publ'g Co.*, 626 F.2d 1238, 1254–55 (5th Cir. 1980); *McGarry v. Univ. of San Diego*, 64 Cal. Rptr. 3d 476, 481 (Ct. App. 2007) (quoting *Barry v. Time, Inc.*, 584 F. Supp. 1110, 1119 (N.D. Cal. 1984)) (“[A] common thread in these cases is that one’s voluntary decision to pursue a career in sports, whether as an athlete or a coach, ‘invites attention and comment’ regarding his job performance and thus constitutes an assumption of the risk of negative publicity”); *Chuy v. Phila. Eagles Football Club*, 595 F.2d 1265, 1280 (3d Cir. 1979) (“Professional athletes, at least as regards their playing careers, assume a position of public prominence.”).

¹⁸³ *Gertz*, 418 U.S. at 351 (1974).

¹⁸⁴ See *Cottrell v. NCAA*, 975 So. 2d 306, 343 (Ala. 2007) (holding the plaintiff was a limited-purpose public figure only for defamatory statements related to the public controversy but not statements unrelated to the controversy).

¹⁸⁵ *Taylor*, 2026 WL 758474, at *9 (granting defendants’ motion to dismiss).

the story became public. We assert that Taylor ought to have been deemed a limited-purpose public figure for that reason.

This distinction between conduct relating to public controversy and defamatory statements made against an individual's personal life is critical to uphold. Athletes, coaches, and sports personalities have evolved to occupy a more significant public role than simply entertainers in recent years, due in part to the rise of NIL deals, social media, and an increasing interest in social and political matters.¹⁸⁶ It can be easy to argue the public is impacted by and has a legitimate interest in discussing these individuals' conduct beyond their athletic performance. However, courts in the NIL era should exercise caution to respect the dignity of these individuals and their right to rectify the harm done to them by defamatory statements. To that end, courts should weigh contextual factors such as the degree to which the athlete has affirmatively monetized or promoted their public persona. One benchmark could consider number of social media followers compared to similarly situated college athletes, and another might weigh reported earnings generated by the athlete. These and other considerations could help to ensure that the public figure doctrine tracks genuine public accountability, rather than serving as a blanket reduction in protection for anyone with a jersey and a social media account.

For example, adopting a broad view of public controversy could mean that Kai Spears is determined to be a limited-purpose public figure with regard to the shooting reported by the *Times*. It could because he was drawn into a specific public controversy by virtue of his status as a teammate of a college basketball star who was at the shooting and, although it turned out he wasn't at the shooting, it appears he had conversations with teammates who were present.

We find that approach problematic. To classify Spears as a public figure would mean that a relatively unknown college athlete who simply wanted to play basketball for a power conference school must show "actual malice" to recover for false statements that affect his reputation. To be sure, collegiate athletes at power conference schools nowadays share a lot in common with professional athletes. They can be directly paid by their schools through revenue sharing—in addition to athletic scholarships, which cover tuition, housing, health resources, and other student benefits—and can sign NIL deals

¹⁸⁶ Sylvie Nguyen, *Athletes Take Political Stances, Influence Public Opinion*, ORACLE (Nov. 1, 2024), <https://gunnoracle.com/27886/uncategorized/athletes-take-political-stances-influence-public-opinion/> [https://perma.cc/GTS5-FXBD].

with third parties.¹⁸⁷ It is no wonder that so many collegiate athletes are of public interest, with surging TV ratings and other rising metrics.¹⁸⁸ Yet they are also students, typically between seventeen and twenty-two years old, and fewer than two percent of them will become professional athletes.¹⁸⁹ There ought to be limits to what aspects of student athletes' lives are subject to public debate, and their private activities, such as who they choose to spend time with outside of practice and games, should not be open to such public scrutiny. Stretching public-figure doctrine to encompass relatively anonymous college players simply because they participate in a popular sport risks collapsing any meaningful boundary between public and private individuals. It would saddle young athletes who pass briefly through the college system with the same diminished reputational protection afforded to seasoned celebrities and public officials, despite their far more limited access to public platforms, media reach, and legal resources.

By contrast, and counter to Magistrate Judge DeMarchi's conclusion, characterizing Stanford coach Troy Taylor as a limited-purpose public figure with respect to investigations into his workplace conduct *is* appropriate because those investigations implicate matters of genuine public controversy. Their consequences extend beyond the immediate participants, affecting the university community and the public's confidence in institutional governance. At the same time, courts must balance the public's interest in debating significant controversies against the interest in preserving individual dignity and reputation for people who have become more prominent than the average person simply by pursuing their careers. One way to strike that balance is to resist expanding the definition of a limited-purpose public figure beyond those who have truly assumed a central, voluntary role in the relevant public controversy.

¹⁸⁷ Michael McCann, *2025 Sports Law in Review: NCAA, Betting and DOJ Controversies*, SPORTICO (Jan. 1, 2026, 09:00 AM), <https://www.sportico.com/law/analysis/2026/college-sports-betting-law-controversies-1234878608/> [https://perma.cc/4ZM8-UFTQ].

¹⁸⁸ Austin Karp, *College Football Rides Wave to New Audience Records for the Sport*, SPORTS BUS. J. (Dec. 8, 2025), <https://www.sportsbusinessjournal.com/Articles/2025/12/08/college-football-rides-wave-to-new-audience-records-for-the-sport> [https://perma.cc/LVT5-5S7P].

¹⁸⁹ NCAA, NCAA RECRUITING FACTS (2014) <https://assets.nfhs.org/umbraco/media/886012/recruiting-fact-sheet-web.pdf> [https://perma.cc/RS24-ZUNN].

CONCLUSION

In sum, this Article urges movement along two intersecting tracks. First, media organizations—especially those covering sports, where breaking news is treated as a competitive blood sport—should realign their internal incentives to favor accuracy over immediacy, recognizing that longterm trust and legal risk turn on whether audiences trust their work. Second, courts should adapt existing doctrines—substantial truth, opinion/fact, and public figure status—to appreciate contemporary realities of process journalism and, for good or bad, AI-infused news distribution.

The defamation disputes pitting Kai Spears and Troy Taylor against the *Times* and ESPN, respectively, reveal the uneasy fit between the doctrine of substantial truth, public figure defamation analysis, and contemporary sports reporting in a world where college sports and professional sports have become more alike due to expansion of compensation opportunities for college athletes. The doctrine and accompanying defamation law dynamics were crafted in an era of slower news cycles and more robust editorial hierarchies. With the rise of process journalism and the need to “break news,” the increasing reliance—and social acceptance—of AI-generated media content, and the unsteady economics of media companies and journalism employment, what counts as “truth” is an evolving concept. Accordingly, the evaluation of truth and reputational harm must account for contemporary reporting practices.

This Article argues that getting the ‘gist’ right is not enough. Inaccuracies that materially alter reputational harm or legal culpability should defeat the substantial truth defense. Conversely, minor or technical errors that do not meaningfully change the gist or impact of the allegation should not preclude reliance on substantial truth. Together, these standards seek to align the substantial truth doctrine with its core purpose: protecting robust speech while refusing to immunize distortions that significantly worsen the sting of a defamatory charge.

Along those lines, media entities should accurately inform the public and shouldn’t enjoy a legal shield for avoidable errors. This is not an abstract issue. Mistakes can meaningfully harm individuals, including prominent sports figures and less publicly visible individuals like Spears, whose ability to fight back—either through litigation or ‘self-help’ via public relations strategies or public statements and influencing on social media—is often misunderstood and overstated. It is true that journalists and media companies face enormous financial and professional pressures and, worse yet, those pressures will probably worsen in time as AI takes a greater hold of content generation. But accuracy should be deemed most important for those who pursue a career in journalism.

We contend this position is consistent with *New York Times Co. v. Sullivan* and its progeny. It also aligns with the need for sports reporting to face readers' scrutiny and the robust, wide-open debate the First Amendment and common sense demand. Courts should apply substantial truth with greater discipline and a healthier dose of skepticism—especially where an inaccuracy misconstrues the legal status of its subject matter. With such an inaccuracy, the story is not “substantially” true, and reliance on the “gist of it” is doing too much work for a legal system that prioritizes justice and fairness.

Public figure doctrine must also be calibrated to contemporary sports culture, where some college athletes share much in common with professional athletes. Even with the professionalization of college sports, not every scholarship athlete and Division I coach is a *de facto* public figure. The reality is that the vast majority of college athletes are *not* prospective professional athletes, and they are still primarily students who seek a degree for a post-college career or graduate school admissions.

In that light, Spears's case underscores the risk of construing “limited purpose” public figure status to functionally deny redress to individuals who resemble ordinary private persons more than celebrity athletes. Courts should demand a high threshold for both allpurpose and limitedpurpose public figure status in the sports context. They should also confine the “public controversy” inquiry to situations where the athlete has injected themselves into a debate; simply being on the roster of a team that faces a controversy is not enough. For those reasons, courts should require a high threshold before extending public figure status to college athletes who have not voluntarily assumed a prominent public role.