

# Patel v. CNN: Public Figures Suing the Media for Defamation Lose Most of the Time

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In a case, as they say, ripped from the headlines, the Virginia Court of Appeals has put on a clinic explaining the inter-play between the First Amendment and defamation law. The Court, in *Patel v. CNN* made clear that public figures suing the media for defamation must allege facts that the media acted with actual malice. As the Court put it, when concluding that Mr. Patel failed to meet that standard, “the actual malice standard does not pose an insurmountable ... burden, only an exacting one.”

Plaintiffs, especially public figures, seeking relief for alleged defamation against media outlets have a steep hill to climb. The First Amendment’s protections of public discourse, more often than not, outweigh private claims of defamation.

## Background in Patel v. CNN

Mr. Patel is an attorney and former official in President Trump’s first administration. He is the current nominee to become the director of the FBI. His lawsuit against CNN stemmed from his claim that its reporting falsely connected him to attempts by President Trump, during his first term, to spread conspiracy theories about then-Vice President Biden and attempts to coerce Ukraine into announcing an investigation into Vice President Biden and his son Hunter.[1]

## Governing Legal Principles for Defamation Cases

When considering whether Mr. Patel sufficiently pled a claim of defamation against CNN, the Court of Appeals set out essential rules that govern defamation cases. These principles are important for any of us prosecuting or defending these claims:



- Public figures bringing claims of defamation against media outlets on widely publicized political issues must allege facts with sufficient definiteness to enable the conclusion that the media outlet published false statements with actual malice.
- To be actionable, a statement must be both false and defamatory.
- True statements cannot support a claim for defamation.
- Statements of opinion are not actionable as defamation because they cannot be objectively characterized as true or false.
- To be defamatory, a false statement must tend to harm the reputation of the plaintiff or deter others from associating with him.
- The right to recover for defamation is constrained by the First Amendment. The protections of the First Amendment are at their zenith when the statements in question relate to public questions about public officials.
- Debate about public issues should be “uninhibited, robust, and wide-open” and should be protected especially when the debate includes “vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.”
- Even erroneous statements that resort to exaggeration or vilification are protected by the First Amendment.
- Public officials seeking to recover damages for a defamatory falsehood can only recover if they prove that the false statement was made with actual malice “[which] is knowledge that it was false or with reckless disregard of whether it was false.”

### Proving Actual Malice is a Heavy Burden

This last point was the essence of the Court’s ruling that Mr. Patel’s defamation claim could not survive. As the Court explained, it was not enough to say that statements in question should not have been published, or that it was even imprudent to publish them. Public officials must allege that the defendant “*in fact entertained* serious doubts as to the truth of his publication.” Indeed, a media outlet does not have a duty to investigate the accuracy of an allegedly defamatory statement before publication unless the publisher “has a high degree of *subjective* awareness of [the statement’s] *probable* falsity.”

Moreover, it’s not enough for a plaintiff to allege that a media outlet, writ large or as a corporate entity, was broadly aware of the possible falsity of a statement before publication. The plaintiff must allege facts that show that the state of mind of actual malice was “‘brought home’ to the minds of a person or persons in a media company who are responsible” for publishing the statement.



The Court of Appeals emphasized, too, that in the defamation context, the publisher's ill will toward the plaintiff, or the publisher's desire to increase its profits, are not enough to prove "actual malice." Defamation actions are not intended to police news outlets' objectivity. Actual malice requires proof that the speaker of defamatory words knew the words were false at the time he spoke them or that he spoke them with reckless disregard for their truth.

### Reviewing Courts Will Examine the Full Record

The Court of Appeals, in its close review of Mr. Patel's complaint, ignored conclusory statements of law or factual conclusions that were not also supported by specific recitals of evidence. The Court of Appeals also rejected claims in the complaint if they were contradicted by exhibits attached to it. For example, Mr. Patel claimed an article by CBS and a report published by the House Intelligence Committee on the Trump-Ukraine Impeachment Inquiry should have made CNN aware that its own reporting was false.

But the Court of Appeals reviewed those attachments to Mr. Patel's complaint and concluded that although Mr. Patel denied the reports' accuracy, they in fact supported CNN's reporting. In this instance, the Court concluded that it was not obliged, even at the pre-trial stage of proceedings, to credit Mr. Patel's allegations in his complaint over the exhibits attached to it.[2]

The Court's opinion in *Patel* warrants a close read by defamation litigants. It's also an important review of the careful balance we strike between protecting peoples' reputations on the one hand and protecting the right of the people to vigorously debate matters of public concern. If people have a right to speak out about politics or policy, but can only do so if they can afford a follow-on defamation lawsuit, then the right is a hollow one.

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[1] Mr. Patel identified three separate statements by CNN that he claimed were defamatory:

- "Patel [is] a Trump loyalist who was connected to efforts to spread conspiracy theories about Joe Biden"
- "The House impeachment inquiry uncovered evidence connecting Patel, who was then working as an aide to Nunes, to the diplomatic back channel led by Trump attorney Rudy Giuliani, and the efforts to spread conspiracy theories about Joe Biden and coerce Ukraine into announcing an investigation of the former vice president."
- "The Washington Post first reported on the Biden team's problems with the Defense Department transition office, which is led by a Trump loyalist connected to efforts to spread conspiracy theories about the President-elect."



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At oral argument in the Court of Appeals, Mr. Patel abandoned his claims related to a fourth statement that CNN reported that Mr. Patel “worked to discredit Special Counsel Robert Mueller’s probe into Russian interference in the 2016 presidential election.”

[2] The Ukraine Report and the CBS news article were, according to the Court, “attached via oyer” to the Complaint. A defendant in Virginia may “crave oyer” in response to a Complaint. That has the effect of making documents referenced and integral to the complaint part of it. That in turn had the effect of making the articles part of the record that could be reviewed on an initial pre-trial demurrer or motion to dismiss.

