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All the Rumors are True: Verification, Actual Malice, and Celebrity Gossip

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All the Rumors are True: Verification, Actual Malice, and Celebrity Gossip

*Jasmine E. McNealy**

ABSTRACT

*More than half of Americans get their news from social media. These spaces – social media platforms, video and audio recommender systems, social news and gossip boards – have their own fact-checking and editorial cultures that, although not the exact same as those found in newsrooms, offer similar controls for the distribution of information. While imperfect, just like the controls of traditional media, these fact-checking cultures may offer a response to recent US judicial rejection of actual malice and provide a route of inquiry for courts examining evidence to determine if a defamation plaintiff has met the heightened standard. This brief essay considers these cultures of fact-checking with a focus on the cultures of celebrity gossip using the recent ruling in *Almanzar v. Kebe*, the *Cardi B vs Tasha K* defamation case, as a point of departure.*

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I. INTRODUCTION

In recent years, “actual malice,” the heightened standard for plaintiffs achieving public official or public figure status in defamation and intentional infliction of emotional distress cases, has come under scrutiny. At least two members of the U.S. Supreme Court have questioned the standard’s validity publicly.¹ Writing in a concurrence to the Court’s denial of certiorari in *McKee v. Cosby*, Justice Thomas opined that the Court should reconsider the precedents that established the actual malice requirement.² In *McKee*, a woman alleging rape by the prominent comedian and actor Bill Cosby was deemed a limited purpose public figure by a federal court.³ The crux of the federal court’s designation was that the woman had made the disclosure to a reporter, thereby thrusting herself into the forefront of a public controversy.⁴ Although agreeing with the Supreme Court’s decision to deny certiorari, Justice Thomas called this application of actual malice a “policy-driven decision” instead of a decision based on constitutional law.⁵

More recently, Justice Thomas repeated his concern about actual malice in a dissent from the Court’s denial of certiorari in the defamation case *Berisha v. Lawson*.⁶ The case, again, hinged on whether the plaintiff, a man who an author claimed was a prominent member of the Albanian mafia, was able to prove actual malice.⁷ This time, Justice Thomas questioned whether the standard bore any “relation to the text, history, or structure of the Constitution,” and offered examples of how the requirement of proving actual malice can cause real harm.⁸ Writing in a separate dissent in *Berisha*, Justice Gorsuch agreed with Justice Thomas as to the spurious historical and constitutional support for actual malice.⁹ More importantly, perhaps, is Justice Gorsuch’s explication of the media

¹ See *McKee v. Cosby*, 139 S. Ct. 675, 675 (2019) (Thomas, J. concurring at 675); *Berisha v. Lawson*, 141 S. Ct. 2424, 2426 (2021) (Gorsuch J., dissenting).

² *McKee*, 139 S. Ct. at 675.

³ *McKee v. Cosby*, 874 F.3d 54, 62 (1st Cir. 2017).

⁴ *Id.* The 1st Circuit held that “[b]y purposefully disclosing to the public her own rape accusation against Cosby via an interview with a reporter, McKee ‘thrust’ herself to the ‘forefront’ of this controversy, seeking to ‘influence its outcome.’” *Id.*

⁵ *McKee*, 139 S. Ct. at 676 (Thomas, J., concurring).

⁶ *Berisha*, 141 S. Ct. at 2424 (Thomas, J., dissenting).

⁷ *Id.*

⁸ *Id.* at 2424–25 (citing *Tah v. Glob. Witness Publ’g, Inc.*, 991 F.3d 231, 251 (D.C. Cir. 2021) (Silberman, J., dissenting)). According to Justice Thomas “lies impose real harm,” including the shooting at a pizza shop connected to Pizzagate, the need for additional home security after an online campaign of falsity looking for revenge against the target, and the loss of job opportunities from being falsely accused of bigotry. *Id.* at 2425.

⁹ *Id.* at 2426 (Gorsuch, J. dissenting).

landscape's evolution in the time since the Court first imposed the actual malice standard on public officials. According to Justice Gorsuch, advancements in media technology "facilitate[] the spread of disinformation."¹⁰ False information is profitable.¹¹ Therefore, Gorsuch states, while in 1964, the media landscape of newspaper distribution networks, broadcast licensing, and large companies dominating the press may have needed a standard like actual malice to protect the "uninhibited, robust, and wide-open' debate on public issues," the current landscape is very different and the standard is now unnecessary.¹²

Technology like social media has allowed the widespread distribution of falsehoods, while the legacy press has shrunk in size and scope. With the diminishment of the press has come the concomitant disappearance of safeguards like fact-checking and editorial oversight. According to Justice Gorsuch, publishing "*without* investigation, fact-checking, or editing has become the optimal legal strategy," as actual malice encourages false publications, because public figure plaintiffs find it difficult to meet the standard.¹³ In addition, the monetization of falsity and virality is enough of a business incentive to distribute false information. These considerations demonstrate why actual malice no longer serves the purpose for which it was originally proposed. As a result, Justice Gorsuch concluded that the Court needed to reassess the application of the heightened standard.¹⁴

Although both Justices make compelling arguments regarding the current state of defamation law and the actual malice standard for public figures, this essay focuses on Justice Gorsuch's assertions about technology and the distribution of false statements. Justice Gorsuch is correct in his assessment of the media landscape: a study by the Pew Research Center found that more than half of Americans (53%) reported getting their news from social media. Another twenty-two percent reported obtaining news from podcasts.¹⁵ These media spaces—social media platforms, video and audio recommender systems, social news and gossip boards—have their own fact-checking and editorial cultures that, although not the exact same as those found in newsrooms, offer similar controls for the distribution of information.¹⁶ While imperfect, just like

¹⁰ *Id.* at 2427.

¹¹ *Id.*

¹² *Id.* at 2430.

¹³ *Id.* at 2428.

¹⁴ *Id.* at 2430.

¹⁵ See Aniko Hannak et al., *Get Back! You Don't Know Me Like That: The Social Mediation of Fact Checking Interventions in Twitter Conversations*, 8 PROC. OF THE INT. AAAI CONF. ON WEB AND SOC. MEDIA 187 (2014); Maria Kyriakidou et al., *Questioning Fact-Checking in the Fight Against Disinformation: An Audience Perspective*, 0 JOURNALISM PRACT. 1 (2022).

¹⁶ See *infra* notes 85–110 and accompanying text.

the controls of traditional media, these fact-checking cultures may offer a response to Justice Gorsuch's wholesale rejection of actual malice and provide a route of inquiry for courts examining evidence to determine if a defamation plaintiff has met the heightened standard.

This brief essay considers the cultures of fact-checking with a focus on the cultures of celebrity gossip. Section two examines the recent decision in *Almanzar v. Kebe*,¹⁷ also known as *Cardi B vs. Tasha K*, in which a famous rap artist sued a gossip video blogger for defamation, among other claims. The third section details the *Almanzar* case and the arguments that Tasha K made on appeal, the details of which are reminiscent of the types of cases that Justice Gorsuch describes: false information spread using advanced media technology. Following this, I discuss fact-checking and cultures of gossip sites, and how these compare with those of the traditional newsroom. Section four returns to Justice Gorsuch's discussion of the evolution of technology and its impact on defamation law. Section five concludes the paper with a look to the future of celebrity gossip, defamation, and social technology.

II. "Y'ALL BE RUNNIN' WITH FAKE NEWS"

In January 2022, the Internet buzzed with news that internationally known rap star Cardi B won her defamation case against celebrity gossip vlogger Tasha K.¹⁸ The jury returned a \$4 million verdict in favor of Belcalis Almanzar ("Cardi") against Latasha Kebe ("Tasha K") for claims she made on her YouTube channel, UnWineWithTashaK.¹⁹ Posting on her platform, Tasha K claimed that Cardi B was a prostitute, used cocaine, and had herpes, among other assertions.²⁰ The lawsuit against Tasha K, filed in 2019, claimed that she participated in a campaign of harassment against the rapper, inflicting mental and emotional distress and intending to damage Cardi B's reputation among her fans and the rest of the public.²¹ Along with the monetary judgement, Tasha K was enjoined from making

¹⁷ No. 22-12512, 2023 WL 2579119 (11th Cir. Mar. 21, 2023).

¹⁸ *Cardi B Wins Order Forcing YouTuber to Remove Defamatory Videos*, BBC NEWS (Apr. 5, 2022), <https://www.bbc.com/news/newsbeat-60995424> [<https://perma.cc/A88X-JLSB>].

¹⁹ *Id.*

²⁰ Raja Razek & Joe Sutton, *Cardi B Wins Defamation Lawsuit Against YouTuber Tasha K*, CNN (Jan. 26, 2022, 1:41 PM), <https://www.cnn.com/2022/01/26/entertainment/cardi-b-tasha-k-defamation-lawsuit/index.html> [<https://perma.cc/4HS6-Y4RZ>]; Robyn Autry, *Cardi B Wins \$4 Million in Her Defamation Case. But Her Victory is About More Than Money.*, NBC NEWS (Jan. 26, 2022, 1:44 PM), <https://www.nbcnews.com/think/opinion/cardi-b-wins-4-million-youtube-defamation-case-her-victory-ncna1288049> [<https://perma.cc/TJ62-UC6X>].

²¹ *Id.*

statements about Cardi B’s sexual health and personal life.²² In April of the same year, a judge ordered Tasha K to remove more than 20 videos containing the defamatory claims about Cardi B.²³ Later in 2022, a judge ordered Tasha K to either pay the entire judgement or secure a bond for the judgement amount while she appealed the decision.²⁴

Although Tasha K acknowledged in court that some of her content was fake and that she knew some of the rumors she published were untrue, she appealed to the Eleventh Circuit for a new trial based on several arguments.²⁵ These assertions included statements that Tasha K genuinely believed Cardi B had herpes when she made the claim in a video that was published to her more than 1 million subscribers, whom she calls “Winos.”²⁶ More interesting, perhaps, was Tasha K’s appellate arguments concerning actual malice. Although she called herself a journalist in the videos on her channel, the YouTube influencer disclaimed the status of a news provider during trial.²⁷ Instead, she admitted that her channel content was not meant to be journalism. Instead, what she published was designed to increase viewer engagement, which allows YouTube creators to monetize their videos and have their content recommended to a wider audience.²⁸ Further, Tasha K argued that Cardi B had failed to prove actual malice because it is “impermissible to use a defendant’s hatred, spite, ill will, or desire to injure as evidence of actual malice.”²⁹

Celebrity gossip is, of course, not new; people and organizations have spilled and “sipped tea” since celebrity and influencer culture began.³⁰

²² *Cardi B Wins Order Forcing YouTuber to Remove Defamatory Videos*, *supra* note 18.

²³ *Id.*

²⁴ Ade Onibada, *A Judge Has Denied YouTuber Tasha K’s Appeal After She Was Found Guilty Of Defamation Against Cardi B and Will Have to Pay Out Millions in Damages and Legal Fees*, BUZZFEED NEWS (Mar. 22, 2023), <https://www.buzzfeednews.com/article/adeonibada/cardi-b-tasha-k-defamation-lawsuit> [<https://perma.cc/48NJ-EJXP>].

²⁵ See Bill Donahue, *YouTuber Tasha K Wants Cardi B’s \$4M Defamation Victory Thrown Out*, BILLBOARD (June 1, 2022), <https://www.billboard.com/business/legal/tasha-k-wants-cardi-b-defamation-victory-thrown-out-1235079564/> [<https://perma.cc/8XR7-PSLJ>].

²⁶ Nancy Dillon, *Blogger Appeals Cardi B’s \$4 Million Defamation Award. Expert Gives it “Slim Chance”*, ROLLING STONE (Aug. 31, 2022), <https://www.rollingstone.com/music/music-news/cardi-b-defamation-award-blogger-appeal-expert-interview-1234585184/> [<https://perma.cc/8XSC-4TRL>]; Donahue, *supra* note 25; Onibada, *supra* note 24.

²⁷ See Autry, *supra* note 20.

²⁸ *See id.*

²⁹ *Id.*

³⁰ See Jasmine McNealy & Michaela Devyn Mullis, *Tea and Turbulence: Communication Privacy Management Theory and Online Celebrity Gossip Forums*, 92 COMPUT. HUM. BEHAV. 110, 110 n.1 (2019) [hereinafter McNealy & Mullis].

What is interesting, perhaps, are the arguments like Tasha K's, related to online creators and the rumors they spread about public figures like Cardi B. As public figures, people who have attained a status like Cardi B's have a higher burden of proving that they were defamed by statements made about them. The supposed status of these public figures has been thought to allow them a greater ability to correct misstatements. The popularity of public figures also makes them more likely to be of interest to the public, which increases the potential for such false statements to be made about them. Actual malice, as a standard for public officials and public figures, was developed out of an understanding of journalistic practices, how newsrooms operate, and to check the veracity of information.³¹ However, bloggers, vloggers, and other social media content creators are not thought to have the same kinds of verification systems or motivations as traditional newsrooms.³² What, then, can be the evidence that a social media creator followed verification standards to consider whether a statement is true? How do, or should, the objectives of content creation factor into considerations of actual malice on social media?

Public figures are those who have attained fame or infamy sufficient to spark the public interest.³³ Our understanding of public figures generally comes from a group of cases decided by the U.S. Supreme Court during the 1960s and '70s. Of paramount importance is the case *New York Times v. Sullivan*,³⁴ in which the Court ruled that public officials—those with significant influence over matters of public concern, typically government affairs—had to prove that a defamation defendant acted with actual malice in making claims about them.³⁵ The *Sullivan* case famously dealt with a police commissioner suing the *New York Times* for publishing an advertorial soliciting funds in support of the civil rights movement in the southern United States.³⁶ The ad contained some factual errors,

³¹ See Delery H. Perret, *An Unforeseen Problem: How Gertz Failed to Account for Modern Media and What to do Now Comments*, 80 LA. LAW REV. 541, 543–44 (2019); See Jane E. Kirtley, *Uncommon Law: The Past, Present and Future of Libel Law in a Time of "Fake News" and "Enemies of the American People"*, 2020 U. CHI. LEGAL F. 117 (2020); Glenn Harlan Reynolds, *Rethinking Libel for the Twenty-First Century*, 87 TENN. L. REV. 465, 469 (2019).

³² See Alfred Hermida, *Nothing but the Truth: Redrafting the Journalistic Boundary of Verification*, in BOUNDARIES OF JOURNALISM: PROFESSIONALISM, PRACTICES AND PARTICIPATION 1, 37 (Matt Carlson & Seth C. Lewis eds., 2015); Bahareh Rahmzadeh Heravi & Natalie Harrower, *Twitter Journalism in Ireland: Sourcing and Trust in the age of Social Media* *, 19 INFO. COMMUN. SOC. 1194 (2016).

³³ See, e.g., *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342 (1974); *Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 155 (1967).

³⁴ 376 U.S. 254 (1964).

³⁵ *Id.* at 279–80.

³⁶ *Id.* at 256.

although it never mentioned the commissioner directly or indirectly.³⁷ The Court ruled that the First Amendment protected speech about matters of public interest, especially about issues of government or public affairs.³⁸ Because there was a significant government interest in protecting and promoting discussion of political and social issues, falsity would inevitably creep in.³⁹ The idea was not to promote falsity but to weigh on the side of allowing free debate on these issues, while allowing public officials to be able to recover damages if they could prove that the defendant had acted with knowledge of falsity or reckless disregard for the truth when they made their statements.⁴⁰

The actual malice requirement was extended to public figures—those “involved in issues in which the public has a justified and important interest”—in *Curtis Publishing Co. v. Butts*.⁴¹ *Butts* consolidated two cases. One case involved a well-known college athletic director and former college football coach accused of fixing a popular college football game,⁴² and the other case included a “a man of some political prominence” who was accused of taking part in a confrontation over desegregation at the University of Mississippi.⁴³ The Court held that both individuals had attained public figure status by earning a substantial amount of public attention: Butts from coaching a popular collegiate football team, and Walker from his activities on social and political issues.⁴⁴ The Court ruled that Butts met the actual malice standard, but Walker did not.⁴⁵

This recognition of the power and influence that public figures like Butts—the college football coach—commanded was also central to the Court’s further delineation of public figures in *Gertz v. Robert Welch Inc.*,⁴⁶ in which it described three classes of public figure: all-purpose, involuntary, and vortex.⁴⁷ Cardi B is an example of the quintessential all-purpose public figure: a pop music superstar, well-known in the United States and around the world. More importantly, she is an individual who commands the attention of millions of people, and whose life is of interest. In contrast, according to the *Gertz* Court, involuntary public figures are an “exceedingly rare” class of individuals who garner public interest through

³⁷ *Id.* at 256–58.

³⁸ *Id.* at 273.

³⁹ *Id.* at 271–72.

⁴⁰ *Id.* at 280.

⁴¹ 388 U.S. 130, 134 (1967).

⁴² *Id.* at 135–36.

⁴³ *Id.* at 140.

⁴⁴ *Id.* at 155.

⁴⁵ *Id.* at 156.

⁴⁶ 418 U.S. 323, 336 (1974).

⁴⁷ *Id.* at 344–45.

“no purposeful action of [their] own.”⁴⁸ Vortex public figures, however, are those who had sought to influence the public by thrusting “themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved.”⁴⁹

Like the public officials before them, public figures bringing defamation cases have to meet the actual malice standard with clear and convincing evidence.⁵⁰ In her appeal of the ruling in *Almanzar*, Tasha K claimed that Cardi B had failed to demonstrate clear and convincing evidence of actual malice because she had based her claim on evidence of Tasha K’s purported “hatred, spite, ill will or desire to injure” the rapper’s reputation, which was impermissible.⁵¹ Generally, proving actual malice meant that a public figure plaintiff had to show that the defendant had serious doubts about the information they were publishing.⁵² A mere showing that the defendant failed to investigate is not enough to constitute actual malice.⁵³ Rather, a public figure plaintiff is required to prove actual malice based on the defendant’s state of mind when publishing the information. According to the *Butts* Court, a public figure could recover for defamation “on a showing of highly unreasonable conduct constituting an extreme departure from the standards of investigation and reporting ordinarily adhered to by responsible publishers.”⁵⁴

III. “TRUST ISSUES”

The debate engaged in by the Court in *Gertz*, *Butts*, and *Sullivan*⁵⁵ shaped the public official/public figure doctrine and situated public figure power as contra the power of the press/media. Press/media power was the “traditional” press in these cases, working in its watchdog role to bring the public information about people and organizations of public interest. The *Gertz* Court juxtaposed the power of the public figure vis-à-vis that of the press when it provided rationale for why a state would want to have

⁴⁸ *Id.* at 345.

⁴⁹ *Id.*

⁵⁰ *Id.* at 342. This was in contrast to cases prior to the ruling in *Sullivan*, which allowed states to set a strict liability standard, meaning that if might be held liable if the jury found that they had published the advertisement and that the statements were made “of and concerning” respondent” without a consideration of a standard of care. *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 267–68 (1964).

⁵¹ Opening Brief of Appellants at 24, *Almanzar v. Kebe*, No. 22-12512, 2022 WL 4016106 (11th Cir. Aug. 29, 2022) (citing *Bollea v. World Championship Wrestling*, 610 S.E.2d 92, 97 (Ga. Ct. App. 2005)).

⁵² *Cottrell v. Smith*, 788 S.E.2d 772, 784 (Ga. 2016).

⁵³ *St. Amant v. Thompson*, 390 U.S. 727, 733 (1968).

⁵⁴ *Curtis Publ’g Co. v. Butts*, 388 U.S. 130, 155 (1967).

⁵⁵ *See also Rosenbloom v. Metromedia, Inc.*, 403 U.S. 29 (1971); *Rosenblatt v. Baer*, 383 U.S. 75 (1966).

different standards of fault for private and public figures.⁵⁶ Public figures have achieved their level of fame through media channels, and are successful when “they seek the public’s attention.”⁵⁷ Public figures and officials are able to use media, or other channels of communication, to counter false statements made about them.⁵⁸ Public figures also assume the risk that their place of influence or notoriety will bring with it increased scrutiny via the press.⁵⁹ Finally, the media was “entitled” to assume that public figures had opened themselves up to the possibility of falsehood creeping into discussions.⁶⁰

In contrast, private persons had none of the media-related influence or access that public figures had.⁶¹ Importantly, the media was not entitled to assume that a private person had assumed the risk of injuries that come with false statements.⁶² That news organizations understand the implications of false statements and falsity in reporting can be seen in traditional newsroom routines and professional norms. The scholarly literature regarding newsrooms and the implications of new technology on newsroom routines is plentiful. Newsroom routines are “patterns of outcome-oriented behavior, structured by ideological and organizational contexts, regularly enacted or invoked by newswriters engaged in constructing the news, acting individually but thinking collectively.”⁶³ These routines shape how news is defined, reported, and chosen for publication. Professional norms for journalists delineate how newswriters view themselves as a profession in contrast to other content creators.⁶⁴ Both routines and norms “speak to functional and symbolic needs of the profession”⁶⁵ and are closely connected to the practice of journalism. Newsrooms have found these routines beneficial as they allow

⁵⁶ *Gertz*, 418 U.S. at 344–46.

⁵⁷ *Id.* at 342.

⁵⁸ *Id.* at 344.

⁵⁹ *Id.* at 345.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ Edson C. Tandoc, Jr. & Andrew Duffy, *Routines in Journalism*, in OXFORD RSCH. ENCYCLOPEDIAS, (Feb. 25, 2019), <https://oxfordre.com/communication/view/10.1093/acrefore/9780190228613.001.0001/acrefore-9780190228613-e-870> [<https://perma.cc/C2FF-F272>].

⁶⁴ Jane B. Singer, *Out of Bounds: Professional Norms as Boundary Markers*, in BOUNDARIES OF JOURNALISM: PROFESSIONALISM, PRACTICES AND PARTICIPATION 21, 22 (Matt Carlson & Seth C Lewis eds., 2015); Jane B. Singer, *Quality Control: Perceived Effects of User-Generated Content on Newsroom norms, Values and Routines*, 4 JOURNALISM PRAC. 127, 127 (2010).

⁶⁵ David M. Ryfe, *Broader and Deeper: A Study of Newsroom Culture in a Time of Change*, 10 JOURNALISM 197, 199 (2009).

work to be done with quality and efficiency by, in essence, detailing a process of who does what, when, and how.⁶⁶

How journalists gather and confirm information, and their points of intervention such as fact-checking and copyediting, are parts of the newsroom routine. Accuracy, considered a key characteristic of journalism, is based on the routine of verification.⁶⁷ Verification, or checking facts prior to the creation of the story, begins with the goal of “sift[ing] out rumor, innuendo, and spin,” along with any attempts at those attacks on accuracy.⁶⁸ A study of newspaper journalists’ verification processes found various strategies and a hierarchy of care for different kinds of factual statements.⁶⁹ Facts like names, statistics, and other immutable facts were given greater care than other kinds of factual statements; these included facts that could be considered defamatory.⁷⁰ At the same time, the study found that there was a distinction between the journalists’ ideals about verification in comparison with their actual practice. While the ideal standard was that they would have stringently checked all statements, statements could not always be verified thoroughly due to time and resource constraints.⁷¹

Journalists are not alone in the process of verification. Copyeditors and fact-checkers are part of the newsroom routine and employed as a “last line of defense” against errors.⁷² Prior research has found that copyeditors perceive themselves as guardians of journalism ethics, whose job it was to help eliminate error and possible legal issues.⁷³ Journalism organizations have often used fact-checkers, too, in roles complimentary to copyeditors.⁷⁴ Media audiences view both fact-checking and editing positively. Audience perceptions of fact-checking and editing influence

⁶⁶ See, e.g., Gaye Tuchman, *Making News by Doing Work: Routinizing the Unexpected*, 79 AM. J. SOCIOLOG. 110, 111 (1973); Harvey Molotch & Marilyn Lester, *News as Purposive Behavior: On the Strategic Use of Routine Events, Accidents, and Scandals*, 39 AM. SOCIO. REV. 101, 105 (1974); Barbara Schneider, *Reporting Homelessness*, 7 JOURNALISM PRAC. 47 (2013); Wilson Lowrey, *News Routines*, in THE INT’L ENCYCLOPEDIA OF COMMUN. (2014).

⁶⁷ See Ivor Shapiro et al., *Verification as a Strategic Ritual*, 7 JOURNALISM PRAC. 657, 658 (2013).

⁶⁸ Bill Kovach & Tom Rosenstiel, *The Elements of Journalism: What Newspeople Should Know and the Public Should Expect* 67 (4th ed. 2021).

⁶⁹ Shapiro, *supra* note 67, at 668.

⁷⁰ *Id.* at 663–65.

⁷¹ *Id.* at 665.

⁷² Susan Keith, *Newspaper Copy Editors’ Perceptions of Their Ideal and Real Ethics Roles*, 82 JOURNALISM MASS COMMUN. Q. 930, 930 (2005).

⁷³ *Id.*

⁷⁴ See Fred Vultee, *Audience Perceptions of Editing Quality*, 3 DIGIT. JOURNALISM 832, 833 (2015); Lucas Graves, Brendan Nyhan, & Jason Reifler, *Understanding Innovations in Journalistic Practice: A Field Experiment Examining Motivations for Fact-Checking*, 66 J. COMMUN. 102, 102 (2016).

their perceptions of news quality and whether they might pay for the news.⁷⁵ Demands for constant and rapid reporting, as well as economic pressures, challenge fact-checking and editing routines.⁷⁶ Competition for audiences between traditional outlets and social media and other emerging technology has led to demands for almost constant publication.⁷⁷ These demands have placed pressure on the traditional fact-checking and editing routines. In addition, news organizations have turned to innovations in technology in response to economic and resource pressures on verification.

The introduction of technology into news routines has made for both innovation and reconsideration of practice norms. Twitter, now known as X, has been normalized as a part of news production and dissemination by news outlets, because it fits with breaking news routines.⁷⁸ A study of journalists' use of Twitter found, for example, that journalists were applying the norms of transparency about how their job work and accountability for their reporting in the content that they posted.⁷⁹ Apart from using digital technology like social media to shape audience views of journalists' credibility, research has found that journalists working strictly in the online space used external assistance to conduct traditional verification tasks.⁸⁰ Facing a lack of in-depth editing by internal services, some online journalists "had even reached out to social networks rather than editors for help in editing pieces."⁸¹ A study by Agarwal and Barthel in 2015 found, for instance, that traditional print stories received significantly more editing services than those written solely for online.⁸² The laxity in verification for online news in comparison to traditional print did not mean, however, that journalists using new technology were

⁷⁵ Vultee, *supra* note 74, at 833.

⁷⁶ Lucas Graves & Michelle A. Amazeen, *Fact-Checking as Idea and Practice in Journalism*, in OXFORD RSCH. ENCYCLOPEDIA OF COMMUN (2019), <https://doi.org/10.1093/acrefore/9780190228613.013.808> [<https://perma.cc/LZH5-H3RM>] (last visited July 11, 2023).

⁷⁷ Susan Currie Sivek & Sharon Bloyd-Peshkin, *Where Do Facts Matter?: The Digital Paradox in Magazines' Fact-Checking Practices*, 12 JOURNALISM PRAC. 400, 401 (2018).

⁷⁸ See Noah Arceneaux & Amy Schmitz Weiss, *Seems Stupid Until You Try it: Press Coverage of Twitter, 2006-9*, 12 NEW MEDIA & SOC. 1262, 1268 (2010); Dominic L. Lasorsa, Seth C. Lewis, & Avery E. Holton, *Normalizing Twitter: Journalism Practice in an Emerging Communication Space*, 13 JOURNALISM STUD. 19, 20 (2011).

⁷⁹ Lasorsa, Lewis, & Holton, *supra* note 78.

⁸⁰ Sheetal D. Agarwal & Michael L. Barthel, *The Friendly Barbarians: Professional Norms and work Routines of Online Journalists in the United States*, 16 JOURNALISM 376, 386–87 (2015).

⁸¹ *Id.*

⁸² *Id.* (interviewing online journalists to investigate how their professional identities influence their participation in newsroom routines).

without constraints or routines created to avoid legal and policy infractions and harm to their credibility. A study of computational journalists found that because of their apprehension surrounding the possibility of libel from automated outputs, journalists had been posting the code and data that they used to Github or other open-source repositories that allow its accuracy to be checked.⁸³ Such postings also help the computational journalist because the editor in charge may not be knowledgeable enough to check the journalist's code. Posting code and data to these sites might then be considered "evidence that journalists are at least attempting to act with reasonable care – an important consideration when it comes to potential legal liability."⁸⁴

Therefore, despite changes in media channels and pressures connected to demands for information and economics, verification remains an important part of the routine for those working for traditional news organizations. Forms of verification have changed to fit the demands of content publication and the channels of publication. The fact that verification changes to match the medium offers insights into how different kinds and cultures of verification arise outside of the traditional press.

IV. "BE CAREFUL"

In contrast to what is traditionally considered journalism, gossip sites are thought to be devoid of transparency, credibility, and verification. Yet, research on gossip and online gossip sites has demonstrated that users engage in sophisticated forms of disclosure, verification, and disclosure protection.⁸⁵ Gossip, in essence, is a social process that changes cultural norms and functions to protect personal interests.⁸⁶ Celebrity gossip is valuable,⁸⁷ and social media accounts and gossip sites allow for public participation in discussions related to race and gender, among other things connected to celebrities.⁸⁸ This form of gossip can also change the public's understanding and expectations of those who have achieved

⁸³ Sarah K. Wiley, *The Grey Area: How Regulations Impact Autonomy in Computational Journalism*, 0 DIGIT. JOURNALISM 1, 10–11 (2021).

⁸⁴ *Id.* at 11.

⁸⁵ See, e.g., McNealy & Mullis, *supra* note 28.

⁸⁶ GRAEME TURNER, UNDERSTANDING CELEBRITY (2nd ed. 2014); Peter J. Wilson, *Filcher of Good Names: An Enquiry Into Anthropology and Gossip*, 9 MAN 93, 93 (1974); Robert Paine, *What is Gossip About? An Alternative Hypothesis*, 2 MAN 278 (1967).

⁸⁷ Toija Cinque & Sean Redmond, *Talking Miley: The Value of Celebrity Gossip*, in ENTERTAINMENT VALUES 71 (Stephen Harrington ed., 2017), http://link.springer.com/10.1057/978-1-137-47290-8_6 [https://perma.cc/3YQE-Q7NN] (last visited July 11, 2023).

⁸⁸ TURNER, *supra* note 86.

public recognition.⁸⁹ Gossip appears on social media sites as well as online forums and sites created specifically for gossip exchange.

As the *Almanzar* case demonstrates, celebrity gossip and gossip sites have been the subject of legal actions and threats of lawsuits for claims including defamation and invasion of privacy. In 2012, for instance, celebrity gossip site Lipstick Alley was threatened with a lawsuit for defamation and right of publicity by the actor Chris Evans, after a forum user reposted a story from another gossip site claiming the actor had an STD.⁹⁰ The site was similarly threatened with an action for defamation by Jared Leto in 2015.⁹¹ Although Lipstick Alley is a gossip forum allowing users to post rumors, and would therefore be immune from liability under §230 of the Communications Decency Act, other sites and social accounts would not be so privileged if the site itself develops the defamatory content.⁹² More recently, Crazy Days & Nights, a pseudonymously written celebrity gossip blog that posts blind items—statements of purported facts for which readers and commenters seek to guess about whom it applies—was sued by *Real Housewives of Beverly Hills* star Diana Jenkins.⁹³ The blog claimed that she was connected to sex trafficking.⁹⁴

Forums like Lipstick Alley and blogs that allow commenting and other interactions by users open themselves to a kind of fact-checking or verification that is not unlike the modern attempts at verification used by traditional news journalists. Challenges to the veracity of information posted on social media is seen as a part of the culture of the site or app. A study of social media sites like Twitter, for instance, has found that users themselves employ fact-checking interventions, posting counter

⁸⁹ Margarita Esther Sánchez Cuervo, 'Not Sure What Is Going on Today': *Verbal Evidential Strategies in Celebrity Gossip Blogs*, 13 NORDIC J. ENG. STUD. 33 (2014).

⁹⁰ Mike Masnick, *Chris Evans' Lawyer Threatens Forum; Apparently Unfamiliar With Free Speech, Safe Harbors & Streisand Effect*, TECHDIRT (June 15, 2012, 7:06 AM), <https://www.techdirt.com/2012/06/15/chris-evans-lawyer-threatens-forum-apparently-unfamiliar-with-free-speech-safe-harbors-streisand-effect/> [<https://perma.cc/P7T8-G75K>].

⁹¹ Mike Masnick, *Jared Leto's Lawyer Sends Ridiculously Bogus Cease & Desist, Calling Lots Of Attention To Statements About Him*, TECHDIRT (Aug. 6, 2015, 9:55 AM), <https://www.techdirt.com/2015/08/06/jared-letos-lawyer-sends-ridiculously-bogus-cease-desist-calling-lots-attention-to-statements-about-him/> [<https://perma.cc/FG3B-77UW>].

⁹² See, e.g., *Jones v. Dirty World Ent. Rec. LLC*, 755 F.3d 398, 408–09 (explaining that § 230 does not offer immunity for sites that are responsible for the creation or development of the information at issue).

⁹³ Gene Maddaus, *'RHOBH' Star Diana Jenkins Sues 'Crazy Days & Nights' Blogger Over Sex Trafficking Claim*, VARIETY (Nov. 2, 2022, 2:24 PM), <https://variety.com/2022/tv/news/diana-jenkins-lawsuit-entertainment-lawyer-crazy-days-nights-1235421033/> [<https://perma.cc/4AWF-U894>].

⁹⁴ *Id.*

information to refute false disclosures.⁹⁵ Although strangers usually fact-checked the social media users, the study found that these corrections were more likely to draw engagement when they came from a someone with which the user had a relationship.⁹⁶ Importantly, when fact-checked, users were not chilled from tweeting further.⁹⁷

The demands for “receipts,” or proof that the rumors that are being posted have an inkling of truth, are a significant part of gossip culture.⁹⁸ The idea of receipts is traced to a 2002 interview with the late Whitney Houston and ABC News, in which journalist Diane Sawyer asked the singer about her alleged drug use.⁹⁹ “I wanna see the receipts from the drug dealer that I bought \$730,000 worth of drugs from,” Ms. Houston says. “I wanna see the receipts.”¹⁰⁰ Asking for receipts has since become a demand levied by audiences on anyone making statements, demanding that they provide evidence of the veracity of their claims, akin to asking a journalist for their sources. For gossip and other pop culture phenomena, receipts can be digital or analog, taking “many forms: texts, DMs, Instagrams, video recordings, audio recordings, Facebook posts, tweets, photos, videos,”¹⁰¹ and have been invoked in several celebrity or influencer-based conflicts.¹⁰²

Further, so-called drama channels—online channels created for the purpose of exposing celebrity or influencer scamming or “fake[ness]”—have made it their mission to collect the receipts of celebrity and influencer inauthenticity and publish them to a wide audience.¹⁰³ In this way, drama channels, themselves celebrity gossip sites, “often [take] on the mantle of truth-tellers on the platform, in the tradition of watchdog journalists,” by investigating claims and rumors about individuals of public interest.¹⁰⁴ This means even delving into the minute details of celebrity and influencer

⁹⁵ See Hannak, *supra* note 15.

⁹⁶ *Id.*

⁹⁷ *Id.* at 191–92.

⁹⁸ See, e.g., McNealy & Mullis, *supra* note 30, at 116.

⁹⁹ Kate Dries, *She Who Produces the Receipts Controls the Narrative*, N.Y. TIMES (June 25, 2018), <https://www.nytimes.com/2018/06/25/style/show-me-the-receipts.html> [<https://perma.cc/V9NF-6J34>]; Katy Waldman, *How “Show Me the Receipts” Became a Catchphrase for Holding the Powerful Accountable*, SLATE (July 21, 2016, 9:30 AM), <https://slate.com/human-interest/2016/07/how-show-me-the-receipts-became-a-catchphrase-for-holding-the-powerful-accountable.html> [<https://perma.cc/XZL2-JCSB>].

¹⁰⁰ Dries, *supra* note 99.

¹⁰¹ *Id.*

¹⁰² Waldman, *supra* note 99.

¹⁰³ See Rebecca Lewis & Angèle Christin, *Platform Drama: “Cancel Culture,” Celebrity, and the Struggle for Accountability on YouTube*, 24 NEW MEDIA & SOC. 1632, 1642 (2022) [hereinafter Lewis, *Cancel Culture*].

¹⁰⁴ *Id.*

interactions both past and present, as well as soliciting information through the posting of gossip and rumors to get others to comment with relevant information.¹⁰⁵ This kind of engagement with viewers helps drama channels and other gossip sites open opportunities for monetization, increasing their capital gain to grow and sustain their platforms.¹⁰⁶ In both her trial testimony and appellate brief, Tasha K discussed her economic interest as a purveyor of celebrity gossip like the drama channels mentioned.¹⁰⁷ Undoubtedly, after building a community of more than 1 million followers, Tasha K falls into a category of a YouTuber able to participate in the platform's Partner Program, which allows content creators to earn money by placing advertising on their videos.¹⁰⁸ According to some reports, YouTube channels with around 1 million subscribers have made between \$14,600 and \$55,000 per month.¹⁰⁹

Such economic incentives could motivate a site or channel to engage in gossip. At the same time, receipts and the discussion of receipts also increase subscriber engagement and views. Gossipers like Tasha K, then, would have just as much, if not more, incentive to engage in a process of public verification of the gossip that they are distributing. In her appellate brief, Tasha K argues that she engaged in verification of her statements, basing the veracity of her statements on Cardi B's prior interviews and statements in the press, as well as other information published publicly on social media and other spaces.¹¹⁰ Therefore, despite or because of her economic interest, Tasha K engaged in a process of verification similar to others on social media sites, and very similar to those used by journalists employed by traditional news media organizations.

¹⁰⁵ See Sophie Bishop, *Managing Visibility on YouTube Through Algorithmic Gossip*, 21 NEW MEDIA & SOC. 2589 (2019); Lewis, *Cancel Culture*, *supra* note 103.

¹⁰⁶ See Angèle Christin & Rebecca Lewis, *The Drama of Metrics: Status, Spectacle, and Resistance Among YouTube Drama Creators*, 7 SOC. MEDIA & SOC. 1 (2021).

¹⁰⁷ Opening Brief of Appellants, *Almanzar v. Kebe*, No. 22-12512, 2022 WL 4016106 (11th Cir. Aug. 29, 2022).

¹⁰⁸ *YouTube Partner Program Overview & Eligibility*, YOUTUBE HELP <https://support.google.com/youtube/answer/72851> [<https://perma.cc/KRJ3-H22C>] (last visited July 5, 2023).

¹⁰⁹ Amanda Perelli & Nathan McAloone, *How Much YouTubers Make for 1 Million Subscribers*, BUS. INSIDER (July 3, 2023), <https://www.businessinsider.com/how-much-youtube-pays-for-one-million-subscribers> [<https://perma.cc/RYA7-L7BV>].

¹¹⁰ Opening Brief of Appellants, *Almanzar v. Kebe*, No. 22-12512, 2022 WL 4016106 (11th Cir. Aug. 29, 2022).

V. “ALL THE RUMORS ARE TRUE”

The media landscape that Justice Gorsuch described in *Berisha* is accurate: “today virtually anyone in this country can publish virtually anything for immediate consumption virtually anywhere in the world.”¹¹¹ Although advances in technology have made it easier for anyone to become a publisher, it has also amplified the spread of disinformation, which Justice Gorsuch claims has now become a strategy in defamation cases, because the public figure plaintiff’s burden is almost insurmountable.¹¹² Further, Justice Gorsuch claims that fact-checking is no longer paramount in a world of rapid information dissemination.¹¹³ Yet, the research on gossip sites—whether boards, drama channels or vlogs—and the demands for receipts from audiences who engage with celebrity gossip and others on social media demonstrate that Justice Gorsuch’s position is not accurate. Certainly, the interest in gossip is in its possibly salacious nature. However, salaciousness does not equate to a lack of verification.

Of course, there is gossip published that aims to harm a celebrity’s reputation, but the new media environment has not changed the mutual relationship between celebrity and media. Celebrities like Cardi B can still command media attention to correct falsehoods, and they can still successfully influence public opinion on issues of interest. Celebrities, for the most part, have still assumed the risks of fame in the context of defamation—with great celebrity comes the great risk of falsity. This premise does not mean that celebrities and other public figures will never be able to recover for harms, only that they have a higher burden of proof. The rationale for this burden of proof remains the same as well: there is an interest in protecting open and robust debate about matters of public interest. Celebrities and those who have attained a certain level of fame attract this public interest.

Ultimately, the Eleventh Circuit’s denial of Tasha K’s appeal of the ruling in favor of Cardi B was based on procedure and not the substance of her argument.¹¹⁴ It is unfortunate that the appellate court will not be able to decide the case that might have offered further, and more modern, insights into the intersection of celebrity gossip, new technology, and actual malice. A similar case in the future would allow a court to consider cultures of verification as evidence in public figure defamation cases.

¹¹¹ *Berisha v. Lawson*, 141 S. Ct. 2424, 2427 (Gorsuch, J., dissenting).

¹¹² *Id.* at 2428–29.

¹¹³ *Id.* at 2428.

¹¹⁴ *Almanzar v. Kebe*, No. 22-12512, 2023 WL 2579119 (11th Cir. Mar. 21, 2023) (ruling that Tasha K’s attorney had not preserved her arguments for appeal).