

**Defamation Lawsuits and Accusations of Rape In The United States And England**

**Chandler Horne**

**Comparative Legal Studies**

**Fall 2022**

## I. Introduction

In 1987, Tawana Brawley, a fifteen-year-old African American girl, went missing after stepping off her school bus in Wappingers Falls, New York.<sup>1</sup> Four days later, she was found wrapped in a garbage bag close by to where she disappeared.<sup>2</sup> When she was found, her hair was chopped off, and her body was marked with multiple racial slurs.<sup>3</sup> Brawley claimed that she had been abducted, raped, and sodomized by six white men.<sup>4</sup> What happened to Brawley quickly gained mass media coverage, and the general public reacted with shock and outrage over her horrific experience, which led Governor Mario M. Cuomo to assign a special prosecutor to the case.<sup>5</sup> Soon thereafter, Brawley's team of advisers – attorney, C. Vernon Mason, Alton Maddox, and community activist Reverend Al Sharpton – began to make unsubstantiated and outrageous allegations, which included charging Stephen Pagones, a New York prosecutor, as one of her attackers.<sup>6</sup> However, the grand jury concluded that Brawley had fabricated the entire account.<sup>7</sup> Thus, in 1998, Stephen Pagones filed a defamation lawsuit against Brawley and her team of advisors for the false allegations made against him.<sup>8</sup> A judgment was rendered in favor of Pagones, and Brawley was ordered to pay him \$190,000 worth of damages.<sup>9</sup>

---

<sup>1</sup> Ralph Blumenthal, *Questions and Answers In the Brawley Inquiry*, N.Y. Times ( Feb. 24, 1988), <https://www.nytimes.com/1988/02/24/nyregion/questions-and-answers-in-the-brawley-inquiry.html?ref-tawanabrawley>.

<sup>2</sup> Sho Wills, *Tawana Brawley starts paying man she falsely accused of rape in 1987*, CNN (Aug. 5, 2013), <https://www.cnn.com/2013/08/04/justice/new-york-brawley-settlement>.

<sup>3</sup> John J. Goldman, *Rape-Defamation Case Rubs New Salt in Old Wounds*, L.A. Times (Nov. 18, 1997), <https://www.latimes.com/archives/la-xpm-1997-nov-18-mn-55156-story.html>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> History.com Editors, *A Media Controversy Ignites Over the Case of Tawana Brawley*, HISTORY (Nov. 24, 2020), <https://www.history.com/this-day-in-history/a-media-controversy-ignites-over-the-case-of-tawana-brawley>.

<sup>7</sup> Wills, *supra* note 2.

<sup>8</sup> Mark Memmott, *15 Years Later, Tawana Brawley Has Paid 1 Percent Of Penalty*, NPR (Aug. 5, 2013), <https://www.npr.org/sections/thetwo-way/2013/08/05/209194252/15-years-later-tawana-brawley-has-paid-1-percent-of-penalty>.

<sup>9</sup> *Id.*

Tawana Brawley's case illustrates the harsh reality an individual can face when they falsely accuse another of sexual abuse. Additionally, since Brawley's case, there has been an increased amount of defamation lawsuits involving such false claims brought to courts in both the United States and England.<sup>10</sup> While it is important that those falsely accused seek the retribution they deserve, utilizing defamation lawsuits in this manner can have alarming ramifications. That is, true victims of rape or other forms of sexual abuse may choose to not speak out against their abusers out of fear of subsequently being sued. Thus, this paper will examine how the defamation laws of both the United States and England can influence whether or not victims of rape or sexual abuse decided to come forward.

Part II of this paper will discuss the history and development of the laws governing defamation in the United States. Particularly, it will assess how American defamation laws are deeply rooted in the freedom of speech under the First Amendment of the Constitution and how the First Amendment has drastically influenced the modernization of defamation law within the United States. In Part III, this paper will examine the how English defamation laws continue to follow common law principles and how those laws are far more beneficial towards plaintiffs.

Part IV of this paper will analyze how the defamation laws of both the United States and England can produce drastically different outcomes in defamation cases involving false claims of rape and other forms of sexual abuse. Lastly, in Part V, this paper will scrutinize the ramifications the laws of both systems can have on true sexual abuse victims and suggest policies both countries should adopt in order to protect the welfare of both the plaintiff and the defendant in such defamation cases.

## **II. The History and Development of Defamation Law in the United States**

---

<sup>10</sup> Claire Steinman, *Defamation and False Rape Claims: Policies, Attitudes, and Suggested Reform in the United States and the United Kingdom*, 19 *CARDOZO J.L. & GENDER* 907, at 908-909 (2013).

## A. The United States and The Right to the Freedom of Speech

In the United States, the laws governing defamation are firmly grounded in the ideology of freedom of speech. Generally, the notion of free speech contemplates the ability of a person, or community, to articulate their thoughts without censorship.<sup>11</sup> The concept of free speech has been recognized as a fundamental right by the United States since the ratification of the Bill of Rights in 179, and it is conceptualized in the First Amendment of the United States Constitution, which provides in pertinent part: “Congress shall make no law ... abridging the freedom of speech. ....”<sup>12</sup> “Abridgment,” within the meaning of the First Amendment, occurs when the government restricts, or threatens to restrict, one or more person’s speech by way of legal sanctions or penalties.<sup>13</sup> Also, this includes abridging the means used to exercise the freedom of speech, or the freedom of expression. Freedom of expression, often used synonymously with freedom of speech, “refers to the freedom to communicate by diverse means.”<sup>14</sup> In other words, the First Amendment prohibits the United States Legislature from enacting laws that would infringe upon a person’s right to communicate without censorship, as well as censoring their means of communication.<sup>15</sup> However, while the First Amendment signifies the importance of protecting free speech, it has generally not been interpreted by the United States Judiciary as allotting for speech entirely free of censorship.<sup>16</sup> For instance, speech that would create a clear

---

<sup>11</sup> JIDEO ADIBE, *FREE SPEECH V REPUTATION: PUBLIC INTEREST DEFENCE IN AMERICAN AND ENGLISH LAW OF DEFAMATION* at 1 (2010).

<sup>12</sup> U.S. CONST. amend I.

<sup>13</sup> DOUGLAS FRALEIGH & JOSEPH S. TUMAN, *FREEDOM OF EXPRESSION IN THE MARKETPLACE OF IDEAS* at 3 (2010).

<sup>14</sup> *See* FRALEIGH & TUMAN, *supra* note 13, at 2-3; *See also* ADIBE, *supra* note 11 (“Freedom of expression, a broader concept than freedom of speech, is sometimes used as a synonym not just for freedom of verbal speech but also for any act seeking, receiving, and imparting information or ideas, irrespective of the medium used.”).

<sup>15</sup> ADIBE, *supra* note 11.

<sup>16</sup> Timothy J. O’Neill, *Absolutists*, *THE FREE SPEECH CENTER: THE FIRST AMEND. ENCYCLOPEDIA*, <https://www.mtsu.edu/first-amendment/article/887/absolutists> (last visited Nov. 10, 2022).

and present danger,<sup>17</sup> involves obscenity,<sup>18</sup> incites immediate violence or retaliation,<sup>19</sup> or causes harm to another's reputation<sup>20</sup> has been defined by the Supreme Court as speech not protected under the First Amendment. Consequently, determining the scope of the freedom speech and when the right has been violated has remained a controversial issue amongst American courts, especially with respect to defamatory statements.<sup>21</sup> Historically, however, that the United States has a distinct preference for protecting an individual's right to communicate freely with imposing governmental restrictions as little as possible.

This is especially showcased in Justice Oliver Wendell Holmes, Jr.'s dissenting opinion in *Abrams v. United States* in which he stated:

“But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas – that the best of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out.”<sup>22</sup>

With this assertion, Justice Holmes conceptualized the rudimentary nature of First Amendment jurisprudence within the United States. Namely, Justice Holmes was equating the First Amendment right to freedom of speech with the marketplace of ideas theory. Under this theory, “the test of the truth or acceptance of ideas depends on their competition with one another and not on the opinion of a censor, whether one provided by the government or by some other authority.”<sup>23</sup> Thus, Justice Holmes was contending that, when reviewing issues regarding freedom of speech, there should be a preference for unrestricted communication of ideas to

---

<sup>17</sup> *Schneck v. United States*, 249 U.S. 47, (1919).

<sup>18</sup> *Roth v. United States*, 354 U.S. 476, (1957).

<sup>19</sup> *Chaplinsky v. New Hampshire*, 315 U.S. 568, (1942).

<sup>20</sup> *Rosenblatt v. Baer*, 383 U.S. 75, (1966).

<sup>21</sup> ADIBE, *supra* note 11, at 1-3.

<sup>22</sup> *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting).

<sup>23</sup> David Schultz, *Market Place of Ideas*, THE FREE SPEECH CENTER: THE FIRST AMEND. ENCYCLOPEDIA, <https://www.mtsu.edu/first-amendment/article/999/marketplace-of-ideas> (June 2017).

maintain harmony between free speech and competing societal values.<sup>24</sup> Furthermore, Justice Holmes' metaphor regarding the marketplace of ideas has been referenced in a multitude of opinions handed down by the Supreme Court to oppose the censorship of free speech and expression.<sup>25</sup>

### **B. The “Constitutionalization” of Defamation Law in the United States**

In the United States, the laws governing defamation embody principles from both the English common law and the First Amendment. Prior to the Supreme Court case of *New York Times Co. v. Sullivan* in 1964, American defamation law almost mirrored the common law rules of defamation entirely and was considered to be a strict liability tort.<sup>26</sup> Hence, before *Sullivan*, a plaintiff only had to prove that the defendant published (i.e., communicated) a false, defamatory statement about the plaintiff.<sup>27</sup> This gave rise to a great deal of judgments that concentrated significantly upon remedying the harm caused to the reputation of the plaintiff rather than protecting the defendant's freedom of speech.

However, beginning with *New York Times Co. v. Sullivan* in 1964, the Supreme Court has begun to give increasingly more protections to freedom of speech at the expense of the rights or interests in an untarnished reputation.<sup>28</sup> This trend has been categorized as what is known as the “constitutionalization” of defamation law in the United States.<sup>29</sup> In *Sullivan*, L.B. Sullivan brought a civil libel suit against several defendants, including the New York Times Company

---

<sup>24</sup> ADIBE, *supra* note 11, at 2-3.

<sup>25</sup> Schultz, *supra* note 23; *See also Reno v. ACLU*, 521 U.S. 844, (1997); *McCreary County v. ACLU*, 545 U.S. 844, (2005); *Matal v. Tam*, 137 S. Ct. 1744, (2017).

<sup>26</sup> VINCENT R. JOHNSON ET AL., *STUDIES IN AMERICAN TORT LAW* 1106, (CAROLINA ACAD. PRESS EDS., 6th ed. 2018).

<sup>27</sup> VINCENT R. JOHNSON, *MASTERING TORTS: A STUDENT'S GUIDE TO THE LAW OF TORTS* 314 (CAROLINA ACAD. PRESS EDS., 6th ed. 2018).

<sup>28</sup> ADIBE, *supra* note 11, at 47-48.

<sup>29</sup> JOHNSON ET AL., *supra* note 26, at 1107.

(“NY Times”).<sup>30</sup> Sullivan’s claim arose from a newspaper advertisement published by NY Times in support of Martin Luther King, Jr. that claimed minor factual inaccuracies about the conduct of the police during a civil-rights demonstration in Montgomery, Alabama.<sup>31</sup> Although he was not specifically mentioned in the ad, Sullivan – who supervised the police department as an elected Montgomery Commissioner – alleged the advertisement defamed him.<sup>32</sup> At trial, an Alabama jury returned a verdict in favor of Sullivan and awarded him \$500,000 in damages, which was later upheld by the Alabama Supreme Court.<sup>33</sup> On writ of certiorari, the Supreme Court reversed the decision of the Alabama Supreme Court and held that public officials seeking damages for libelous statements related to their official conduct requires clear and convincing proof that the statement was made with “actual malice” as demanded by the First Amendment of the Constitution.<sup>34</sup> Additionally, the Supreme Court noted a defendant will have published a statement with actual malice when it was made with knowledge of its falsity or with a reckless disregard for the truth.<sup>35</sup> With the adoption of the actual malice standard, the *Sullivan* case became landmark decision that first constitutionalized defamation law within the United States. Furthermore, it influenced following Supreme Court defamation cases to shift “the balancing of [First Amendment freedoms] with reputation a step closer to the marketplace of ideas theory.”<sup>36</sup> This is also exhibited by the Supreme Court’s expansion of applying the actual malice standard in defamation cases initiated by public figures.<sup>37</sup>

---

<sup>30</sup> *New York Times Co. v. Sullivan*, 376 U.S. 254, (1964).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Kyu Ho Youm, *Liberalizing British Defamation Law: A Case of Importing the First Amendment*, 13 COMM. L. & POL’Y 415, at 425 (2008).

<sup>37</sup> *Curtis Publ’g Co. v. Butts*, 388 U.S. 130, (1967). *See also Associated Press v. Walker*, 389 U.S. 28, (1967).

While the Supreme Court's decision in *Sullivan* was transformative, there has still been some confusion amongst American courts in determining whether the actual malice standard applies in cases involving private persons. However, the Supreme Court has examined the question of whether the *Sullivan* actual-malice standard applies in cases involving private persons suing with respect to matters of public concern in *Gertz v. Robert Welch, Inc.*<sup>38</sup> In a majority opinion delivered by Justice Lewis F. Powell, Jr., the Court answered that question in the negative and held that the Constitution does not require a showing of actual malice in such cases. Alternatively, the Court held that a private-plaintiff must prove that the defendant acted with some degree of fault as to the statement's falsity and that "the States may define for themselves the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood injurious to a private individual," which may be set as low as mere negligence.<sup>39</sup> As a result, almost every state requires only a showing of negligence in defamation cases involving a private-plaintiff suing with respect to matters of public concern.<sup>40</sup> It should also be noted that the *Gertz* Court prohibited the States to permit a private-plaintiff from recovering presumed or punitive damages absent a showing of actual malice.<sup>41</sup> Instead, private-plaintiffs, who are unable to prove actual malice, may only recover compensation for actual injury.<sup>42</sup>

Lastly, however, the Supreme Court has declined imposing any First Amendment limitations in defamation cases involving any person, whether public or private, suing with regards to matters of private concern. In *Dun & Bradstreet, Inv. V. Greenmoss Builders, Inc.*, the Court determined that a false and defamatory credit report, which stated that the plaintiff had

---

<sup>38</sup> *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, (1974).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*



declared voluntary bankruptcy, was not a matter of public concern.<sup>43</sup> On the contrary, the Court found it to be a matter of private concern and held that “permitting recovery of presumed and punitive damages in defamation cases absent a showing of actual malice does not violate the First Amendment when the defamatory statements do not involve matters of public concern.”<sup>44</sup> Furthermore, the plurality opinion handed down by the *Dun & Bradstreet* Court did not address whether a plaintiff in a private-matter defamation lawsuit must establish that the defendant acted with some degree of fault as to the statement’s falsity.<sup>45</sup> This has raised questions as to whether private-plaintiffs suing for defamation can claim presumed and punitive damages without a showing of fault on behalf of the defendant, such as under the rules of the common law.<sup>46</sup>

### **III. The History, Development, and Application of Defamation Law in England**

#### **A. England and The Human Rights Act of 1998**

Contrary to the United States, English defamation laws are deeply rooted in the principle of preserving one’s reputation rather than upholding the right to uncensored speech. Until the enactment of the Human Rights Act of 1998 (“HRA of 1998”) – which incorporated the European Convention on Human Rights (“ECHR”) – “freedom of speech existed when statute or common law rules did not restrict its exercise [under English common law].”<sup>47</sup> In other words, prior to 1998, English law did not afford any explicit constitutional or statutory right of freedom of speech or expression.<sup>48</sup> Moreover, before the incorporation of the ECHR, freedom of speech was generally invoked under English common law as a “defense or as an exception or qualification to other well-established legal rights, such as the right to reputation or fair trials.”<sup>49</sup>

---

<sup>43</sup> *Dun & Bradstreet, Inv. V. Greenmoss Builders, Inc.*, 472 U.S. 749, (1985).

<sup>44</sup> *Id.*

<sup>45</sup> JOHNSON ET AL. , *supra* note 26, at 1126.

<sup>46</sup> Youm, *supra* note 36, at 428.

<sup>47</sup> ADIBE, *supra* note 11, at 6.

<sup>48</sup> Youm, *supra* note 36, at 419.

<sup>49</sup> ADIBE, *supra* note 11, at 6.

Nonetheless, the HRA of 1998 has to some extent modified the English perspective on free speech by integrating the ECHR into English law. Specifically, Article 10 of the ECHR guarantees the right to freedom of expression, which states:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...
2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.<sup>50</sup>

As shown above, while Section 1 of Article 10 grants the right to freedom of expression, Section 2 of Article 10 details a considerable amount of circumstances wherein curtailing the right would be lawful. Therefore, even though the HRA of 1998 was a significant advancement towards the recognition of freedom of expression as an individual right, it still confers substantial leeway for the restriction of that right.

### **B. Defamation Under the English Common Law**

Despite the recent developments that have been made towards reforming English defamation laws, they still largely remain embedded in the common law and continue to be more advantageous for plaintiffs. Under the common law, defamatory statements are presumed to be false.<sup>51</sup> That is, once a plaintiff has proved that the statements made by the defendant were defamatory, the law presumes those statements to be false.<sup>52</sup> As a result, the defendant bore the

---

<sup>50</sup> Vincent R. Johnson, *Comparative Defamation Law: England and the United States*, 24 U. MIAMI INT'L & COMP. L. REV. 1, at 19-20 (2016).

<sup>51</sup> David J. Acheson et al., *The Economics of Weaponized Defamation Lawsuits*, 47 SW. L. REV. 335, at 341 (2018).

<sup>52</sup> *Id.*

burden of proof to establish that his or her statements were true or substantially true, or to plead another defense, in order to avoid being held liable.<sup>53</sup> These common law principles continue to be preserved by the Parliament of the United Kingdom and have recently been codified by the English Defamation Act enacted in 2013.<sup>54</sup> In addition, another aspect of the common law that has been upheld by English law is that defamation is still considered to be a strict liability tort.<sup>55</sup> In other words, if no affirmative defense is raised to disprove the falsity of the statements at issue, the defendant will be held liable for defaming the plaintiff, regardless of whether he or she acted with any degree of fault.<sup>56</sup> Furthermore, under English law, a plaintiff suing for defamation may be awarded damages without showing that the defendant's statement actually caused harm to the plaintiff.<sup>57</sup>

Although the defamation laws in England remain vastly liberal, there have been some cases decided by English courts to help further protect a defendant's ability to communicate freely without governmental restrictions. In *Reynolds v. Times Newspapers Ltd.*, the former Prime Minister of Ireland, Albert Reynolds, sued the Sunday Times Newspaper for publishing a story, which accused him of misleading the Dáil and his cabinet members.<sup>58</sup> In response, the newspaper attempted to raise a qualified privilege defense claiming that it had a qualified privilege to publish the news issue because Reynolds' conduct as a public official was a legitimate matter of public interest.<sup>59</sup> However, Lord Nicolls found that extending a qualified privilege to report on political matters would not provide adequate protection for reputation.<sup>60</sup> Additionally, Lord

---

<sup>53</sup> *Id.*

<sup>54</sup> Defamation Act 2013 c. 26, § 2-7 (U.K).

<sup>55</sup> Johnson, *supra* note 50, at 340-341

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> *Reynolds v. Times Newspapers Ltd.*, [2001] 2 A.C. 127, 1999 WL 852315, (HL).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

Nicholls noted that, by doing so, “it would be unsound in principle to distinguish political discussion from discussion of other matters of serious public concern.”<sup>61</sup> As an alternative, Lord Nicholls established a “a ten-factor qualified privilege test for ‘responsible journalism’ on matters of public interest to protect journalist.”<sup>62</sup> However, the *Reynolds* defense proved to be difficult to apply in subsequent defamation cases, and for this reason, Parliament replaced this defense with a more flexible one in Section 4 of the Defamation Act 2013.<sup>63</sup>

#### IV. Defamation and False Allegations of Rape in the United States and England

Lord Chief Justice Matthew Hale, a renowned seventeenth century English jurist, once famously defined rape as “an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, tho never so innocent.”<sup>64</sup> With this declaration, Lord Hale immeasurably shaped centuries of rape jurisprudence and instituted the longstanding narrative of “the victim is lying.”<sup>65</sup> Today, this proposition remains embedded in a majority of the societal, political, and legal attitudes towards rape victims and those they accuse.<sup>66</sup> Hence, one of the most contentious issues that is predominant within our society is the possibility of a false allegation of rape.<sup>67</sup> In essence, an allegation of rape is false if a victim intentionally reports a rape when in fact no rape has actually occurred.<sup>68</sup> When such instances happen, there is no doubt that the reputations of those falsely accused have been harmed. As a solution, there has been a trend in

---

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Acheson et al., *supra* note 51, at 345.

<sup>64</sup> Eric T. Cooperstein, *Protecting Rape Victims from Civil Suits by Their Attackers*, 8 MINN. J.L. & INEQ. 279, at 285 (2018).

<sup>65</sup> G. Geis, *Lord Hale, Witches, and Rape*, 5 BRITISH J.L. & SOC’Y 26, at 40 (1978).; *See also* Cooperstein, *supra* note 64, at 285; Amanda Taub, *The 17th-Century Judge at the Heart of Today’s Women’s Rights Rulings*, N.Y. TIMES (MAY 19, 2022) <https://www.nytimes.com/2022/05/19/world/asia/abortion-lord-matthew-hale.html#:~:text=Hale%20also%20wrote%20in%20his,but%20only%20for%20the%20wife.>

<sup>66</sup> Geis, *supra* note 65; *See also* Taub, *supra* note 65.

<sup>67</sup> Cassia Spohn et al., *Unfounding Sexual Assault: Examining the Decision to Unfound and Identifying False Reports*, 48 WILEY L. & SOC’Y REV. 161, (2014).

<sup>68</sup> Holly Yan et al., *Trump says it’s a ‘scary time’ for men. Here are the stats on false sexual assault claims*, CNN (Oct. 3, 2018) [https://www.ojp.gov/ncjrs/virtual-library/abstracts/false-rape-allegations.](https://www.ojp.gov/ncjrs/virtual-library/abstracts/false-rape-allegations)

both the United States and England in utilizing defamation laws to punish individuals who make such false accusations. While those who make falsified rape claims should be penalized, this trend may encourage defamation lawsuits to be used as a weapon against true victims of rape, and thus, preclude them from coming forward.

#### **A. Defamation Cases Involving False Allegations in the United States**

In the United States, defamation lawsuits over false allegations of rape still remain a rarity.<sup>69</sup> Moreover, while the Tawana Brawley case exemplifies how detrimental the outcome of these cases can be, only a minority of them have ended in judgments favorable towards the plaintiff due to the strict requirements of American defamation laws.<sup>70</sup> Despite this scarcity, there have been some defamation cases that have arisen in American courts which involve other types of false accusations, such as sexual harassment and abuse.<sup>71</sup> Therefore, the case examined below does not encompass a typical claim of a false rape allegation, but it is effective in demonstrating how courts within the United States apply American defamation laws to cases concerning false claims of other forms of sexual abuse.

In *Norris v. Hathaway*, Norris, Hathaway, and Prestito, Hathaway's boyfriend, were all employed by United States Postal Service at the Omaha plant in Nebraska.<sup>72</sup> As a part of his job, Norris' duties included reviewing problems that arose in various areas of the plant's operations.<sup>73</sup> During their employment, Norris reported both Hathaway for inaccuracies in her work and Prestito for threatening another coworker to their respective supervisors.<sup>74</sup> In retaliation, Hathaway complained to several of Norris' supervisors and other coworkers that Norris had been

---

<sup>69</sup> Steinman, *supra* note 10., at 918.

<sup>70</sup> *Id.*

<sup>71</sup> *Norris v. Hathaway*, 156 N.W. 2d 583, (Neb. Ct. App. 1997).; *See also Steed v. St. Paul's United Methodist Church*, 728 So. 2d 931 (La. Ct. App. 1999).

<sup>72</sup> *Norris* 156 N.W., *supra* note 71.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

sexually abusing her.<sup>75</sup> Norris responded by filing a complaint against Hathaway for defamation.<sup>76</sup> However, the district court dismissed his complaint because he failed to show damages.<sup>77</sup> Although, if Norris had proved that he incurred damages, his case may have succeeded provided that it seems Hathaway's motivation behind making these allegations arose out of revenge.<sup>78</sup>

The *Norris* case illustrated how a defamation case will be unsuccessful in the United States if the plaintiff fails to establish damages.<sup>79</sup> On the other hand, if Norris would have brought his defamation claim in an English court, he would not have been obligated to make a showing of damages.<sup>80</sup> Rather, he would have only needed to prove that Hathaway's allegations were communicated to a third party and that they caused – or were likely to cause – serious harm to his reputation.<sup>81</sup> Thus, *Norris* is effective in demonstrating how stringent the requirements of American defamation laws are and how arduous they can be to prove.<sup>82</sup>

## **B. Defamation Cases Involving False Allegations in England**

Unlike the United States, defamation cases related to false rape allegations arise more frequently in English Courts.<sup>83</sup> Also, not only can an individual be sued for making a false claim, but he or she can also face criminal charges and a maximum sentence of life imprisonment for “perverting the course of justice.”<sup>84</sup> For example, in *Hamilton v. Milroy-Sloan*, Ms. Milroy-Sloan

---

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> Steinman, *supra* note 10., at 919.

<sup>80</sup> *Id.* at 920

<sup>81</sup> Defamation Act 2013 c. 26 § 1 (U.K.).

<sup>82</sup> Mercedes Charles, *Building A Case: Amending United States Defamation Laws As Appropriate Remedies to Protect Real Rape Victims and Men Who Are Falsely Accused of Rape*, 4 AVE MARIA INT'L L.J. 106, at 123 (2015).

<sup>83</sup> Steinman, *supra* note 10., at 923

<sup>84</sup> The Code For Crown Prosecutors, *False Allegations of Rape and/or Domestic Abuse*, see: *Guidance for Charging Perverting the Course of Justice and Wasting Police Time in Cases involving Allegedly False Allegation of Rape and/or Domestic Abuse*, CPS, <https://www.cps.gov.uk/legal-guidance/false-allegations-rape-and-or-domestic-abuse-see-guidance-charging-perverting-course> (Sep. 2019).

alleged that a man named “Lehane” raped her in his apartment after she met him in a sex chatroom online.<sup>85</sup> Ms. Milroy-Sloan also claimed that, as she was being raped, Neil and Christine Hamilton were present at the apartment and that they too sexually assaulted her.<sup>86</sup> Following this encounter, Ms. Milroy-Sloan gave a televised interview in which she publicly recounted the details of her experience.<sup>87</sup> The Hamiltons denied their involvement and brought a defamation action against Ms. Milroy-Sloan for the claims she had made against them.<sup>88</sup> Ms. Milroy-Sloan’s allegations were found to be false, and she was criminally convicted at the Central Criminal Court in London for which she received a three-year sentence in prison.<sup>89</sup>

The *Hamilton* case demonstrates that, “while defamation law in the United Kingdom [provides] greater ease for bringing defamation claims over rape accusations, British courts have taken a much stricter approach than their American counterparts.”<sup>90</sup> Additionally, it caught the attention of various media outlets and quickly gained notoriety.<sup>91</sup> As a consequence of this type of media exposure, Ms. Milroy-Sloan’s three-year imprisonment for her false allegations became well-known to the general public. Therefore, this case drew attention to the chilling reality of how defamation lawsuits can be used to condemn women who choose to publicly come forward about their experiences of sexual abuse, thus possibly deterring future victims from seeking help.

## V. Reforming Defamation Law in the United States and England

---

<sup>85</sup> *Hamilton v. Milroy-Sloan*, [2004] EWHC 1542, 2004 WL 1476606, (QB).

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Steinman, *supra* note 10., at 923

<sup>90</sup> Steinman, *supra* note 10., at 910

<sup>91</sup> Tim Ross, *Hamilton accuser jailed for three years*, GUARDIAN (June 13, 2003), <https://www.theguardian.com/media/2003/jun/13/pressandpublishing.politics>; See also Lucy Crossley, *Fantastit jailed in 2003 for falsely claiming she was raped by Neil and Christine Hamilton behind bars for lying again after wrongly telling police her boyfriend attacked her with a samurai sword*, DAILY MAIL (Sept. 24, 2014), <https://www.dailymail.co.uk/news/article-2767792/Fantastit-jailed-2003-falsely-claiming-raped-Neil-Christine-Hamilton-bars-lying-wrongly-telling-police-husband-attacked-samurai-sword.html>; Cindy Martin, *British Couple Cleared of Sex Allegations*, ABC NEWS (Aug. 29, 2001), <https://abcnews.go.com/International/story?id=80576&page=1>.

Defamation cases involving false claims of rape have arisen in both the United States and England. However, the way the legal systems of both countries handle these types of cases is drastically different. Henceforth, in order to effectively adjudicate defamation claims stemming from false rape allegations, both countries should adopt stricter standards to apply in these cases.

Because England still follows the rules of the common law, its defamation laws are centered around preserving the reputation of the plaintiff rather than protecting the freedom of the defendant to communicate without censorship. Accordingly, this inadvertently sets a standard that conveys it is preferable for a victim to remain silent than to disrupt an assailant's moral standing in society. In effect, by maintaining common law principles, the English government is relaying an underlying message to its citizens that the trauma experienced by victims of sexual abuse is better off unspoken. Additionally, by presuming defamatory statements to be false, the English law is presuming that the victim is lying, which immensely prejudices the defendant. Further, defamation remains a strict liability tort in England. Thus, unless the defendant raises an affirmative defense, such as the defense of truth, the plaintiff does not have to show that defendant acted with any degree of fault. This is extremely alarming because it is often difficult for victims to prove that they have been sexually abused or raped due to a lack of evidence to corroborate their allegations.<sup>92</sup> As a result, this makes it almost impossible for a victim to ever raise the defense of truth in order to avoid being held strictly liable.

England should amend its laws to follow the stricter standards as required by the laws governing defamation in the United States. If England were to eliminate the presumption of falsity and place the burden of proving the falsity of the defamatory statements onto the plaintiff, it would alleviate the prejudicial hardship placed on the defendant and would even out the

---

<sup>92</sup> Cooperstein, *supra* note 64, at 284.



playing field in cases of defamation. Moreover, it would help to remove the subconscious belief that victims are untruthful when bringing forth their claims of sexual abuse. Additionally, England should require the plaintiff to show some degree of fault on behalf of the defendant as to the defamatory statement because providing a plaintiff with so much leverage from the start of the case instills a fear in victims that they could be sued or criminally punished solely for seeking help from their abusers. By the same token, England should modify its laws to no longer categorize defamation as strict liability tort. By doing so, this would force the plaintiff to prove that the victim's false allegations actually harmed him or her in order to recover damages.

Lastly, both England and the United States should consider applying the *Sullivan* actual malice standard in defamation cases that involve false claims of sexual abuse. Because of how difficult it is to meet the actual malice standard, implementing it in such cases would dissuade abusers from using defamation lawsuits as a way of intimidating their victims. To explain, the actual malice standard requires plaintiff to prove, by clear and convincing evidence, that the defendant published the defamatory statement with knowledge of its falsity or with a reckless disregard for the truth.<sup>93</sup> Thus, with the adoption of this standard, the plaintiff is barred from merely relying on a victim's motive in order to prove a successful defamation claim, which makes the victim more credible. Also, given that actual malice is such a challenging requirement for plaintiffs to establish, it would guarantee that individuals who actually make false accusations of sexual abuse are rightfully punished. Finally, the implementation of the actual malice standard would make victims more trusting of the legal system because it shows them that the governmental bodies of their countries are more concerned with ensuring that they seek out the assistance they need rather than protecting the reputations of those who sexually abuse them.

---

<sup>93</sup> *Sullivan*, 376 U.S. 254, *supra* note 30.

