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Infowars Goes to War with the First Amendment

August 15, 2018

The malicious spreading of rumors, masquerading as fact, well predates the Internet, but the ubiquity and speed of electronic communications, and the tendency of social media to provide amplification, has made the problem exponentially more dangerous to the “marketplace of ideas.” Perhaps there is no better example of that cancer on public discourse than Infowars, an outlet for conspiracy-mongering and false accusations headed by Alex Jones.

His show is broadcast on more than 160 radio stations, and he has a YouTube channel with more than 2.4 million subscribers. But they now may be facing an existential crisis from [multiple lawsuits](#) that have been filed because of Infowars broadcasts that denied that there was a mass shooting at

Sandy Hook Elementary School (it was “staged,” “scripted,” “a giant hoax,” fake,” “synthetic and manufactured,” “as phony as a three-dollar bill,” and “I did deep research and it pretty much didn’t happen”).

It is hard to imagine more sympathetic plaintiffs than the parents of the children who were killed. They allege that Infowars broadcasts defamed them by portraying them as liars for insisting that their children were, in fact, dead.

Unlike many defamation cases, in which the focus is on a somewhat ephemeral harm to reputation, these plaintiffs can prove that they were actually stalked and harassed by Infowars followers after Jones displayed their addresses and maps to their homes on his show.

Jones is raising several First Amendment arguments in defense.

The first is that he is totally immune from liability because the harmful statements were opinions, rather than fact, and thus cannot be the basis for a defamation action. Courts have struggled with where to draw the line between fact and opinion, but it is certainly possible that allegations that a person is part of a government conspiracy and is lying when they say their child is dead are sufficiently verifiable to be support a defamation claim.

Even if Jones loses that argument, he will try to raise another constitutional shield: Because the plaintiffs were “public figures” they have to prove by “clear and convincing evidence” that his statements were not only false but published with him knowing they were false, or with reckless disregard of truth or falsity.

This, too, is not a clear winner for Jones: First, it is not clear that the plaintiffs are “public figures” and thus must satisfy a higher proof standard than “private figures.” These plaintiffs were inadvertently drawn into the debate about Sandy Hook and gun control. A court could well distinguish their situation from a person who jumps in to the middle of a public controversy and instead allow them to recover damages by satisfying a lower standard – that is, that Jones published without doing a reasonable investigation, which they certainly could prove given Jones’ track record over the years.

Second, even if the plaintiffs are considered public figures and have to prove a the highest level of culpability, there is much in Jones' past behavior that calls into question whether he made any effort to verify the truth of his assertions. That could support a substantial jury award.

How might an unfavorable jury verdict impact Infowars?

We know that another website that trafficked in salacious information – [Gawker](#) – folded rather than pay a huge judgment.

So it is certainly possible that these plaintiffs will use the civil justice system to flush another creature of the Internet from our public discourse.