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Malice in the Digital Palace: A Commentary on Athletes, Social Media, and Defamation

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The purpose of this commentary is to dissect and discuss the intersection between sport, social media, and defamation claims. Specifically, this discussion is guided by one underlying question: Do social media platforms level the playing field when it comes to one's classification and defamation claims? Various issues are presented, such as media access, an individual's classification and the effect on burden of proof, and how one defines celebrity status in the digital age. Overall, the intention of this piece is to pose thought-provoking questions and elicit meaningful and worthwhile discussion.

Keywords: social media, sport, defamation, actual malice

There is little doubt that social media platforms have altered the very nature of communication. One area that has seen the dramatic effects of these outlets on both public relations and marketing efforts is sport (Clavio & Frederick, 2014). In fact, social media has shown to be a rich ground for conversation and expression (Sanderson, 2013), allowing individuals to bypass traditional media outlets (Sanderson, 2011) and put their voice on display (Clavio, 2013). Furthermore, these platforms provide users with the opportunity to introduce divergent narratives (Maireder & Ausserhofer, 2014) and even challenge the image and character of an athlete (Frederick, Stocz, & Pegoraro, in press). It is the latter point that is of particular interest here, as high-profile athletes must now traverse an additional path within a complicated media terrain to protect their image. Providing an outlet for individual expression is both positive and negative. In fact, anyone with access to an Internet connection can now express unsolicited opinions and promulgate false statements via social media, effectively blurring the once-clear dividing line between private and public figures.

The purpose of this commentary is to dissect and discuss the intersection between sport, social media, and defamation claims. Specifically, this discussion is guided by one underlying question: Do social media platforms level the playing field when it comes to one's classification and defamation claims? To address this

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question, an overview of literature related to social media use in the sport realm will be provided. Then, a definition of defamation and other key legal terms will be discussed. The manuscript will conclude with a discussion of how social media platforms can potentially transform the nature of defamation within the realm of sport and beyond.

Social Media and Sport

Over the last decade, there has been an abundance of research within the field of sport and social media. These research endeavors have ranged from explorations of usage trends and interaction patterns to examinations of how cultural and social issues are discussed on these platforms. Research within this area has examined various outlets, but blogs, Twitter, Facebook, and Instagram have received the most scholarly attention. A summary of research related to each platform will be provided.

Blogs and message boards represent the initial focus of social media scholarship within the field of sport. In terms of usage trends, individuals will often use sport blogs for evaluation, community, and information gathering (Frederick, Clavio, Burch, & Zimmerman, 2012). This line of research also demonstrated that blogs can serve as platforms in which fans can engage in emphatic interactions (Sanderson, 2008a), parasocial interactions (Sanderson, 2008b), or active social relationships (Kassing & Sanderson, 2009) with sport celebrities. Specifically, these interactions ranged from admonishment and identification (Sanderson, 2008b) to consultation and emotional intensity (Sanderson, 2008a). In addition, Sanderson (2008c) found that athletes can use blogs to navigate between various self-presentation strategies. With regard to image-repair, research has revealed that blogs can be used to share and discuss evidence (Plymire, 2008) and present positive narratives (Mean, Kassing, & Sanderson, 2010). Finally, in terms of media outlets, research has shown that blogs will often present female athletes in sexualized overtones, compared with their male counterparts (Clavio & Eagleman, 2011), and that mainstream media and independent fan blogs differ in terms of their content during major sporting events (Burch, Frederick, Zimmerman, & Clavio, 2011).

Of all the social media platforms, Twitter appears to have received the most attention. Early forays into Twitter research revealed that athletes use this platform to interact with their followers (Hambrick, Simmons, Greenhalgh, & Greenwell, 2010), keep in contact with others (Browning & Sanderson, 2012), and discuss their daily lives (Frederick, Lim, Clavio, Pedersen, & Burch, 2014), which allows for heightened interaction (Pegoraro, 2010). Along similar lines, Kassing and Sanderson (2010) argued that social media platforms such as Twitter allow for a more social (as opposed to parasocial) relationship between athletes and their fans. In addition, scholars have discovered that Twitter allows athletes to engage in various backstage and frontstage self-presentation strategies (i.e., Frederick & Clavio, 2015; Lebel & Danylchuk, 2012; Sanderson, 2013; 2014) and to enact image repair (Hambrick, Frederick, & Sanderson, 2013). In terms of follower motivations, studies have shown that individuals will often follow an athlete on Twitter based on factors such as perceived expertise (Clavio & Kian, 2010), affinity, and uncertainty reduction (Frederick, Lim, Clavio, & Walsh, 2012). Beyond athletes and fans, research has also explored usage trends among sport journalists (Schultz & Sheffer, 2010), revealing a discrepancy between journalists' actual

usage patterns and claims of how Twitter is being used (Sheffer & Schultz, 2010). Overall, Twitter has been found to be an effective platform for journalists to frame a story (see Sanderson & Hambrick, 2012).

Additional lines of Twitter research have investigated the use of hashtags to discuss sporting events and the framing of social or cultural issues. With regard to the Olympic Games, research has demonstrated that content associated with hashtags differs from content provided by official accounts (Frederick, Burch, & Blaszka, 2013) and traditional media outlets (Frederick, Pegoraro, & Burch, 2016). In addition, hashtags have been used to counter public perceptions of events (Burch, Frederick, & Pegoraro, 2015) and hijack marketing initiatives (Pegoraro, Burch, Frederick, & Vincent, 2015). In terms of sociocultural topics, scholars have revealed that Twitter can be used as a vehicle to discuss issues related to flaws in the American justice system and freedom of speech (Schmittel & Sanderson, 2015). In that regard, scholars have argued that Twitter is in fact the new water-cooler (Smith & Smith, 2012), allowing users to engage in digital conversations on a global scale.

Research within the realm of sport and Facebook use has been relatively limited when compared with Twitter. However, interesting findings have emerged. Specifically, Facebook was found to be an avenue for teams to manage their brands and discuss success (Wallace, Wilson, & Miloch, 2011). In addition, scholars have stressed the importance of authenticity when using this platform (Pronschinske, Groza, & Walker, 2012). Sport-specific Facebook research has also shown how individuals use this platform to discuss controversial events. For example, Sanderson (2013), in his analysis of a Facebook page dedicated to Brian Kelly's departure from Cincinnati, found that users used the page for rallying, stigmatizing, victimization, intimidation, and degradation. Following the protests in Ferguson, Missouri, and the "hands up, don't shoot" incident, a Facebook page entitled "Boycott the St. Louis Rams" was created in which users primarily renounced their fandom and provided punishment commentary (Sanderson, Frederick, & Stocz, 2016). These same themes were also present on Twitter. In addition, Facebook has been found to provide users with the opportunity to display their knowledge and discuss evidence surrounding controversial events (Frederick, Stocz, & Pegoraro, in press).

Recently, sport scholars have begun to explore the utilization of Instagram. This research has focused primarily on self-presentation. Smith and Sanderson (2015) analyzed the Instagram feeds of both male and female professional athletes. They found that female athletes accounted for more active photos than did male athletes. Smith and Sanderson (2015) have argued that in the past women were more likely to be shown in a more passive role (i.e., on the sidelines). They further argued that Instagram afforded these athletes the opportunity to "buck the trend" (p. 354). In their analysis, Geurin-Eagleman and Burch (2015) found that most of the photos that athletes posted were personal in nature and therefore indicative of athletes utilizing Instagram as a platform for backstage self-presentation.

In terms of policy research, scholars have revealed that social media policies at the collegiate level usually focus on content restrictions and limitations with little attention being given to the positive outcomes of social media use (Sanderson, 2011). In addition, those who have received social media training have discussed how those lessons remain relatively forgettable (Sanderson, Browning, & Schmittel, 2015). Finally, this line of research has discussed how athletes are given conflicting

information regarding the ownership of social media content (Sanderson, Snyder, Hull, & Gramlich, 2015).

Beyond policy research, scholars have examined social media within a legal context as it pertains to promotions and endorsements. In their examination of the *Coastal Contacts* case, Baker, Brison, and Byon (2013) discussed the implications of like-gating on Facebook. Specifically, they noted that liking a Facebook page has been deemed a "general social endorsement" (p. 114) by the National Advertisement Division (NAD). With that in mind, they suggested that sport marketers should be aware of this caveat and treat like-gated promotions with the same care as traditional advertisement in terms of complying with the Federal Trade Commission's (FTC) guidelines. In their discussion of the FTC, the authors cited the work of Carpenter (2012), who explained how the Commission has established guidelines that, while not carrying the force of the law, will be used to regulate celebrity endorsements made via social media. In their 2013 study of U.K. and U.S. regulations regarding athlete endorsements and social media, Brison, Baker, and Byon (2013) reviewed multiple cases and discussed various implications. The authors noted various problems related to social media marketing campaigns involving endorsers, including (a) variances in laws regulating multinational social media marketing, (b) inappropriate interpretation of the law, (c) inconsistent applications of laws and regulations, and (d) failure to provide adequate guidelines to endorsers regarding the content of their tweets. They concluded, "Given the environment for potential noncompliance, the legal implications for violating a country's advertising laws should be at the forefront of any social media marketing campaign involving endorsers" (p. 65).

There is a rich body of literature that has examined the realm of sport and social media. This line of research has shown that these platforms can be used as a digital watercooler by athletes and fans alike to connect, attack, counter traditional news media, create organic commentary, and shape public perception, which speaks to the power of these outlets. While scholars have investigated the various usage trends of social media platforms, along with the legal implications of endorsements and promotions made via social media, there is a dearth of literature regarding social media's impact on defamation claims. This commentary seeks to fill that void by offering up questions and discussion points concerning how athletes, social media, and defamation intersect. With that in mind, a definition of defamation is necessary.

Defamation

For the sake of clarity, it should be noted that the definitions of defamation and other key terms discussed in this section are taken from the work of Moorman (2013), unless otherwise noted. Moorman's work appears in Cotten and Wolohan's (2013) 4th edition of *Law for Recreation and Sport Managers*. Defamation is traditionally defined as a false statement of fact that injures one's reputation (Moorman, 2013) and paints a negative image of an individual or entity (Elefant, 2011). With regard to injury, *Gertz v. Robert Welch, Inc.* (1974) stated that an actual injury includes "impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering" (p. 350). Defamation is classified in two types, slander and libel. Slander refers to any defamatory comments made orally, while libel references slanderous comments, photographs, or items in print. One could argue that both types of defamation could occur on social media, depending on which

platform is being used (i.e., videos on Facebook, comments on Twitter, and photos on Instagram). There are various elements needed to prove a defamation claim. Specifically, one must show a false or defamatory statement of fact, publication to a third party, fault or negligence of the publisher, and damages or actual injury. Examples of defamatory statements include, but are not limited to, accusations of criminal conduct, accusing someone of having a disease, accusing an individual of being unchaste, accusing someone of misconduct in public office, and a statement that injuries a person's profession, business, or trade. According to *Romaine v. Kallinger* (1988), if a statement can only be interpreted to have one meaning that is defamatory in nature (such as those described above), the statement is libelous.

It is generally understood that private figures enjoy greater protection from defamatory statements when compared with public figures or public officials. With that said, there are four categories in which individuals are classified when one determines how to balance free speech and individual rights. These categories include public officials, public figures, limited purpose public persons, and private figures. Specifically, a public official is someone who works for the government and draws their pay from public payroll (Pember, 1990). Public figures are individuals who garner significant media attention and public interest due to their actions or activities (*Curtis Publishing Co v. Butts,* 1967; Moorman, 2013). A limited purpose public person is one who voluntarily becomes the subject of public interest for a limited range of activities (*Gertz v. Robert Welch Inc.,* 1974). Finally, a private figure is a citizen that is not involved in public matters or employed in a public office. Generally, celebrities, TV personalities, professional athletes, and even some college athletes fall within the public figures category, while high school athletes and coaches tend to fall in the limited purpose public figures category. Both categories have what is referred to as a reduced expectation of privacy. Most everyday citizens fit within the categorization of a private figure.

In general, the burden of proof for a defamation claim weighs more heavily on the plaintiff the further they move up this ladder. Specifically, public officials (see *New York Times v. Sullivan,* 1964), public figures (see *Curtis Publishing Co. v. Butts,* 1967), and even limited purpose public persons (see *Daubenmire v. Sommers,* 2004) must prove actual malice to prevail in a defamation claim. Actual malice is when a defamatory statement is made with knowledge that it is false or with disregard for whether the statement was indeed false of not. For the average citizen (i.e., private figure), there is a lower standard of proof. In fact, the plaintiff must only show that a statement was negligently made. A common argument for this distinction is that most private citizens do not have the same access to media outlets to counter negative portrayals or defamatory statements as high-profile celebrities or athletes.

One additional note for consideration are the various defenses to defamation. Claiming that a "defamatory" statement is indeed true is the best defense one can have against this type of claim. Absolute privilege is a defense often invoked by those in public office (i.e., legislative forums, judicial forums, and administrative and executive branches of the government). In these venues, there is technically no liability for statements that are made, regardless of their falsity. With regard to media outlets, fair comment is a common defense, in which the outlet claims that they are discussing issues of importance to the community at large. With that said, freedoms tied to the First Amendment, specifically freedom of speech and

freedom of the press must be weighed against individual rights when considering defamation claims. The question becomes, where does social media fit within this complicated balancing act? This question is a compelling one, considering that the first case dealing with defamation on Twitter was dismissed by a judge who ruled that a "tweet was nonactionable as a matter of law" (Bennett, 2011). One could argue that this decision was rendered due to issues such as jurisdiction. Jurisdiction comes into play, as statements made via social media are "mobile" and immediately transmitted to hundreds or thousands of individuals. While one case involving social media was dismissed, the "just a tweet" defense has not always been convincing to the courts, leading to settlements before trial (Gardner, 2009). Clearly, the courts disagree regarding where social media fits within the realm of defamation. With that said, it is necessary to discuss whether social media level the playing field with regard to athletes and defamation claims.

Do Social Media Level the Playing Field?

The first issue to discuss is media access. Before the emergence of social media platforms, athletes only had TV, radio, and newspaper outlets to counter defamatory statements being made about them. Now, there are various platforms at their disposal, which allows the athlete to serve as their own brand manager and public relations specialist. For example, though Ryan Lochte is currently embroiled in controversy since making false robbery claims during the Rio Olympics, he has been actively using social media (Auerbach, 2016), perhaps to divert attention away from his misdeeds. While athletes can use these platforms to interact with fans, create and manage their brand, and counteract negative media portrayals, private figures can also access these platforms to disseminate their views and opinions to millions of users. These platforms also provide private citizens with the opportunity to post defamatory content pertaining to athletes. Unlike traditional watercooler dialogue, social media content can be seen by an individual's network of followers and beyond. In fact, in an age of citizen journalists and Internet celebrities, individuals can reach well beyond their selective watercooler, effectively weaving their defamatory content within the collective conscience and into conversations of the masses. With that said, athletes not only have to contend with media portrayals; they must also fight against defamation from the bottom up. While athletes can counter defamatory content, users can just as quickly offer a rebuttal via social media. Now it appears that access to the media should possibly be removed from the equation all together when considering how to balance an individual's rights and freedom of speech as they relate to defamation claims.

The second issue of importance is whether actual malice should still serve as the line of demarcation between public figures and private figures. With the speed at which information travels, one could argue that many comments made by private figures (including citizen journalists and Internet celebrities) and journalists alike are negligently and recklessly disseminated with little regard for their falsity. For example, Gabby Douglas was widely (and often undeservedly) criticized via social media during the Rio Olympic Games for a lack of patriotism and bad attitude (Schuman, 2016). More specifically, Douglas was criticized for not placing her hand over her heart during the National Anthem and not cheering on her teammates, which led to screengrabs and memes featuring the hashtag #CrabbyGabby

(Schuman, 2016). While scholars have argued that social media users should be sensitive about the content they post (Kassing & Sanderson, 2015), most private figures (and some professional journalists) who post content are trying to either break a story (without source verification or fact checking) or simply stir the pot. If these social media comments find their way to a powerful or trusted source, they can quickly make headlines. Even if they do not reach a "trusted" source, these comments can still spread virally due to the conventions of these platforms (retweets, shares, etc.). Therefore, should an athlete have to prove actual malice when defamatory comments spread virally, even if a private citizen serves as the point of origin? Or, have the scales equalized to the degree that an athlete's burden of proof regarding defamation should be the same as that of private figures (i.e., negligence) who now have access to a large audience via social media, thereby wielding substantial power to damage an athlete's reputation?

A final issue for consideration is how one defines a celebrity. What is an Internet celebrity? How does one gain celebrity status? What is a Kardashian? Where do we draw the line? Perhaps a celebrity in the digital age is simply someone who garners significant media attention (likes, followers, etc.) in spite of social status, talent, and occupation. With that said, the rise of Internet technologies such as social media has dramatically blurred the line between private figure and celebrity (i.e., public figure). Does an Internet celebrity qualify as a public figure or at least a limited purpose public person? If the answer to that question is yes, then those individuals would also have to accept a reduced expectation of privacy and show actual malice to prevail in a defamation claim. This would at least level the playing field if a social media battle were to erupt between an athlete and an average citizen. If the answer is no, then those individuals (i.e., private figures) would effectively tip the scales of justice in their favor, as they would be able to post defamatory comment to their masses of followers without having to worry about lawyers intervening or media sources fact-checking their claims. In fact, if a tweet is indeed nonactionable by law (see Bennett, 2011), then someone who hides behind the veil of private figure could indeed post nearly anything he or she wants, except for a threat on a public figure's life. An argument could be made that this is a dangerous legal precedent to set even for those who "enjoy" a reduced expectation of privacy. A reduced expectation of privacy works when we are dealing with freedom of the press. However, does it still apply to freedom of speech now that anyone with Internet access can make their thoughts known to the world? Needless to say, this is an area that warrants further discussion.

Conclusion

The law, though written in ink, is open to interpretation. While this does not allow one to subtract from the law, it certainly opens the door for additions to be made. With that said, the emergence of social media platforms has certainly resulted in an expedited need to both revisit existing laws and policies and create new laws and policies regarding media use. While progress has been made regarding the regulation of celebrity endorsements via social media (see Carpenter, 2012) and the implementation of social media policies among athletic departments (see Sanderson, 2011; Sanderson, Browning, & Schmittel, 2015; Sanderson, Snyder, Hull, & Gramlich, 2015), many unanswered questions endure pertaining to athletes, social

media use, and defamation claims. The purpose of this commentary was to pose these questions in hopes that future scholarship will delve deeper. Moving beyond the nascent phase of discussion and debate will involve qualitative (i.e., interviews and textual analysis) and quantitative (i.e., surveys and content analysis) inquiry examining the actions, values, and perceptions of both the perpetrators and victims of what could constitute defamation in the online realm. First, we must agree that defamation can exist on social media. That is easier said than done.

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