

Highlights in the 2026-2 Release

- The Supreme Court once again refused to entertain a challenge to the actual malice regime emanating from *Sullivan* and *Gertz* in *Dershowitz v. Cable News Network, Inc.* The case arose from a challenge to the actual malice standard brought by the famous Harvard law professor and defense lawyer Alan Dershowitz, in a suit against CNN, in which CNN allegedly defamed Dershowitz by mischaracterizing his defense of President Trump in the President's first impeachment trial. Once again, Justices Thomas and Gorsuch dissented from the denial of certiorari, arguing that the precedents in *Sullivan* and *Gertz* are not grounded in First Amendment history and should be reconsidered. (§§ 2:3.50, 3:43)
- In *Newsom v. Fox News Network, LLC*, the court held actionable statements broadcast by Fox News that Gavin Newsom, the Democratic Governor of California, was a liar. The Fox allegations were not generalized but specific. Fox claimed that Newsom lied about having spoken to President Trump in a phone call. The court distinguished between a complaint alleging that Fox had labeled Newsom a liar "generally," and statements that he had lied about his account of an interaction with President Trump on a specific issue in a specific phone call. (§§ 6:22, 3:67)
- In *Moore v. Cecil*, the Eleventh Circuit, adopting an approach similar to the Third Circuit's decision in *Kendall v. Daily News Publishing Co.*, held that in a defamation-by-implication case, to show the necessary intent to defame that is inherent in the actual malice standard, the plaintiff must show something that establishes the defendant's intent to communicate the defamatory implied meaning or that the defendant acted with reckless disregard for the defamatory implied meaning. (§§ 4:16, 4:19)
- In *Satanic Temple, Inc. v. Newsweek Digital LLC*, the Second Circuit held that the provisions of New York's anti-SLAPP statute requiring that the actual malice standard apply to the exercise of free speech rights on matters of public concern was substantive, not procedural, and thus could be applied by federal courts sitting in diversity. (§§ 9:110, 3:47)
- Delaware joined the states that have adopted the Uniform Public Expression Protection Act (UPEPA), effective September 15, 2025. The Delaware UPEPA is essentially a carbon copy of the model act. (§ 9:109)