

dividual,”<sup>1263</sup> then the truthfulness of the factual assertions may be tested in a defamation action. There are sufficient protections for free public discourse already available in defamation law, the Court concluded, without creating “an artificial dichotomy between ‘opinion’ and fact.”<sup>1264</sup>

Substantial meaning is also the key to determining whether inexact quotations are defamatory. Journalistic conventions allow some alterations to correct grammar and syntax, but the Court in *Mason v. New Yorker Magazine*<sup>1265</sup> refused to draw a distinction on that narrow basis. Instead, “a deliberate alteration of words [in a quotation] does not equate with knowledge of falsity for purposes of [*New York Times*] unless the alteration results in a material change in the meaning conveyed by the statement.”<sup>1266</sup>

**False Statements.**—As defamatory false statements can lead to legal liability, so can false statements in other contexts run afoul of legal prohibitions. For instance, more than 100 federal criminal statutes punish false statements in areas of concern to federal courts or agencies,<sup>1267</sup> and the Court has often noted the limited First Amendment value of such speech.<sup>1268</sup> The Court, however, has declined to find that all false statements fall outside of First Amendment protection. In *United States v. Alvarez*,<sup>1269</sup> the Court overturned the Stolen Valor Act of 2005,<sup>1270</sup> which imposed criminal penalties for falsely representing oneself to have been awarded a military decoration or medal. In an opinion by Justice Kennedy, four Justices distinguished false statement statutes that threaten the integrity of governmental processes or that further criminal activity, and evaluated the Act under a strict scrutiny standard.<sup>1271</sup>

<sup>1263</sup> 497 U.S. at 20. In *Milkovich* the Court held to be actionable assertions and implications in a newspaper sports column that a high school wrestling coach had committed perjury in testifying about a fight involving his team.

<sup>1264</sup> 497 U.S. at 19.

<sup>1265</sup> 501 U.S. 496 (1991).

<sup>1266</sup> 501 U.S. at 517.

<sup>1267</sup> *United States v. Wells*, 519 U.S. 482, 505–507, and nn. 8–10 (1997) (Stevens, J., dissenting) (listing statute citations).

<sup>1268</sup> See, e.g., *Hustler Magazine, Inc. v. Falwell*, 485 U.S. at 52 (1988) (“False statements of fact are particularly valueless [because] they interfere with the truth-seeking function of the marketplace of ideas.”); *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council*, 425 U.S. at 771 (“Untruthful speech, commercial or otherwise, has never been protected for its own sake.”).

<sup>1269</sup> 567 U.S. \_\_\_, No. 11–210, slip op. (2012).

<sup>1270</sup> 18 U.S.C. § 704.

<sup>1271</sup> 567 U.S. \_\_\_, No. 11–210, slip op. at 8–12 (Kennedy, J.). Justice Kennedy was joined by Chief Justice Roberts and Justices Ginsburg and Sotomayor.