Zoe Sherlock
"Firm at Center of Panama Papers Sues Netflix Over 'The Laundromat'" – Julia Jacobs, New York Times, October, 16 2019
Media Libel

Overview

The article is about the law firm that is involved in the scandal dubbed *The Panama Papers* is suing Netflix because of a movie about the scandal, *The Laundromat*. The firm, Mossak Fonesca, run by partners Jürgen Mossack and Ramón Fonesca, is based in the country Panama and is known for helping wealthy people and celebrities open off-shore bank accounts. In 2015, over 11 million financial documents between the firm and its clients were leaked that exposed the firm for using the accounts for fraud and tax evasion. The law firm argued that their portrayal in the film was libelous and defamatory.

While Mossak and Fonesca are out on bail for the documents, they are still under investigation by the F.B.I. in New York and the film has the possibility of changing the perception of the jurors involved in the case, because they have not been charged of the crime. If the jurors were to see the film and believe the falsities of the firm and its partners, it may have an effect on how they view the facts of the case.

Legal Argument

While the case of the documents in itself greatly resembles the case of NYT v. US (1971), and was even nicknamed after The Pentagon Papers, the case in the article depicts libel, not prior restraint. So the two cases that can set a precedent for this case are Curtis Publishing v. Butts (1967) and AJC v. Jewell (2001).

Curtis Publishing v. Butts was a libel suit filed by Wally Butts, the former head coach of University of Georgia. Butts sued Curtis Publishing because of a story that

accused him of fixing an Alabama/UGA game. The suit was combined with Associated Press v. Walker at the Supreme Court (1967). Associated Press v. Walker involved Associated Press accusing Walker of leading students in an angry mob against federal marshals. Walker sued. The decision for the case determined that public figures had to prove actual malice. While the court ultimately ruled for Butts in Curtis Publishing v. Butts and Associated Press for Associated Press v. Walker, the distinction came down to whether or not the story was hot-news, which in Walkers case, it was. Both plaintiffs were public figures like Mossak and Fonesca and therefore in order to win, they had to prove actual malice.

The same goes for Richard Jewell in AJC v. Jewell. Jewell was a security guard at the Olympic Park bombing and was deemed a hero immediately after the horrific event. However, after an anonymous tip, the FBI began investigating whether or not Jewell knew that the bomb was there and pulled the stunt for notoriety. The AJC and other media outlets published stories on Jewell, framing him in an unsavory way. The other media outlets settled but AJC was prepared to fight because they never accused him of being the bomber; they just stated that he was now a suspect. Jewell sued the AJC for libel, however he lost because he was established as a limited-purpose public figure. Because there was so much public interest in him during the media coverage of him being a hero, he was then a public figure and therefore had to prove that the AJC knew what they published was libelous or in reckless disregard of the truth before they published it. This case relates a great deal to the Panama Papers lawsuit because of the involvement of public figures. Since Mossack Fonesca is a private firm, they normally wouldn't be held to such a standard as actual malice. However, since they

were the center of such public interest when the news broke about the documents being leaked, everyone knew who they were. Now Associated Press v. Walker, Curtis Publishing v. Butts and AJC v. Jewell have set the precedent of how the case will unfold.

Legal Test

The legal test that needs to be applied to this case is the public figure/actual malice test. As described earlier, Mossak Fonesca became public figures because the firm was the source of great public interest after the documents were released describing their fraudulent behavior. Because of this recognition, they must prove actual malice, which states that the filmmakers knew that there was false or defamatory portrayal of the firm in the film. Normally, the case would not be so difficult to win because there are obvious falsities in the film, but because the plaintiffs have to prove actual malice, it will be much more difficult to win. They also have to prove that the subject of the libel was the plaintiff, Mossak Fonesca. Because the logo is placed in multiple scenes of the movie, it is safe to say that the average viewer will be able to know that the plaintiff is the subject of the material. In my opinion, the only way that they will be able to prove that the filmmakers were in reckless disregard of the truth or knew that the portrayal was inaccurate would be to find a direct discrepancy between the film and Jake Bernstein's book, "Secrecy World." Because Bernstein was an executive producer of the film, which was based off the book, if there is a difference between what is said in the book and what is shown in the film, it would prove actual malice.

Zoe Sherlock
"State supreme court sides with Christian print shop who refused gay pride T-shirts," – Amanda Robert, ABA Journal, November 4, 2019
First Amendment Violation

Overview

This case took place between a Kentucky private business owner and the Gay and Lesbian Services Organization. The organization wanted to print custom t-shirts for the gay pride festival in 2012, but the shop owner (Blaine) refused to print the shirts due to religious beliefs. The group filed a complaint with the Lexington-Fayette Urban County Human Rights Commission, accusing the shop owner of discrimination against the organization based on sexual orientation and the denial of equal rights and opportunities. In 2014, the commission ruled that the print shop violated a local ordinance by denying to serve the organization. The decision was overturned by the Fayette Circuit Court and the Kentucky Court of Appeals. In the Kentucky Supreme Court, the decision was upheld solely because the wrong party filed the original complaint. This makes it difficult for the court to decide whether or not the plaintiff is a part of the protected party or not. If it had been an individual and not an entire organization, it would have been easier for the court to determine if they are affected by the violation of the first amendment. One of Blaine's attorneys said that government officials used the case to "turn Blaine's life upside down." The court's decision had the case been filed properly is unknown.

Legal Argument

One of the precedents I looked at is one mentioned in the article, Masterpiece Cakeshop v. Colorado Civil Rights Commission (2017), which went to the Supreme Court. In this case, a shop owner, Jack Phillips, refused to make a cake for a gay

couple's wedding. The couple filed a complaint with the Colorado Civil Rights Commission with the reasoning that the shop owner violated the Colorado law "prohibiting discrimination in places of public accommodation, including discrimination on the basis of sexual orientation." The commission sided with the gay couple, ordering that Phillips stop discrimination against same-sex couples. The Colorado Court of Appeals came to the same decision, but the Supreme Court reversed the decision. The decision, however, was made due to the unfair treatment of the state to Phillips. Justices ruled that the commission was unreasonable with him while they allowed other bakers to refuse cakes to gay couples. The majority opinion, written by Justice Anthony M. Kennedy, stated, "a long list of persons who provide goods and services for marriages and weddings might refuse to do so for gay persons, thus resulting in a community-wide stigma inconsistent with the history and dynamics of civil rights laws." The dissenters, Ginsburg and Sotomayor, claimed that the baker would not provide the same products and services to a gay couple than he would to a straight couple. This case applies to the original court case because they both analyze whether freedom of religion is above the equal rights of homosexual couples. Given that the decision was made because of unfair treatment, the debate is still unsolved.

The second precedent used to analyze this case is Arlene's Flowers v. State of Washington (2019). The case has similar facts to both cases previously mentioned, involving the battle of freedom of religion versus LGBT rights. A florist, Barronelle Stutzman of Arlene Flowers, refused to create wedding bouquets for a gay couple because it went against her religious beliefs. The Washington Supreme Court's decision unanimously ruled against the florist. She filed a petition for a writ of certiorari at the

same time that the Masterpiece Cakeshop v. Colorado Civil Rights Commission case was coming to a close. Stutzman tried to make a claim that the state of Washington also treated her with hostility, in which case the U.S. Supreme Court remanded the case back to the Washington Supreme Court to further ensure that there was no religious discrimination. The court upheld the decision. This case is very important as well because it again shows that the U.S. Supreme Court has not set a precedent for the rights of private business owners when it comes to refusing to serve people based on sexual orientation and therefore the decision for suit between the print shop and the commission is still unknown had the complaint been filed properly.

Legal Test

In order to determine whether a person's first amendment rights were violated, courts must apply strict scrutiny. The Religious Freedom Restoration Act states that a religiously neutral law can violate the Free Exercise Clause just as much as a law intended to suppress religion. Therefore, the courts must apply two conditions to determine whether a person's first amendment rights were violated. First, is to determine whether or not the government has burdened the person's right to freely exercise their religion. In relation to Blaine and Gay and Lesbian Services Organization, if the courts had decided he needed to sell shirts to gay people, it wouldn't have been asking him to stop practicing his religion, however it would have been a burden on his religion in making him do something that went against his beliefs. The second component that the courts have to analyze is whether placing the burden on an individual's freedom of religion is for a greater government interest. If this case had come to a decision, I think that the decision would have been in favor of the Gay and

Lesbian Services Organization. Even though Blaine has the right of expression, the government has a greater interest in making all individuals feel like they have equal opportunities, even when it comes to buying goods and services.

Zoe Sherlock
"YouTube Creator Lindsay Ellis Receives a Universal Music Copyright Claim, Loses Her Audible Sponsorship," – Ashley King, Digital Music News, October 30, 2019
Copyright Infringement

Overview

This article describes a case of copyright infringement with the defense of fair use. Lindsay Ellis is a popular YouTuber that created a video with a clip of the song, *Song of the Roustabouts* from the movie *Dumbo*. Universal Music Group filed a copyright claim against the YouTuber and subsequently, advertisements were placed on the video. Those advertisements allowed Ellis to keep her video up on YouTube and for Universal Music Group to make money off of it. The video, however, was originally sponsored by Audible, meaning that advertisements should not be in the video at all. The YouTuber lost her sponsorship with Audible for violating their contract. Although YouTube has software that detects copyrighted material in the videos posted on the platform, it is ultimately down to Ellis and Universal Music Group to determine whether she the material is copyrighted or fair use.

Legal Argument

The first case that is relevant to the previous case is Folsom v. Marsh (1941). Jared Sparks wrote a biography of George Washington published by Folsom, Wells and Thurston. After the death of Sparks, Reverend Charles Wentworth Upham wrote his own book, *The Life of Washington in the Form of an Autobiography*. In this book, he copied 353 pages of Sparks' biography and argued that he could do so because the author was dead and, therefore, it was not private property. Furthermore, he said that even if the biography was private property, it would still not be copyrighted because he used the 353 pages to create a new work. The court decided that the use of the 353

pages was, indeed copyright because “the value of the original is sensibly diminished, or the labors of the original author are substantially to an injurious extent appropriated by another.” This case is particularly important because it created the legal test for fair use, the fair use doctrine, which was added into the Copyright Act and is still in use to this day.

The next case that is relevant to the decision of the original article is TCA Television Corp. v. McCollum (2016). In a Broadway Comedy called *Hand to God*, the famous routine of *Who’s On First?* by Abbott and Costello made an appearance. The heirs of Abbott and Costello protested the recitation of one minute and seven seconds of the notorious comedy skit. After much deliberation by the district court on whether or not the plaintiffs held ownership in a valid copyright of the work, the district court began to apply the four factors of fair use. They found (1) that the skit was creative and deserving of copyright recognition, (2) that the portion of the skit used was famous and easily recognizable, however was used in a “highly transformative nature of the new use,” (3) that the use of the skit would not harm the marketability of the original skit and (4) that the play uses the routine to create “new aesthetics and understandings about the relationship between horror and comedy that are absent from Abbott and Costello’s performance of the routine.” Therefore, the decision made by the court was that the use of the skit in the play was indeed fair use because of the transformative nature of the piece as a whole. This is important because Ellis’ main argument is that her video was transformative, so to compare the facts of the two situations is helpful.

Legal Test

Because Ellis argues fair use as her defense, the legal test required to analyze her case is the four-part fair use test. The first requirement is that Ellis created something new with her video. She is not trying in any way, shape or form to recreate the Dumbo song or movie and is simply creating an analytical narrative of the recreation of Disney movies. Ellis used the portion of *Song of the Roustabouts* in order to analyze the lyrics of three lines and how they are racially insensitive. Not only that, but her point about the film being racially insensitive lends itself to the larger point that she is making, so it is fair to say that the work is transformative.

The second aspect regards the nature of the copyrighted work. Although the original material is for creative and entertainment purposes, the nature of Ellis' work is for public use because it disseminates facts of the relationship between Disney original movies and the modern remakes, which has the potential to be educational and beneficial for the public. She uses a portion of the song *Song of the Roustabouts* in order to point out historical stereotypes in old Disney films and further expands on the ideas.

The third parameter of the fair use test is the amount of the work taken and the substance of the work taken. In Ellis' case, the clip she used in the video was only about seven seconds of the song and three lines of the song. Given such a small and unsubstantial amount was taken, Ellis passes this portion of the fair use test as well.

Lastly, the fair use test asks whether or not the material used will damage the marketability of the original work. As previously mentioned, she only uses seven seconds of the song. It is safe to say that if someone wants to listen to the song they

won’t listen to the same seven seconds over and over again. They will go and buy the song.

So overall, if Ellis does end up trying to fight Universal Music Group with fair use as a defense, there is a good chance she will win.

“Prince Harry and Meghan Markle’s Lawsuit Comes After Months of Negative Media Coverage,” – Rachel Elbaum, NBC News, October 2, 2019
Appropriation

Overview

The article describes the feud between the media and the royal family in England, particularly the duke and duchess of Sussex, Harry and Meghan. For months, the press released negative coverage of the couple, especially after their wedding in 2018 and during her maternity leave in 2019. In February of 2019, the Mail on Sunday posted a private letter between Meghan Markle and her father, causing Prince Harry to initiate legal proceedings against the Mail on Sunday and their parent company Associated Newspapers. The letter contains private details of Markle’s relationship with her family, as well as her feelings towards him. Markle claims the Mail on Sunday misused private information and infringed copyright. She is seeking damages but the media company plans to fight against the claims.

Legal Argument

The first case involving invasion of privacy that is relevant is Barber v. Time (1942). This case involved the publication of private information by Time magazine. Dorothy Barber had an eating disorder that caused her to lose weight even when she ate large quantities of food. The magazine published a photo of her in her hospital bed as well as a story about her and her disease. Barber sued for invasion of privacy and the suit went to the Missouri Supreme Court. The court affirmed the lower-court opinion that Time had in fact invaded Barber’s privacy and sided with Barber. The decision was based on the fact that the article could have been published without the name of Barber, who never gave consent. If it had been about the disease and not the person with the

disease, it would not have been an invasion of privacy. Furthermore, the eating disorder was not contagious and therefore she was not a danger for others to be around. The information published was confidential between doctor and patient. This case is important and relevant because it establishes that there needs to be a balance between freedom of press and the right to privacy. Neither are absolute privileges and thus each court case will have a different outcome based on the defining facts of the case. If the publication of the Markle's letter is deemed an invasion of privacy, then those rights outweigh freedom of press in that case.

The second case that can be applied to the lawsuit between the press and the royal family is Pearson v. Dodd (1969). In this case, two previous employees of Senator Dodd suck into his office and copied documents taken from his files and replaced the originals. The documents were given to Drew Pearson and Jack Anderson, journalists for The Washington Merry Go-Round. They then used the documents to write a story about Senator Dodd and he sued the journalists on the ground that the story was an invasion of privacy. Because the journalists themselves didn't trespass, they were decided not guilty by a unanimous vote. Even though Pearson knew the information was stolen by Dodd's former employees, he was not the one that physically invaded Dodd's space nor did he encourage the staff to. In addition, Dodd also argued that Pearson should be held liable for conversion, meaning that the senator would not have the ability to use those documents. This was also rejected by the court, as the employees had photocopied the documents and left the originals in place. This case is important and relevant to the royal family lawsuit because documents were involved that did not have a known origin. If the letter was obtained by

an outside source, no matter by what means, the media platform, Mail on Sunday, would not be guilty of trespass and it would just be a matter of the content of the letter published and whether or not it offensively revealed private information about Markle.

Legal Test

The legal test for the intrusion of Meghan Markle by Mail on Sunday and Associated Newspapers is private facts, which is a tort defined in *The Restatement (Second) of Torts*. With this legal test, the court has to analyze the facts of the case and decide whether the published material, in this case the letter between Markle and her father, is "1) highly offensive to a reasonable person and 2) is not of legitimate concern to the public." Therefore, the only way for Markle to win is to convince the court that the published story is not newsworthy enough and sufficiently offensive. This is a very difficult thing for the court to measure because everything about this decision is subjective.

In my opinion, if this lawsuit does end up going to court, it will be a quick decision in favor of Mail on Sunday and Associated Newspapers. Relatively few cases have resulted in the right to privacy outweighing the right to free press and I don't think this will be an exception. Although the publication of the letter most likely did cause embarrassment and was highly offensive, especially when the media has been continuously critical of her, being in the royal family makes her a public figure. Having that celebrity-like status, almost everything she does will be newsworthy in the eyes of the public and media outlets.

Zoe Sherlock
"Covering Misconduct Allegations as a High School Journalist" – Avani Kalra, Columbia Journalism Review, October 3, 2019
C) High school or college media prior restraint

Overview

A public school in Vermont, Burlington High School, was under fire from the local community and student reporters for censoring the school newspaper, *The Burlington High School Register*. The journalists had gotten a tip from a student about the charges against the school's guidance director Mario Macias for unprofessional conduct. They wrote a story on the charges and posted it on the high school's website. The school then requested that the story be taken down because it created a hostile work environment for Macias. However, the story simply stated the facts of the charges, which they obtained from public records. In addition, the school implemented a 48-hour pre-publication review period. The students were worried that their supervisor, Fialko-Casey would be in trouble with the school if she kept the story on the site and felt pressure to allow the school to censor them. After a call to the Student Press Law Center in Washington, they found that Fialko-Casey was protected by state law. The state of Vermont passed the New Voices legislation in September of 2017, which prohibits school from censoring students unless the content is libelous, and invasion of privacy, violates school policies, incites violence or is disruptive. On September 15, five days after the publication, the school's superintendent and school board chairwoman lifted the pre-publication review of the newspaper's stories.

Legal Argument

The first case that applies to the situation at Burlington High School is obviously Hazelwood v. Kuhlmeier (1988), which created the precedent for censorship of high

school newspapers. Journalists at Hazelwood East High School wrote stories about birth control and divorce in their school newspaper, *The Spectrum.* The school used prior restraint to stop them and the students sued.

The case went to the Supreme Court and the final decision was 5-3 for the school. The decision was based upon the fact that the newspaper was a designated-limited public forum instead of a public forum because it was a part of Hazelwood East High School curriculum. It was decided that schools can censor students if there is a "legitimate pedagogical concern." In this case, it was the controversial subject matter.

The decision to allow schools to censor students led to the discussion of what is censorable. The found that anything that 1) interferes with school discipline, 2) interferes with the rights of other students, 3) violates the academic integrity or propriety, 4) violates health and welfare concerns, or 5) is obscene, indecent or vulgar is deemed as censorable. The case is extremely important to the situation because it was the beginning of student speech restrictions. Without the Vermont New Voices legislation, the students of Burlington High School would be upheld to the same standards of the students from Hazelwood. Many students today live in states that have not passed the New Voices legislation and are censored on a regular basis.

The next case that applies was also talked about in class: Hosty v. Carter (2005). Although this is a college case, it still applies to the situation at Burlington High School because it expanded the Hazelwood decision to apply to designated limited public forums that are not part of the curriculum.

At Governors State University, student Hosty wrote articles for the school newspaper The Innovator. The articles contained criticisms of the dean of the School of

Arts and Sciences. The students sued the school when dean ordered the printer to stop printing the newspaper that contained the article. The case ultimately ended with an en banc hearing at the Seventh Circuit Court of Appeals after the students won at both district and appellate level. Previously, courts avoided applying the Hazelwood standard to student media in colleges because it was not a part of the curriculum and therefore was a public forum instead of a designated-limited public forum, however the en banc hearing resulted in a decision that the newspaper being part of the curriculum was a sufficient condition in making it a non-public forum but not a necessary condition.

Ultimately, both of the cases have limited student speech in both high schools and colleges. Because of these cases, the rights of the student journalists of today are muddled and taken advantage of by administrations like the one at Burlington High School.

Legal Test

For the sake of applying a legal test to the situation in Vermont, we will assume that the principal decided to fight the New Voices legislation because of the issue. Had the issue been brought to court, the principal would have used the argument that the law is unconstitutional by citing Hazelwood. This test says that schools have the right to censor students if there are legitimate pedagogical concerns. That could include material that 1) interferes with school discipline, 2) interferes with the rights of other students, 3) violates the academic integrity or propriety, 4) violates health and welfare concerns, or 5) is obscene, indecent or vulgar is deemed as censorable.

I think that if he decided to fight the legislation, the court would have sided with the principal because the New Voices legislation covers material that is against school

policies and just doesn't define it. If the principal really wanted to sue the student, he still could have used the defense that the story created a hostile work environment for Mario Macias and in turn had the possibility to incite violence.