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JOR 310

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Mass Media Law Final Exam

- 1. Explain why the 1964 U.S. Supreme Court case, *New York Times v. Sullivan*, was such a significant development in libel law. Your answer should show your understanding of the precedent set in the decision, what libel is and why the case was considered a victory for the press. (300-400 words)**

New York Times v. Sullivan was a landmark case in setting the actual malice standard for freedom of the press. The actual malice standard required L.B. Sullivan to prove that the Times was aware that the statements made in their advertorial regarding the Montgomery, Alabama police department's mistreatment of civil rights protesters were blatantly false with reckless disregard for the truth. Sullivan was never named directly during the advertorial, just the fact that the police department he was commissioner of was treating civil rights protesters unfairly. The U.S. Supreme Court took on the case and found that the actions of the Times were not sufficient for a libel suit. The Times was protected under the freedom of the press clause of the First Amendment, and the court ruled in favor of the publication under the actual malice standard. In other words Sullivan would have had to prove that the New York Times knew that the statements made against him were recklessly untrue through a conscious lack of fact checking before publishing the information. Although parts of the information that the Times published in the advertorial were untrue there was no reckless disregard for the truth, and there was no libelous acts against Sullivan individually. This was the first time that the Supreme Court used actual malice in a press freedom case dealing with libel claims. Due to the fact that Sullivan was a public official he had to prove defamation against the publication, which he was unable to do. This case was a victory for the presses right to the first amendment, protection of the "unfettered

interchange of ideas", and help defining free speech.

2. The U.S. Supreme Court has ruled that it is more permissible to regulate broadcast media than print. A) Why? B) How is broadcast media regulated? What does the regulation include? (300-400 words)

The U.S. Supreme Court has ruled that it is more permissible to regulate broadcast media than print, because the number of newspapers in the U.S. has dropped sharply compared to the amount of separate broadcast stations. The Telecommunications Act of 1996 was created with the hope of promoting competition in broadcast media, and it relaxed the restrictions on the number of television stations that a single company can own. It also lifted limits on radio station ownership besides preventing control of a market or geographic area. The current regulated framework for broadcast media was created in 1934, which established the Federal Communications Commission (FCC). The FCC regulates broadcast media in a multitude of ways by regulating the amount of radio and TV stations a company can own. The FCC has rules to govern public service and local programming, and reviews station operations as part of the licensing process.

3. If you misquote someone in a story and, thereby, change the meaning of what that person said, are you at risk if you are sued for libel? Explain, showing your knowledge of *Masson v. New Yorker Magazine* and your understanding of the defenses available to journalists, who are sued for libel. (300-400 words)

If a person is misquoted in a story there will be no fear of a libel suit if you as the journalist accurately report the facts while capturing the tone, essence, or spirit of what the interviewee had said. Unless the quote is tape recorded or emailed to the journalist quotations are not always verbatim what the interviewee originally said. Journalists in this predicament need to be especially careful with misquoting a person to the point where the inaccuracy of the quotes

negatively affect them by exposure of hate or aversion. This could be means for a libel suit where the journalist may suffer tremendous costs. In the case of *Masson v. New Yorker Magazine* where public figure Jeffrey Masson claimed libel for being misquoted in a profile by journalist Janet Malcolm that was later used in her book *In the Freud Archives*. Masson claimed the quotes of his were fabricated and defamatory to him, but Malcolm claimed she had tape recorded some of her interviews and handwrote others that she threw away after typing up the information. A jury found that Malcolm was not guilty as some of the quotes were mostly accurate while others were not. Since Masson was a public figure he had to prove that Malcolm knowingly and recklessly disregarded him with the written quotes, which he was unable to prove.

4. Describe the difference in the majority opinion in *Branzburg v. Hayes* and the dissenting opinion by Justice Potter Stewart, showing in your answer that you understand the term “journalist’s privilege.” (300-400 words)

When the four *Branzburg v. Hayes* cases went to U.S. Supreme Court, the outcome was split with the reporters losing 5-4 against the existence of journalist's privilege as part of the Press Clause of the First Amendment. The difference in majority opinion in *Branzburg v. Hayes* was journalist's privilege based upon the First Amendment, and whether or not requiring newsmen to appear in court and testify before a grand jury in order to release their source(s) curtail's what is guaranteed to the press in the First Amendment. Although in these four cases a few of them were journalists witnessing illegal activity while staying true to keeping their sources of the stories anonymous. Justice Potter Stewart who was part of the Supreme Court's 5-4 decision had the differing opinion that when a reporter is asked to appear before a grand jury to release confidential sources he would expect the government to administer a three point test to recognize a journalist's privilege in a specific case. Stewart's three point test would check if: there is

probable cause to believe the newsman has information that is relevant to a specific probable violation of law, demonstrate that the information wanted could not be obtained by other means less intrusive of First Amendment rights, and demonstrates a compelling and overriding interest in the information. The term journalist's privilege is an exception that a journalist won't suffer consequences for non-compliance in giving up a confidential source. The biggest issue in this case is that there is no well defined explanation of when a journalist is or is not allowed to keep their source(s) anonymous.

5. What can be expected to happen to the composition of the U.S. Supreme Court now that Donald Trump is the president-elect? In your answer, show you know how many people serve on the court, how they get there and the controversy before the election regarding President Obama's nominee, Merrick Garland. (300-400 words)

What can be expected to occur to the composition of the U.S. Supreme Court since Donald Trump has become the president-elect is that he can be responsible for filling a handful of present and future vacancies on the Supreme Court during the course of his term. Trump would be able to fill these positions due to death or retirement that would give the Republican party majority control of decisions in the judicial branch of government for years to come. This started prior to the recent 2016 election results when Justice Antonin Scalia died on February 13, 2016. President Barack Obama is still in office with the ability to attempt to convince Senate to confirm his nominee for the U.S. Supreme Court spot left behind following Scalia's death in Chief Judge Merrick Garland. However once Trump takes over his position as President he can elect another individual with conservative beliefs swaying the majority of the Supreme Court to the Republican Party. There has always been nine individuals who serve on the Supreme Court, and currently there are eight following Scalia's death. The eight current members of the Supreme Court are: John Roberts, Anthony Kennedy, Clarence Thomas, Ruth Bader Ginsburg, Stephen Breyer, Samuel Alito, Sonia

Sotomayor, and Elena Kagan. In order for a U.S. Supreme Court justice to obtain their job the acting president of the U.S. has to nominate a candidate, and the Senate votes whether to confirm or reject the nomination. If the candidate is confirmed they are appointed to the Supreme Court, and typically the chosen candidate is from the president's political party or by members of legislation. After the candidate is nominated by the president the FBI investigates the person's background providing a report to the Senate Judiciary Committee, and they hold a hearing meant to determine the candidate's qualifications then the committee passes or rejects the individual through Senate by receiving a majority 51 votes.

6. If you ask for a transcript of a pretrial confession under Rhode Island's Open Records law, and the trial hasn't started yet, what is likely to be the police department's response and why? In your answer, reference the relevant portion of the law and your understanding of how First Amendment guarantees and those of the 6th Amendment sometimes collide. (300-400 words)

If the trial has yet to start when asking for a transcript of a pretrial confession under Rhode Island's Open Records law the likely response from the police department would be to deny you from receiving a transcript. Section D of the Rhode Island Open Records law explains the following, "such records shall not be deemed public only to the extent that the disclosure of the records or information (a) could reasonably be expected to interfere with investigations of criminal activity or with enforcement proceedings, (b) would deprive a person of a right to a fair trial or an impartial adjudication, (c) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (d) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority, or any private institution which furnished information on a confidential basis, or the information furnished by a confidential source, (e) would disclose techniques and procedures for law

enforcement investigations or prosecutions." For each of these reasons listed in the Rhode Island Open Records law police officers would deny any records of a pretrial confession, because it would risk the possibility of conducting a free and fair trial. The wording of the First and Sixth Amendments causes conflict in situations dealing with a free press and fair trial, because the 1st Amendment guarantees freedom of the press while the 6th Amendment guarantees the right to a speedy and public trial by an impartial jury of the state. Typically journalists will try to argue the public's right to be informed. On the opposite end it is argued that there is no guarantee of a fair trial if there is too much information about a case and the parties involved out to the public before the case has even officially started.

7. What does copyright law protect and why did the founders think it was so important that it was included in the main body of the Constitution? (200 words)

Copyright law gives an author the sole right to copy or distribute his or her work. In Article I, Section 8, Clause 8 of the Constitution the founders included the significance of copyright laws, "To promote the progress of science and useful arts, by securing for limited time to authors and inventors the exclusive right to their respective writings and discoveries." The founders seemed to think copyright laws were significant, because they understood the public benefits from individuals' creative work. The founders also seemed to know that future creators needed an incentive to create by allowing to exclusively give creators control of their creation for a limited amount of time. When the time period runs out the public is free to copy or use the work for any reason legally.

8. Who was Elmer Gertz and why did the U.S. Supreme Court rule in the 1974 that he was not a public figure for purposes of libel law? (200 words)

Elmer Gertz was an attorney that was hired by the Nelson family following the death of their son Ronald who was shot and killed by Chicago police officer, Richard Nuccio who was convicted for second degree murder. Gertz was hired by the family to sue Nuccio, and in a magazine entitled American Opinion the John Birch Society accused Gertz of being Leninist and a communist-fronter due to the clients he represented were attempting to sue a law officer headed by Robert Welch. Gertz won a jury verdict and was awarded \$50,000, but lost the libel suit as the trial judge found the magazine did not violate actual malice. The U.S. Supreme Court ruled that he was not a public official or public figure for the purposes of the libel law, because he never held a paid office nor was he famous. Thus he was considered a private figure by the court of law meaning that he would only need to prove negligence instead of actual malice. Gertz ended up doing a retrial for libel where 12 years after his first trial he received \$400,000, and in the retrial decision the U.S. Supreme Court set rules for categorizing libel plaintiffs explaining what each category of plaintiff would need to collect damages for a libel suit.

9. You hear that a prisoner at the state's main prison has been on a hunger strike for 21 days to protest violence against inmates by corrections officers. You ask to interview the inmate inside the prison and the warden denies you access. Can the warden do that? Don't you, as a journalist, have special right of access to the prison? Cite the relevant Supreme Court case on this subject in your answer. (300 words)

The warden should not be able to do that under a federal civil rights statute since it would be a violation of my First Amendment rights as a journalist. Due to this First Amendment violation with the public having a right to know what type of violence is going on in order to make a prisoner go on a three week long hunger strike. The relevant Supreme Court case on a similar subject is the case of Houchins v. KQED. he San Francisco TV station KQED reported a suicide of an inmate in the Alameda County Jail at Santa Rita. The reported story had a psychiatrist close

to the jail explain that the prisons conditions caused illnesses of patient-prisoners, along with a denial from the county sheriff. The TV station requested to visit the prison to take pictures, but again the sheriff disagreed with them. The station teamed up with the National Association for the Advancement of Colored People (NAACP) from the Alameda and Oakland areas to file a suit against the sheriff under a federal civil rights statute claiming a violation of their First Amendment right. KQED and the NAACP branches claimed that the public had a right to know the jails conditions, and both the District Court and Circuit Court of Appeals agreed as the justices voted 4-3 in favor.

10. It is rare for a jury in a level case to find that the reporter acted with malice, but it has happened. What sort of behavior has been found by the courts to constitute malice? In your answer, cite the relevant cases from your textbook and show that you understand the two-part definition of malice. (300-400 words)

My first example of a reporter acting with malice out of the textbook is *Hustler Magazine and Larry C. Flynt v. Jerry Falwell* (1988). *Hustler* magazine parodied a Campari Liqueur advertisement along with an apocryphal interview with Reverend Jerry Falwell who was a well-known and controversial evangelist, pretending to quote him as saying that his "first time" was during a drunken meeting with his mother in an outhouse. Although at the very bottom of the page it stated "ad parody- not to be taken seriously" Falwell still filed a suit alleging invasion of privacy, libel, and intentional infliction of emotional distress in a federal district court in Virginia. The jury found *Hustler* and Larry Flynt the published guilty of infliction and emotional distress, which required Falwell showing that the defendant's actions were intentional or reckless, that it offended generally accepted standards of decency or morality, that it was a cause of Falwell's emotional distress, and that the distress caused was severe. Falwell was awarded a total of \$200,000. This was considered actual malice, because

the published material was knowingly false, and was published with reckless disregard while being false. Another relevant malice case from the textbook where the reporter acted with malice is *Cantrell v. Forest City Publishing Co.* In this case reporter Joseph Eszterhas who was doing a story for the *Cleveland Plain Dealer* covered a tragic collapse of an Ohio River bridge at Point Pleasant, West Virginia, where resident Melvin Cantrell (forty-year-old father of seven) was killed along with forty-three others. Eszterhas wrote a story about how the loss of the father affected the family as he won three press awards for his coverage in the story. Five months later he returned to Point Pleasant to do a follow-up story on the family. In the follow-up story Eszterhas exaggerated false quotes from Mrs. Cantrell, and other falsehoods about the quality of their home, clothes, etc. Mrs. Cantrell and one of her sons William sued the newspaper and the two journalists who were involved. They sued Forest City Publishing Co. for false light, and this was one of only two false light cases heard by the U.S. Supreme Court. In the end Eszterhas and Forest City Publishing were found guilty for publishing the "calculated falsehoods", and Mrs. Cantrell was given a \$60,000 judgment in her favor. False light is a legal term that refers to a tort concerning privacy that is similar to the tort of defamation.

Bonus question: 5 points.

Describe the evolution of shield laws for journalists, showing in your answer that you understand the difference between state and federal laws and the limitations of existing shield laws. (300 words)