Paparazi – college essay

The term “ paparazzi” is used to refer to photographers who pursue celebrities trying to get photographs. According to Kenneth Kobre, the term is actually from the word paparazzo which stands for “ buzzing insect” in several Italian dialects (as cited in “ Paparazzi”, 2006). Though the term connotes pestering photographers, the term can actually be used to refer generally to all photojournalists. The word started to be used to refer to harassing photographers when Federico Fellini used it to name the street photographer in his classic file La Dolce Vita as Signor Paparazzo.

The character in Fellini’s movie was in turn inspired by a real life street photographer named Tazio Secchiaroli (Valdes, 2006). The paparazzi became under scrutiny late in the 1990’s when they were implicated as the cause of the death of Diana, Princess of Wales, who died with Dodi Al-Fayed reportedly trying to avoid the press chasing them, in August 1997 in Paris (Kirtley, 2002). The death caused a public outcry to establish more laws and regulations both in Europe and the United States. The resulting legislation however has also raised the issue of constitutionality and press freedom.

Hudson (2006) points out that the issues of privacy and press freedom are both important and not that impeding on either means the loss of fundamental and constitutional rights. Sullivan (2006) traces the first court cases that concerned the paparazzi when French courts prevented the publication and sale of Dumas’ controversial pictures with American actress Adah Isaacs Menken. The courts sighted that “ posing for the photographs did not mean Dumas and Menken had surrendered their rights to privacy and dignity…” (para. 2).

Today, the issue of privacy and paparazzi is being exacerbated by the development of telephotography, digital imaging and editing and wireless technology (Berzon, 2005). As more technologies are made available for imaging and publishing, the question of privacy invasion and press freedom will continue to be a developing theme of interest. The paparazzi however are not just an issue that involves news gathering or journalism. Valdes (2006) wonders whether the paparazzi should really be the concern or rather the growing inclination of the public for voyeuristic materials.

Celebrities and public figures' lives including those of their families and close associates have pursued legal action and protection to secure their privacies particularly those of their children. Rights of the Press and Individuals The freedom of the media is one of the essential elements the features expected of a free society. At the same time, citizens have a right to freedom and their privacy. The protection of these rights are both essential in ensuring rights and developing responsibility in its citizenry.

Regardless of how opposed privacy issues and paparazzi are, they both cite their foundation in constitutional rights. Often, the laws that both these rights are founded on are subject to interpretation than can go either way for either issues. Largely, the issue is debated on what constitutes the private and the public which is difficult to determine since most victims' pf the paparazzi live a large part of their lives in public. Press Freedom Freedom of expression is a constitutional right. In the United States, the First Amendment is the primary mantle for all forms of journalism.

Douglas Mirell, a First Amendment lawyer says that the problem anti-paparazzi legislation is that they are misdirected and from showmanship (“ California law strikes at paparazzi”, 1998). Mirell points out that the anti-paparazzi movement after in the late 1990’s was a “ P. R. effort spawned by the tragedy of Princess Diana’s death but addresses no legitimate issue that is not now in existing law. ” (para. 9). The concern regarding anti-paparazzi legislation is its extension to all forms of media. Solove (2005) points out that the laws affect a lot of press activities when many of the paparazzi are not even legitimate member of the press.

He cites the work of C. Thomas Dienes’ analysis of the constitutionality of anti-paparazzi laws. Dienes mentions that in the US Supreme Court case Arcara v. Cloud Books, Inc. , the court decided that “ although directed at activity with no expressive component, [if they] impose a disproportionate burden upon those engaged in protected First Amendment activities”(Dienes, 1999, p. 1139). The new paparazzi legislation does not only seek to limit photographing celebrities but also extends to all other information that may be illicitly collected such as voice recordings, personal communications and legal, medical, personal documents and effects.

Right to Privacy and Personal Autonomy The privacy and freedom of every individual and is protected by the constitution. If the concept of freedom of expression is an essential element of a free society, individual freedom is the essence of every society is the greatest benefit of a society. The First Amendment protects every individual to keep their privacy (Hudson, 2006). This ensured that celebrities and public figures have the right to keep what they feel as private information confidential.

Though the US Constitution does not specifically talks about privacy, it does articulate the right of personal autonomy. According to Hudson (2006), the US Supreme Court has supported these provisions through its decisions that have ruled in support of “ zones of privacy” (para. 26). This also includes a person’s right against “ unwarranted public scrutiny” that can constitute harassment and the loss of freedom of activity (para. 27). The Fourth Amendment includes provisions to protect the privacy of people’s homes or personal domains (Hudson, 2006). US and European laws vary in this aspect.

In the US, the privacy of a person’s home is considered very strongly but the moment he leaves his home whether in the physical sense or figuratively as in the case of working online, then this right is reduced (Sullivan, 2006). This implies that regardless of how newsworthy a person’s action is inside his home, the public’s “ right to know” is not applicable (“ Paparazzi”, 2006). In Europe however, individuals are afforded more privacy rights in the workplace as long as there is a prior reference or implication to the privacy of a communication or action (Sullivan, 2006). Responsibility Equated with Rights and Regulation

All rights have corresponding responsibilities. This correspondence is designed so that others can enjoy the same rights and so that no other rights are compromised. The issues that involve the paparazzi usually involve the question of where journalistic rights already impede individual rights. It ahs become important to create definite lines between what is considered acceptable factors on investigative journalism and what is to be considered as acts on invasion not just to define is a tort has been committed but has

also become important because of the imposition of higher penalties for theses offenses (Kirtley, 2002).

Responsible Journalism According to Machan (1997), the press in the US benefit from constitutional protection against strict regulation unlike other press. The reason for this the granting of this kind of freedom is because the press is seen as means to voice put opinion and to raise issues. He points out that this may have been good to ensure the freedom of speech but it has also allowed for abuse. Machan says that can become self-defeating and that " basic rights of the press will be best protected when all individual rights are protected" (para. 10).

If a person's movement or his freedom becomes restricted because of the hounding of the press, then the press' purpose of ensuring freedom becomes the reason for the loss of a person's own liberty. There is no guarantee against the abuse of any right. According to Kirtley (2002), the US Supreme Court cites though any society would want its press to be a responsible and conscientious one, " responsible press is undoubtedly a desirable goal, but press responsibility is not mandated by the Constitution and like many other virtues cannot be legislated" (para. 45).

The main means of developing responsibility among the press seems to have been the imposition of higher penalties as damages for invasions of privacy and more regulation. In 1890, Samuel Warren and Louis Brandeis authored " The Right to Privacy" in the Harvard Law Review. In their article, they pointed out that there should be a penalty for the emotional harm that unwarranted media pestering can bring an individual that can impugn

privacy and decency (Hudson, 2006). This article became the basis for subsequent recognition by the courts for the validity of action against the invasion of privacy.

In 1960, William Prosser subdivided the tort in four classifications: intrusion upon physical solitude, false light, public disclosure of private facts and appropriation (Prosser, 2006). Taylor (2006) refers to Time Inc. v. Hill as the first privacy case against the media that the US Supreme Court decided on. The case involved the publication by Life magazine of a promotional article for a theatrical production based on the novel The Desperate Hours written by Joseph Hayes which was inspired by experience of James Hill's family being taken hostage in their Connecticut home.

The magazine used photographs of the Hills' home ton promote the play for which James Hill sued them for citing that " the inaccuracies in the accompanying text had made the layout a piece of fiction" (part 2, para 25). Though Life magazine appealed the decision, the Appeals court of New York still sided with Hill and affirmed the Supreme court decision citing that " Life created a wholly fictitious display for commercial advertising and trade purposes, using plaintiff's name and family as the basis for a true-life thriller" (para. 26). Personal Privacy

Every person is entitled to his privacy and the freedom to act and speak accordingly. Machan (2006) says that all individuals even in public areas have the right to engage in any activity as long as that it does not violate any laws, inhibit the rights of others or cause personal injury to him or others. The law does not only allow for this freedom but assures that it is an

option available to a person. The laws regarding the right to privacy and other supporting statutes is designed to protect all individuals and to allow them a reason to seek action against those that may impugn on these rights.

However, laws on the right of privacy have different application to celebrities and public figures which is the qualification that paparazzi employ when trying to solicit photographs or information. (Taylor, 2006) According to Valdes (2006), the current provision for right to privacy is qualified between public figures and ordinary people. He points out that the natural interest in public figures, celebrities and other individuals that become prominent socially reduces the rights of privacy afforded to every individual.

Celebrities in particular have been vocal against their opinion on the intrusiveness of the paparazzi however; some members of the media argue that the numbers of celebrities that solicit their attention are just as many. Being in the public eye benefits celebrities and the paparazzi can do a lot to increase the public's familiarity and recall of people (Hudson, 2006). Some public displays of celebrities are even criticized to be a deliberate ploy to gain public attention and even protest against paparazzi itself has been criticized as a move to gain media attention (Kaplar, 1999).

Part of the responsibility of every individual in protecting his privacy is being responsible himself for his actions. According to Amitai Etzioni, the critical question is not whether the piece of information or material is a private one or not, the question that should be asked is whether there was invasion in procuring the material; in the absence of such circumstances, then there should be no liability for the media assuming goodwill (Taylor, 2006).

This implies that for celebrities, the public's interest that fuels paparazzi attention is treated as part and parcel of the trade or practice and a trade off of celebrity and public figures' professions. In 1908, John Moser sued the publication New York World owned by the Press Publishing Company after it published an uncomplimentary article about him. The case was presented in court claimed that the article and the pictures were an invasion of Moser's privacy.

However, considering that Moser was a known personality and there was no invasion in the conception of the article or the pictures, the New York court hearing the case decided in favor of the magazine (Taylor, 2006). In this case, the media's attention to Moser was part of its function to scrutinize important elements of society that are of interest to the public and therefore falls under press freedom rights (Rectenwald, 2005). Another case that courts have decided in favor of the press is that of Sidis v. F-R Publishing Corp.

The case involved William James Sidis, a former child celebrity, and his claim that the article published by the New Yorker regarding the circumstances of previous celebrities was an invasion of his privacy. Sidis pointed out that since he was not a celebrity anymore; his being included in the article violated his privacy as a private individual. The case was ultimately decided in favor of the paper and the decision stated that, " Regrettably or not, the misfortunes and frailties of neighbors and ' public figures' are subjects of considerable interest and discussion to the rest of the population" (Taylor, 2006).

California’s Anti-Paparazzi Act The core of all regulation and legislation regarding the paparazzi is the protection of the privacy of individuals so that their own freedom of expression and self determination is not impeded by similar rights afforded to the press. The pursuit of truth and the protection of the public’s right to know should not be constituted as more important than an individual’s right to live the way he wants to unless there is danger to himself or others.

Nor does it preclude his right to protect himself from over scrutiny or public disdain (Sullivan, 2006). The protection of privacy are said to be an intrinsic need that a state has to be able to protect. Many of the statutes that now are recognized to provide for these rights are based on the constitution but the development of privacy protection laws took a long time to become validated. So far, the most forceful statement against paparazzi was enacted by the state of California in 2005 through the “ Anti-Paparazzi Act”. Content and Provisions

An important element of California’s Anti-Paparazzi Act is the definition of what constitutes an invasive action or a trespass on an individual’s privacy. If a reporter or photographer “ in order to physically invade the privacy of the plaintiff with the intent to capture any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a personal or familial activity and the physical invasion occurs in a manner that is offensive to a reasonable person”, the he is guilty of violating the act (as cited in Solove, 2005).

This definition is a response to the call for anti-paparazzi laws to increase the protection afforded to celebrities while in public places (Rectenwald, 2005). A notable feature of the act in comparison to other pre-existing privacy statutes is that it does punitive action against paparazzi does not depend on the invasiveness as much (Taylor, 2006).

According to the Anti-Paparazzi Act, even if a paparazzo does not commit a trespass in procuring the material, he is still in contravention of the act if his actions reflect “ attempts to capture, in a manner that is offensive to a reasonable person, any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a personal or familial activity under circumstances in which the plaintiff had a reasonable expectation of privacy, through the use of a visual or auditory enhancing device” (as cited in Solove, 2005).

This implies that even if a an act is done by a celebrity in public but if there is an expectation of privacy, then the soliciting of photographs or other material under provocation or not is also against the Anti-Paparazzi Act. Aside from providing this specified content, the act also increases the penalties for the violations of privacy laws. The penalties for violations include all proceeds from derived from the material obtained and as much as thrice the amount of the calculated general and special damages (Solove, 2005).

The Anti-Paparazzi Act supports the premises of the decision made by the US Supreme court in 2003 regarding the case of Virginia vs. Black that agrees to an individual’s right to live their life free from fear and intimidation”

(Shapiro, 2005, para. 11). It also concurs with John Whitman's paper, The Two Western Cultures of Privacy: Dignity versus Liberty, where he states that " One's privacy, like other aspects of one's honor, was not a market commodity that could simply be definitively sold" (as cited in Sullivan, 2005, para. 3) Contentions and Critiques

The press does not deny the legitimacy of the need to protect individual rights and privacy regardless of whether they are celebrities or not. Its primary contention against California's Anti-Paparazzi Act is that it has the effect of limiting First Amendment rights and penalizes legitimate media outfits for the actions of paparazzi that may not be associated with any legitimate press. Rectenwald (2005) cites the evaluation of Davis Wright Tremaine that the new act affects media as a whole and not just what falls under the paparazzi.

Rectenwald's opinion is that the act can compromise freedom of expression. She points out that trespassing is already punishable by existing laws not related to Anti-Paparazzi Act as form of prior restraint and so that the increase of penalty when there is intent to take pictures can already be considered as a form of censorship (para. 6). Tom Newton, an attorney for the California Newspaper Publishers Association says the law is penalizing legitimate practice of the First Amendment in a way that specifically targets only media practitioners (" California Expands Anti-Paparazzi Law", 2006).

Kirtley (2006) has the opinion the laws prior to the legislation of California's Anti-Paparazzi Act have provided enough protection against defamation and invasions to privacy and warns that government should exercise caution in

creating constraints on information, content or conduct since it can also obstructions to freedom and rights. Evaluation and Effectivity It is ironic that plaintiffs have had better success in protecting their privacy through using statutes unrelated to privacy than using laws that are deigned to protect this right implicitly.

In cases that are brought based on the defense on the right of privacy alone, the prevalent trend is for the decision to benefit more rather otherwise (Taylor, 2006). Kirtley (2006) points out that what maybe essential is upholding existing laws that protect individual rights rather than creating more laws that only ultimately discriminate against legitimate media. Critics of the Anti-Paparazzi Law say that it could be used in the future to subdue press freedom while advocated of the act believe that it is only high time that such a legislation be enacted (Taylor, 2006).

Both arguments are valid but the real challenge is finding a balance between privacy freedoms of the press. As mentioned, if the press is becomes a force of intimidation or hindrance to personal rights then it will defeat its very own purpose. Existing laws need to be updated so that existing regulation can still be applicable and respond to the changes in media and technology to prevent reactive measures and to develop proactive deterrents to privacy and self determination (Crews, 2006). In the 1970’s the cases Cox Broadcasting Corp. v. Cohn of 1975, Oklahoma Publishing v.

Oklahoma County District Court of 1977 and Smith v. Daily Mail Publishing of 1979 were all decided in favor of the media, the courts citing that “ If a newspaper lawfully obtains truthful information about a matter of public

significance then state officials may not constitutionally punish publication of the information, absent a need to further a state interest of the highest order" (Taylor, 2006, para. 19). These cases did not just individually signify judicial success for the media; it also set the precedence that became the basis of future decisions in favor of the right to inform.

However, Robert Ellis Smith who established the Privacy Journal points out that the scenario has changed dramatically today (Taylor, 2006). Developments in technology have given birth to digital photography, wireless videography and miniature electronics that have contributed to the development of covert media operations and the increase in invasiveness (Valdes, 2006). Smith cites that verdicts such as the recent decision on the Los Angeles Police Department v. United Reporting Publishing Inc. reflect the changing scenarios that have to be adapted when considering the issues of privacy and freedom of speech (Taylor, 2006).

Smith points out that the media today is "…intruding into personal details more, they are publishing more salient details that are hardly newsworthy" (para. 21). According to Taylor (2006), in cases involving privacy, plaintiffs bare the burden of proof in proving the privacy of the information that has been made public and plaintiffs will have to defeat the notion news worthiness that has become the premise of many court rulings that favor the press. But it is not to be construed that the media is given unfair advantage.

The media is subject to preemptive laws to prevent the impudence of individual rights (Kaplar, 1999; Kirtley, 2002). It is when violation against individual privacy rights despite laws and regulation that penalties for torts

associated with invasion of privacy should be applied. Rather new anti-paparazzi legislation should focus not so much on the technicalities that can already be derived from pre-existing and instead should create foundations of privacy itself to anticipate developing trends that may impugn on this right (Kirtley, 2002).

References

http://commfaculty. fullerton. edu/woverbeck/2006. htm

http://www. washtimes. com/commentary/20060414-085720-8847r. htm

http://www. mediainstitute. org/ONLINE/FAM99/intro. html

http://www. independent. org/newsroom/article. asp? id= 1354

http://pittsburgh. indymedia. org/news/2005/12/21823. php