

Research Paper

Ethics of Neutral Reportage in Dominion Versus Fox

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Executive Summary

This research paper explores the ethics of Freedom of the Press through the lens of the Dominion Voting Systems v/s Fox News defamation case. I conducted research of news stories from diverse sources to form informed arguments that support and counter the statement that neutral reportage is an ethical defense in the Dominion v/s Fox News defamation case. Following the supporting and counter arguments, the paper concludes with my own answer to the question: is neutral reportage an ethical defense in the Dominion Voting Systems v/s Fox News defamation case?

Dominion filed a \$1.6 billion lawsuit against Fox News in March of 2021, stating that the network repeatedly aired false statements about the 2020 Presidential Election results being manipulated with the use of the company's voting machines, causing great damage to the brand. Fox News says that they will fight for Freedom of Speech. While it is true that Fox aired false statements about the company, Dominion would have to prove that Fox News acted with actual malice to win the case. As part of the First Amendment, neutral reportage protects media by granting "immunization from liability for defamatory statements found in an accurate and disinterested reporting of charges against a public figure made by a responsible and prominent organization" (*Neutral Reportage Privilege*, n.d.).

Fox's attempt to get the case thrown out in favor of freedom of the press failed. The ruling of the preliminary hearing said "the evidence developed in this civil proceeding demonstrates that is CRYSTAL clear than none of the Statements relating to Dominion about the 2020 election are true. Therefore, the Court will grant summary judgment in favor of Dominion on the element

of falsity” (Mastrangelo & Schonfeld, 2023). In the following days and weeks, the two companies seemed motivated to fight in front of a jury as the high-profile case amassed tons of media attention. However, the two companies avoided going to trial by coming to a settlement agreement at the last moment. Fox will pay Dominion a record breaking \$787.5 million dollars.

Ethical considerations of neutral reportage privilege are different from the legal aspects of the case. This paper was written while the case was being litigated. Because ethics and the law refer to separate concepts, outcomes of the case do not limit the ability to comprehensively contemplate the ethics of neutral reportage using this example. The case was examined as an example to understand the ethical limits of neutral reportage.

Supporting argument

Neutral reportage is an ethical defense in the Dominion Voting Systems v/s Fox News defamation case. This is ethical because any challenge to freedoms of the press should not be taken lightly. Neutral reportage protects the media when a newsworthy story turns out to be false. While this is a double edge sword because people might lie, it also protects against government control of the media. Neutral reportage is the mechanism that makes it possible for the press to tell stories that go against norms and expose wrongdoing. Media organizations have a duty to defend First Amendment rights because they are responsible for being watchdogs. It is true that people lie sometimes and lies can be harmful. While today it is common knowledge that Rudy Giuliani and Sydney Powell lied about Dominion voting machine fraud, at the time it was a relevant story. They were talking about something that would have been an utter threat to democracy. The President of the United States was also saying these things. These are

prominent people telling catastrophic stories. Fox can ethically claim neutral reportage because it was relevant for people to know what was being said.

Fox News said, “there will be a lot of noise and confusion generated by Dominion and their opportunistic private equity owners, but the core of this case remains about Freedom of the Press and Freedom of Speech, which are fundamental rights afforded by the Constitution and protected by *New York Times v. Sullivan*.” In *New York Times versus Sullivan*, “the Court said the right to publish all statements is protected under the First Amendment. It also said in order to prove libel, a public official must show that what was said against them was made with actual malice – that is, with knowledge that it was false or with reckless disregard for the truth” (*New York Times V. Sullivan Podcast*, n.d.-b). It is ethical for Fox News to fight to protect those fundamental rights that allow the media to be a source of checks and balances for the government and other powerful entities.

Freedoms of the press in the First Amendment are important to American democracy. The media has a responsibility to keep a watchful eye on the government and other powerful organizations. To prevent abuses of power, the media needs to have the freedom to let the public know what is happening and what prominent people are saying. In 1977, neutral reportage privilege was defined in the *New York Times versus Audobon Society* ruling. “When a responsible, prominent organization like the National Audubon Society makes serious charges against a public figure, the First Amendment protects the accurate and disinterested reporting of those charges, regardless of the reporter's private views regarding their validity” (*Neutral Reportage Privilege*, n.d.-b).

Dominion sued Fox for broadcasting false statements that caused the company harm. The network criticized Dominion saying, "their efforts to publicly smear Fox for covering and commenting on allegations by a sitting President of the United States should be recognized for what it is: a blatant violation of the First Amendment," (Rubin, 2023). Fox hosted guest speakers whose messages, had they been true, would have been a colossal crisis. If the story was true, America's democratic foundation would be shattered. Rudy Giuliani and Sidney Powell have now lost credibility, but at the time when the statements were made, they were members of Trump's legal team. They were prominent people saying things that mattered. It is reasonable to consider that Fox News reporters found value in what they had to say. Had it been true, the public would need to know, and it would be imperative to publish the story. As messy as it is, the truth did come out. Through this entire scandal, it is certain that voter fraud did not take place in the 2020 presidential election. Debunking that entire conspiracy theory makes a positive impact on the world. "Fox was not responsible for the claims made by Trump's allies about voter fraud and the fact the president of the United States was making those claims was newsworthy," (Mastrangelo & Schonfeld, 2023). It is ethical for Fox News to fight for Freedom of the Press with neutral reportage as a defense. We need the media to be able to tell stories that are difficult and revealing.

Dominion sued Fox for \$1.6 billion, yet the company's revenue in 2022 was \$17.5M (*Dominion Voting Systems Revenue: Annual, Quarterly, and Historic - Zippia*, 2023). The difference between the two amounts is shocking, making it difficult to understand what makes up the \$1.6 billion damage claim. "Fox's legal filings have pushed back against Dominion's damage claims, arguing 'that figure has no connection to Dominion's financial value as a

company.” “Fox News calls Dominion's claims nothing more than a money grab” (Birkeland, 2023). This case could risk America’s Freedom of the Press as we know it, an outcome that should not be taken lightly. Freedom of the Press is a fundamental right. The way media operates regarding Freedom of the Press should not change due to greedy aspirations. That is another reason it is ethical for Fox to claim neutral reportage as a defense. Fox should defend Freedom of the Press because if defamation cases become grossly profitable for plaintiffs, the risk for media to report against the status quo will be too great. The ability to report on stories that go against mainstream perspectives is necessary because transparency to the public through the media is important for keeping the powerful in check.

Counter argument

Neutral reportage is not an ethical defense in the Dominion Voting Systems v/s Fox News defamation case, because they were not acting in the best interests of the public. Fox was trying to retain its viewers by telling them what they wanted to hear. The Dominion story does not qualify as newsworthy because it was a lie. Internally, Fox employees viewed the sources of information as unbelievable. Court documents show evidence of malice through multiple conversations between Fox employees that indicate the network was fully aware that claims of voting machine fraud were not true. Fox News chose to broadcast the Dominion story over and over for two months to help their bottom line. There is nothing ethical about knowingly broadcasting lies. Neutral reportage is not an ethical defense when actual malice is at play.

The lie started as soon as the presidential election was called for Biden. Before the Dominion story was fabricated, there was a history of the election results being questioned and

all accusations were found to have no merit. Fox News understands its audience and knows that they would tune in for stories about Trump losing the election unfairly. In a 16-minute statement made two days after the election on Thursday, November 5, 2020, former President Donald Trump dredged doubt into the results. He detailed concerns for illegal votes from absentee ballots and the ways specific cities were counting ballots. “I challenge Joe and every Democrat to clarify that they only want legal votes.” “The Trump campaign challenged the vote counts in some states and sought recounts in others” (*Stanford-MIT Healthy Elections Project*, n.d.-b). Several battleground states experienced election contests or vote recounts: Arizona, Georgia, Michigan, Pennsylvania, and Wisconsin, and no widespread fraud was found. Although those results matched the original vote counts, Trump supporters still believed that the election was stolen.

The rumors about software errors with Dominion Voting Systems followed. “A few days after the presidential race was called for Joe Biden, a right-wing podcaster, Joe Oltmann, alleged that (Eric) Coomer (a former Dominion Voting Systems employee) had tampered with the company’s machines to steal the election from Trump” (Holley & Holley, 2021). Investigations of the Dominion voting machines found “there was no indication of widespread fraud that could change the result” (Cassidy, 2021). Doubts about the election were still prevalent among Trump supporters. Even in the July following the election, Colvin (2021) reported that 66% (of Republicans) continued to say the Democrat was illegitimately elected.” Although widespread fraud was not found, a lot of people still believed that it happened. This context demonstrates the climate brewing before the election and the impact that it had after the election. Fox News capitalized on the incorrect beliefs of its audience to feed viewers what they wanted to hear.

That alone is an unethical application of neutral reportage. Additionally, neutral reportage is intended to curtail government overreach. Fox cannot ethically claim neutral reportage when the network was feeding lies to its audience that were beneficial to the former president. That is an example of government overreach.

Fox News was in a desperate situation as the network experienced its lowest ratings in 20 years, falling to third place in January 2021 (Sommerlad, 2021). On the night of the election, "the network was the first and only news organization to declare a winner in Arizona and make it the first red-to-blue flip on the electoral map" (*Fox News Defends Calling Arizona for Biden After Pushback From Trump Team*, 2020). The stakes were high for Fox News. Fox News's audience base includes Trump supporters who resented the network's early Arizona call for Biden. Trump supporters left Fox News for other media organizations that spoke to their perspectives, like Newsmax which as a result experienced a surge in ratings. To win back viewers, Fox broadcasted the Dominion story, giving the audience what they wanted, regardless of the quality of the sources or legitimacy of the story. Fox News disregarded the truth and exploited their audience by broadcasting what they wanted to hear for its own personal gain.

Fox viewers already believed there was fraud in the U.S. presidential election. Fox News perpetuated those falsities in order to improve its ratings. That is not neutral reportage. Fox News perpetuated lies that threaten the democracy of our nation. They actively and recklessly disregarded the truth and caused damage to Dominion's brand. News organizations need to be held accountable for undue harm caused by reporting lies. Neutral reportage is not an ethical defense for Fox News because actual malice occurred. The news should focus on the truth, not audience-targeted messaging. "The truth matters. Lies have consequences," the lawsuit said. "If

this case does not rise to the level of defamation by a broadcaster, then nothing does,” (Edwards & Subdhan, 2023). A win for Dominion proves that the First Amendment works as it is intended.

Conclusion

This case is extremely complicated. It is right to hold Fox News accountable for defamation of Dominion. Fox acted with malice, recklessly disregarding the truth and the network should be punished. Fox News abused its neutral reportage privileges; however, neutral reportage is indeed an ethical defense for Fox News. As a media organization, Fox News has an ethical obligation to stand up for Freedom of the Press. Although their handling of this story was completely unethical, it is ethical for Fox to defend its position because it resulted in vital information being released to the public. Ultimately, this case brought forth discussion and reporting that served the greater good. It would be less ethical for Fox News to settle right away and sweep the story under the rug, concealing it from the public eye.

Fox News and Dominion came to a settlement on April 18, 2023, right before the trial was supposed to begin. “The settlement of \$787.5 million is the largest amount of money paid to conclude an American media libel case, said Richard Tofel, principal of Gallatin Advisory,” (Coster, 2023b). The settlement and the process leading up to the trial brought a lot of value and learning opportunities. It teaches how to approach media with a healthy mindset. In a CNN Pulse of the People segment, Alisyn Camerota spoke with a panel of Fox News viewers about the settlement. The viewers reflected on having blind spots in their news consumption and said that they will seek out more diverse sources in the future (CNN, 2023b). Fox could have settled the case right away without creating all the buzz around the trial. That might have been a better

business decision for Fox, but if that happened the dialog around this case would have been lost. Dominion Voting Systems v/s Fox News brings light to how people should approach the news. That outcome makes neutral reportage and ethical defense for Fox News.

This defamation case is about Dominion standing up for the truth and Fox News standing up for the freedoms of the press. A fundamental right and the truth were at odds here; that is not a battle of good versus evil. While my instinct is to avenge the truth, I do not want to forsake the freedoms of the press. However, the boundaries of the First Amendment need to be defined better. The media needs to uphold high standards of truthfulness, otherwise Freedom of the Press does not work. This case demonstrates a greater problem that America needs to address. Where is the line when it comes to the First Amendment? Fox crossed that line and by claiming neutral reportage, it created the opportunity for the world to see the boundary. Attention was brought to the fact that Fox News was not truthful about the Dominion claims; people needed to know that. By Fox claiming neutral reportage, the resulting dialog allowed the truth to prevail. Because of this case, we got to see what happened behind the scenes at Fox News and that teaches a valuable lesson. “Internal text messages and emails from top hosts at Fox showed them throwing cold water on Trump’s false claims of electoral fraud but worrying how fact checking those claims might hurt their standing with their audience” (Mastrangelo & Schonfeld, 2023).

This case teaches that people should not be blinded by fandom of their preferred news sources and instead should take an objective approach to all news media, seeking multiple perspectives. Hopefully, the media at large will raise the bar for truthfulness, if not in the name of ethics, at least to mitigate risk, considering the \$787.5 million settlement. Because, either way,

reporting the truth serves the greater good. With these positive outcomes, it was right for Fox News to advocate for the freedoms of the press, making it ethical for the network to claim neutral reportage as a defense.

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