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December 9, 2019

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Re: **Atlanta Journal-Constitution and Cox Enterprises, Inc. v. Warner Bros., et al. - "Richard Jewell"**
Our File No. 6739-2

Ladies/Gentlemen:

We are writing on behalf of the Atlanta Journal-Constitution and Cox Enterprises, Inc. (collectively "AJC," unless the context otherwise requires) and are writing regarding the film "Richard Jewell." It is highly ironic that a film purporting to tell a tragic story of how the reputation of an FBI suspect was grievously tarnished appears bent on a path to severely tarnish the reputation of the AJC, a newspaper with a respected 150-year-old publishing legacy.

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The "Richard Jewell" film falsely portrays the AJC and its personnel as extraordinarily reckless, using unprofessional and highly inappropriate reporting methods, and engaging in constitutional malice by recklessly disregarding information inconsistent with its planned reporting. This, too, is the height of irony, since all those involved in the film's creation and dissemination and its false portrayal of the AJC are the ones who have acted recklessly and are engaging in constitutional malice.

The film falsely portrays the AJC's reporters, and Kathy Scruggs in particular, as unethical, unprofessional and reckless. Ms. Scruggs was an experienced reporter whose methodology was professional and appropriate, in contrast to how she is portrayed in the film. She was a seasoned reporter who worked proactively within appropriate journalistic bounds. Despite the true facts, the film depicts her use of inappropriate and unprofessional reporting methods that included getting story tips from an FBI source in exchange for sexual favors. The AJC's reporter is reduced to a sex-trading object in the film, having been "written as an unethical journalist who sleeps with an FBI agent ... for information...."¹ Such a portrayal makes it appear that the AJC sexually exploited its staff and/or that it facilitated or condoned offering sexual gratification to sources in exchange for stories. That is entirely false and malicious, and it is extremely defamatory and damaging. This is particularly so in today's "Me Too" environment and "cancel culture," in which the public is quick to blindly blackball anyone and anything merely accused of participating in or condoning sexual exploitation in the workplace, even if such an accusation is fictional and false.

Significantly, there is no claim in Ms. Brenner's *Vanity Fair* piece on which the film is based that the AJC's reporter unethically traded sex for information. It is clear that the film's depiction of an AJC reporter trading sex for stories is a malicious fabrication contrived to sell movie tickets.

For a film that purports to be about the besmirching of someone's reputation to proceed to smear Ms. Scruggs and the paper she reported for in this manner is highly offensive. It is also highly defamatory. This false portrayal of AJC's supposed reporting methods is extraordinarily damaging to the AJC and its reputation.

As you should know, it has been incontrovertibly adjudicated that the AJC's articles

¹ *Los Angeles Times*, "Monument to a hero | 'Richard Jewell,' Clint Eastwood's drama about the '96 Atlanta Olympics bombing case, scrutinizes media," November 22, 2019
<https://www.pressreader.com/usa/los-angeles-times/20191122/282527250278393>
<https://pages.pagesuite.com/d/2/d22a76d4-cb6d-4112-98ed-331ca867367e/orig.pdf>

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reporting on Richard Jewell being an FBI suspect in the Centennial Olympic Park bombing **"in their entirety were substantially true at the time they were published,"**² such that the assertions in the film that state or infer otherwise about the AJC's reporting are false, highly defamatory, and with constitutional malice.

You should be well aware of the true facts since Marie Brenner's *Vanity Fair* article on which the film is allegedly based stated that "the F.B.I. had singled [Richard Jewell] out as the Olympic Park bombing suspect," and her article repeatedly noted that the FBI had considered him a suspect.³ Moreover, Ms. Brenner was certainly aware of the true facts since my client's legal counsel had sought retraction of inaccurate defamatory assertions contained in her *Vanity Fair* article after it was published.

Media reports about the film confirm that its portrayal of this AJC reporter outrageously depicts her as someone who "only bothers to check the facts of her reporting weeks after the story runs."⁴ The AJC is therefore falsely portrayed in the film as recklessly publishing stories without having done fact-checking. Significantly, however, Marie Brenner's *Vanity Fair* article on which the film is based specifically noted key instances where AJC's reporter Ms. Scruggs properly obtained material information supporting the AJC's reporting *before* publication, demonstrating that the film's fictional defamatory portrayal was done with knowledge of its falsity. For example, Ms. Brenner's article expressly stated that before the AJC broke the Richard Jewell story, "Kathy Scruggs, a police reporter, who had allegedly gotten a tip from a close friend in the F.B.I., got confirmation from someone in the Atlanta police."⁵ Ms. Brenner's story also noted that prior to publication the AJC had confirmed with first-person observation that there was a law enforcement stake out of Mr. Jewell's apartment. Despite this, the film portrays the AJC as publishing recklessly. Doing so is pure hypocrisy given the recklessness permeating the film's portrayal of the AJC and its reporting.

That the film portrays the AJC and its staff in a false and defamatory manner is also

² *Bryant v. Cox Enterprises, Inc.*, 311 Ga. App. 230, 239, 715 S.E.2d 458, 467 (2011).

³ *Vanity Fair*, "American Nightmare: The Ballad of Richard Jewell"
<https://www.vanityfair.com/magazine/1997/02/brenner199702>

⁴ *Los Angeles Times*, "Monument to a hero | 'Richard Jewell,' Clint Eastwood's drama about the '96 Atlanta Olympics bombing case, scrutinizes media," November 22, 2019
<https://www.pressreader.com/usa/los-angeles-times/20191122/282527250278393>
<https://pages.pagesuite.com/d/2/d22a76d4-cb6d-4112-98ed-331ca867367e/orig.pdf>

⁵ *Vanity Fair*, "American Nightmare: The Ballad of Richard Jewell"
<https://www.vanityfair.com/magazine/1997/02/brenner199702>

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highly ironic because it was the AJC's reporting that played a pivotal role in developing information that led to the *exoneration* of Mr. Jewell. Investigation by the AJC's reporters determined that it would have been logistically impossible for Mr. Jewell to have made the 911 call that the bomber made from a pay phone that was blocks away from Mr. Jewell's location in Centennial Olympic Park. The publication of the AJC's front page story containing that analysis led to a shift of direction in the FBI's investigation. More than two months later, Mr. Jewell was cleared by the federal government. Not only does the film omit the highly significant fact that the AJC's reporting discovered the logistical impossibility of Mr. Jewell calling from the pay phone, the film actually substitutes that true fact with a false and fictional narrative in which Mr. Jewell's lawyer (not the AJC's reporters) is depicted unearthing the logistical problems. This was a key finding made by the AJC. The film's intentional falsification of the facts in this regard, so they fit its predetermined storyline to portray the AJC as unethical, untrustworthy, and reckless, exemplifies the film's malicious defamatory intent.⁶

Despite these facts, the film falsely portrays the AJC as blindly accepting information from law enforcement sources without subjecting it to any sort of journalistic scrutiny. Such a portrayal turns the facts on their head. The example of the AJC's reporters conducting their own onsite analysis showing the impossibility of the law enforcement theory that Mr. Jewell placed the 911 call from a distant pay phone demonstrates that the AJC's reporting methods were indeed thoughtful and appropriate.

The film falsely portrays the AJC as having questionable sourcing for its initial report that the FBI considered Richard Jewell a suspect in the bombing. This assertion is demonstrably false and highly defamatory. The AJC's initial breaking story that reported on July 30, 1996 that the "FBI suspects 'hero' guard may have planted bomb" and identified Mr. Jewell as "the focus of the federal investigation"⁷ was incontrovertibly determined by the court to have been "substantially true at the time" of publication.⁸ Far from acting recklessly, the AJC actually *held* that story for a day to develop additional independent corroboration of key facts prior to publication. Law enforcement sources confirmed to the AJC their focus on Mr. Jewell, and FBI activity had been visible at the Jewell's apartment. The accuracy of the story had also been confirmed with an FBI spokesperson to whom the entire story was read before publication. In sum, the AJC acted responsibly and in accordance with appropriate journalistic standards. As such, the assertion in the film that the AJC recklessly relied on questionable sourcing is itself

⁶ *Gertz v. Robert Welch, Inc.*, 680 F.2d 527, 539 (7th Cir. 1982), cert denied, 103 S. Ct. 1233 (1983) (held constitutional malice can be shown through calculated use of journalistic device of pre-conceived storylines, themes, or angles).

⁷ *Bryant v. Cox*, *supra*, 311 Ga. App. at 232, 715 S.E.2d at 462.

⁸ *Bryant v. Cox*, *supra*, 311 Ga. App. at 239, 715 S.E.2d at 467.

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reckless.

The film’s direct and implied defamatory accusations give rise to liability.⁹ The film’s portrayal of AJC and its reporting staff omits relevant facts such that they are portrayed in a false and defamatory manner, such defamation by omission would likewise support liability.¹⁰ Claims for trade libel may also arise from a damaging false portrayal of the Atlanta Journal-Constitution in the film.¹¹

It is obvious that nobody associated with the film was actually interested in obtaining the accurate facts from my clients since you completely disregarded the information that was provided when my client’s representatives met with the film makers and the former AJC editor who was Ms. Scruggs’ boss provided relevant feedback about how the AJC broke the story and who Ms. Scruggs was as a person and as a reporter. It is evident that the meeting was a mere pretext and that any information that deviated from or was inconsistent with the film’s planned thesis was ignored. Such conduct evidences purposeful avoidance of the truth, supporting a finding of constitutional malice.¹²

The FBI’s initial focus on Mr. Jewell as a suspect had truly unfortunate consequences and

⁹ *White v. Fraternal Order of Police*, 909 F.2d 512, 518 (D.C. Cir. 1990) (“defamation by implication stems not from what is literally stated, but what is implied,” recognizing “possibility that a defamatory inference may be derived from a factually accurate news report”); *Kapellas v. Kofman*, 1 Cal.3d 20, 33, 81 Cal.Rptr. 360 (1969) (libel defendant is accountable and liable “for what is insinuated as well as for what is stated explicitly”); *Solano v. Playgirl, Inc.*, 292 F.3d 1078, 1083 (9th Cir. 2002), quoting *Selleck v. Globe Int’l*, 166 Cal.App.3d 1123, 212 Cal.Rptr. 838, 843 (1985) (“our inquiry is not to determine whether the publication may have an innocent meaning but rather to determine if it reasonably conveys a defamatory meaning. In making that determination we look to what is explicitly stated as well as what insinuation and implication can reasonably be drawn from the publication”).

¹⁰ See, *Ringler Associates Inc. v. Maryland Cas. Co.*, 80 Cal.App.4th 1165, 1180 (2002); *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 19, 110 S.Ct. 2695, 2706 (1990) (incomplete facts may imply false assertion of fact); *Toney v. WCCO Television, Midwest Cable and Satellite*, 85 F.3d 383, 392 (8th Cir. 1996) (recognizing cause of action for implied defamation where defendant omits important facts); *Express Publishing Co. v. Gonzalez*, 350 S.W.2d 589, 592 (Tex. 1961) (“it is not a defense to show that a statement contained in a publication, if taken alone, is literally true, when other facts are omitted which plainly refute the false impression of the partial statement. A statement is not true or even substantially true if, by implication, an entirely untrue impression is made by omission of part of the facts.”); *Mohr v. Grant*, 153 Wash.2d 812, 827 (2005) (defamation claim where “the communication left a false impression that would be contradicted by the inclusion of omitted facts”).

¹¹ See, e.g., *Mann v. Quality Old Time Service Inc.*, 139 Cal.App.4th 328, 340, 42 Cal.Rptr.3d 607 (2006) (“trade libel involves false disparagement of the quality of goods or services”).

¹² *Harte-Hanks, Inc. v. Connaughton*, 491 U.S. 657, 692 (1989) (“purposeful avoidance of the truth” supports a finding of constitutional malice).

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resulted in a negative perception of Mr. Jewell by the public before the FBI exonerated him. It would therefore be the height of hypocrisy for the film to create a defamatory false public perception of the AJC and its reporting staff and methods based on misinformation and defamatory falsehoods.

The AJC’s writers were and are professionals who follow accepted journalistic standards. They have been the recipients of multiple Pulitzer Prizes during the paper’s 150-plus year history. It would be a travesty if this film’s plot was contrived to profit by manipulating the facts to defamatory affect, causing devastating harm to the reputations of the AJC and its hard-working journalists.

Clint Eastwood has been quoted saying about the film that, to get it made “*I sold a lot of souls to the devil.*” He said “*I wanted this picture in the worst way.*”¹³ And he proceeded to make “this picture *in the worst way*” – a way that amounts to a malicious defamatory smear of the AJC and its journalists.

The beginning of the film trailer proclaims that it is “**BASED ON THE TRUE STORY,**” and the trailer ends by telling consumers: “**RICHARD JEWELL**” “**THE WORLD WILL KNOW HIS NAME AND THE TRUTH.**”¹⁴ While the film may tell truths about Mr. Jewell, the “facts” it portrays about the AJC and its journalists are untruthful, defamatory, and damaging.

Since the film will be released internationally, my clients do not need to satisfy constitutional malice criteria for a successful defamation lawsuit in various jurisdictions including, but not limited to, the U.K., France, and Australia. My clients will simply need to establish that statements in the film are false and that it is defamatory by harming my client’s reputation, one of the finest newspapers in the world. **Accordingly, we hereby demand that you immediately issue a statement publicly acknowledging that some events were imagined for dramatic purposes and artistic license and dramatization were used in the film’s portrayal of events and characters We further demand that you add a prominent disclaimer to the film to that effect.**

As a result of the untruthful, defamatory statements about the AJC and its reporters in the

¹³ *Los Angeles Times*, “Monument to a hero | ‘Richard Jewell,’ Clint Eastwood’s drama about the ‘96 Atlanta Olympics bombing case, scrutinizes media,” November 22, 2019
<https://www.pressreader.com/usa/los-angeles-times/20191122/282527250278393>
<https://pages.pagesuite.com/d/2/d22a76d4-cb6d-4112-98ed-331ca867367e/orig.pdf>

¹⁴ https://www.imdb.com/title/tt3513548/videooplayer/vi1837612825?ref_=tt_ov_vi

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film, all those involved in the film and in the dissemination of its defamatory falsehoods are exposed to significant liability in the United States, as well as in other jurisdictions throughout the world where the film is disseminated.

You therefore proceed to disregard this letter's demands at your peril.

This does not constitute a complete or exhaustive statement of all of my clients' rights or claims. Nothing contained herein is intended as, nor should it be deemed to constitute, a waiver or relinquishment of any of our clients' rights or remedies, whether legal or equitable, all of which are hereby expressly reserved.

Sincerely,



MARTIN D. SINGER

MDS:lg

cc: Juliette Pryor, Esq.
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