

Case Study Analysis: Public Release of Private Information

Sophia DePhillips

Department of Communication Studies, University of North Carolina Wilmington

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Professor David Pernell

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Facts

Political Public Relations expert, Michael Sandifer, is using his journalism degree, experience as a political journalist for the *Washington Times*, and employment with a public relations firm, to kick-start his own media consulting business for political hopefuls. The business, Sandifer Communications, Inc., skyrocketed to popularity after his first campaign in a Virginia Republican primary. He represented a little-known candidate, and although a win was not achieved, the candidate went from fourth place in a four-person race to a close second place. Between this impressive feat and Sandifer's refusal to play dirty, focusing on issues important to voters as opposed to tearing down the opposing candidate, he has grown a reputation.

In well-known national publications such as *Newsweek* and *Time*, he has been described as having a specific methodology: identifying a handful of issues and focusing the campaign on those alone. All speeches and appearances will hone in on the specified issues while varying forms of media campaigning will push forth messaging that gets voters to connect with the candidate. His unconventional approach in politics doesn't come without criticism, as some believe he isn't hardcore enough to succeed in the political landscape. Supporters argue that what makes him unconventional will bring him to succeed when combined with his determination and desire to win.

Recently, Sandifer was hired by Marcus Fletcher's campaign manager. Fletcher is running in California's gubernatorial Republican primary and is floundering in third place as millionaire real estate tycoon William Soros takes first. Soros already has a relationship with the Republican Party and is the epitome of California's American dream, described as going from rags to riches. He's running a campaign founded on "family values" and takes a strong pro-life, anti-affirmative

action stance. In contrast, Fletcher holds a more pro-choice viewpoint and is open to affirmative action as long as there are no race quotas.

A mere six weeks before the election, rumors of Soros having a nervous breakdown and seeing psychiatric therapy while on the City Council begin to run rampant. Soros claims that the rumors are unfounded and that the therapy had simply been marriage counseling. “While serving on the L.A. City Council my wife and I did seek counseling for some marriage difficulties we were having. But it had nothing to do with any form of mental incapacity,” said Soros. “Most married couples have some rocky moments, but we’ve worked our way through ours. We have a happy marriage!” But Soros wasn’t giving the whole story, which became clear to Fletcher when a Soros campaign staffer Hedi Larkin, who was gearing up to quit, showed up with a packet of documents such as personal letters and psychiatric records. These documents showed that the counseling Soros received was because his wife gave him an ultimatum. After experiencing physical abuse, she told him he needed counseling or she would pursue legal action. They spent two years living separately before reconciling.

While he has been given the materials needed to give his candidate a boost in the polls, Sandifer struggles on whether or not to go public with the information. His staff is split, and ultimately the choice falls on him. If he makes the information public, his candidate could win, but he’d be going against his methodology of not tearing down the opponents. However, if he keeps the information quiet, his candidate may lose, and the winner could be somebody who has a history of domestic violence. He must now consider all legal and ethical components to the debate before deciding his next course of action.

Legal Issues

The legal issues necessary to consider when coming to a decision about whether or not to publicize the information on Soros can be separated into three groups: defamation, emotional distress, and privacy. First, Sandifer should consider whether making the information public is an act of defamation. Out of the five requirements to prove libel, it is non-negotiable that the information would have to be published and Soros would be identified. The questions arise when it comes to defamation, falsity, and fault. Is it libel per se to call Soros an abuser if he did physically harm his wife? Is the information false? Can it be verified by Sandifer's team? Did negligence occur in accessing the information, and as a public official, should Soros just assume public scrutiny? To answer these questions, Sandifer and his team must analyze *New York Times vs Sullivan*, and *Gertz vs Welch*.

Next, Sandifer and his team must analyze the legality in terms of emotional distress. For the grounds of intentional infliction of emotional distress, the information does have to be false. Sandifer only confirmed the information with one other individual, an old political ally of Soros'. With information as loaded as this, one confirmation of fact may not be enough to confirm the information is completely truthful. In this scenario there is a lot of information to verify such as were Soros and his wife living separate for two years, was it because of physical abuse, did physical abuse occur, is that why he was in therapy, did his wife give an ultimatum, and are the letters truly written by Soros? Cases to use to help understand this aspect of the decision-making are *Hustler Magazine vs Falwell* and *Snyder vs Phelps*.

Lastly, Sandifer needs to consider Soros' privacy and if this would be considered an invasion. Although there is no constitutional right to privacy, there are several court cases that set a basis for some form of privacy on different levels. Intrusion would be a major tort in Sandifer's

decision-making process. Would it be right to assume Soros had “a reasonable expectation of privacy” when it came to his letters and psychiatric documents? Did Soros’ campaign worker gather the information legally? Within that same realm, it is important to question if this would count as publication of private fact. Cases that may help Sandifer come to a decision regarding privacy are *Bartnicki vs Voppe*, *Florida Star vs BJJF*, and *Mitchel vs Globe International*.

Notably, California, where Soros is from, has fairly strong Rights to Privacy so Sandifer would want to look into California laws as well, such as the California Privacy Rights Act (CPRA) while also taking into account that California was the first state to give a constitution right to privacy via state constitution (California Privacy Protection Agency, n.d.).

Legal Analysis

To begin, Fletcher’s media team will first want to consider the possibility of a libel lawsuit from Soros’s camp. The 1964 Supreme Court case *New York Times vs Sullivan* is a good place for them to start. This case began when the *New York Times* published an editorial claiming that officials in Southern states were suppressing civil rights demonstrations using violent and illegal means. A police commissioner from Alabama, L.B. Sullivan felt he had been defamed because, although he was not named in the piece, he believed it was “of and concerning” him. Sullivan initially won the case in both a trial court and the state Supreme Court, but the U.S. Supreme Court overruled the decision. The rationale was that because Sullivan was a public official, he should inherently assume that he would receive more criticism and face a more difficult standard than private individuals. For Sullivan to win, he would have also needed proof of actual malice, which is a disregard for the truth or willingly putting forth false information (Ross et al., 2019, #149-150).

The *New York Times vs Sullivan* case could be used to justify Sandifer making the information about Soros public because he could cite that as a public official Soros should assume he will face more scrutiny. If Soros tried to claim there was actual malice Sandifer could rebuttal by saying he made an effort to fact check the information and that this was for the public good; keeping a man with a history of violence out of public office. However, Sandifer should verify all information he has received multiple times to ensure in no way would he be publishing false information or showing a disregard for the truth because then Soros would have grounds to sue.

Ten years after *New York Times vs Sullivan* came another case that pertained to public figures and libel law; *Gertz vs Welch*. *Gertz* closely follows the same rationale as Elmer Gertz lost his libel suit because the court ruled that by seeking government office you must understand that there are “certain necessary consequences of that involvement in public affairs. He runs the risk of closer public scrutiny than might otherwise be the case (Ross et al., 2019, #157).” This reinforces that as a public figure in a government position Soros must accept that there will be higher levels of criticism and therefore he can’t sue for defamation every time somebody says something unsavory about him. Sandifer could go as far as to argue that Soros knew he had a history of domestic violence and that by entering a close political race he inherently accepted the risk of that information coming to light.

The next aspect to look at in terms of legality is if Soros would have the grounds to sue for intentional infliction of emotional distress (IIED) or if Sandifer, Fletcher, and the rest of the team would be protected. *Hustler Magazine vs Falwell* (1988) set a pretty strong precedent for cases involving IIED. *Hustler Magazine* published a parody of a Campari ad, which discussed individuals first time having the drink, using Rev. Jerry Falwell. The ad insinuated Falwell was

discussing his first sexual experience with his mother in an outhouse which was against the morals the Reverend preached. Rev. Falwell sued and lost in the Supreme Court because he needed to be able to prove actual malice as a public figure. Using the precedents set by *Gertz* and *Sullivan* the rationale was that because actual malice had to be proven in libel cases for public figures then IIED cases would be no different (Ross et al., 2019, #164-165).

Based on this case, Sandifer would have grounds to say Soros could not prove actual malice, but this is only if the information was obtained legally and is factual. By having already fact checked the information with an ex-political ally of Soros it would be challenging for a judge to say Sandifer showed a disregard for truth or purposely published false information. *Snyder vs Phelps* (2012) could also be used to protect Sandifer from IIED suits because it found that if something is a matter of public concern, it is protected from those lawsuits (Ross et al., 2019, #165). Sandifer could claim that a candidate who has a history of violent domestic abuse is a public concern. Shouldn't people know who they're voting for? What if there are victims of abuse supporting Soros because they are unaware of his history? All of this could be used to prove public concern.

The final legal section to look at is privacy, which is arguably the biggest player when it comes to making a decision on whether or not to publicize Soros' information. The first case to look at is *Bartnick vs Vopper* where it was decided that as long as media was not involved in the obtaining of illegal video they can use it especially if the information is of public concern. This case could both help and hurt Sandifer. On one hand he could claim that because Larkin obtained the information and he had no role in it that regardless of whether or not it was legally obtained he has the right to use it especially because a violent candidate is public concern. On the other hand it could be used against him because the case pertains to media outlets and videos, not a

campaign using personal letters. The line between journalistic protections and campaign protections is a fine one to walk, it may be unwise to put all his faith in cases pertaining to cases involving the press as a political media consultant. And as previously mentioned, one could argue that Soros's counseling and marriage history is of nobody's concern (Ross et al., 2019, #271). *Florida Star vs B.J.F.* (1989) may help distinguish this further, as it found that violent crime would be a publicly significant topic and physical domestic abuse would fall under violent crime. The one downside is that the private information about a rape victim in this case was obtained from publicly accessible records, which psychiatric files and personal letters are usually not (Ross et al., 2019, #242).

Because there is no constitutional right to privacy, it is also crucial to look at the state rules where the campaign is occurring. Notably, California highly values privacy and was the first state to establish a right to privacy in its constitution (ACLU Northern California, n.d.). This means they may hold a higher standard of privacy and who is protected under it, especially in terms of medical information such as psychiatric records which would be protected under HIPAA (The Health Insurance Portability and Accountability Act). This act protects medical records and medical information, like Soros' psychiatric history (U.S. Department of Health and Human Services, 2024). The nature of the documents is what creates some questioning on the legality of releasing them because chances are personal letters were not publicly available, nor are medical records. Intrusion would be easily used against Sandifer because both personal letters and medical history are scenarios where Soros would have had a reasonable expectation of privacy.

Legal Decision

In terms of facing legal backlash over defamation or intentional infliction of emotional distress Sandifer would be fairly safe due to the rulings in *Sullivan* and *Gertz*. Both of these cases determined that those who are public figures should expect more scrutiny and criticism. Thus, making it more difficult for someone, like a government official, to prove that actual malice, defamation, or intentional infliction of emotional distress has occurred. However, when deciding the legality of releasing the information they have on Soros, defamation and IIED are not the only two things to consider. Privacy plays a big role and is much more of a grey area legally.

How the information was obtained, what type of information/documentation it is, and if it can be proven that it is of public concern all matter when dissecting the privacy issue. In *Bartnicki* it was ruled that journalists can publish an illegally obtained video as long as they had no role in getting it and it was public concern. Because Sandifer isn't using these documents in a journalistic light and rather for political gain and because they are personal documents and not video a court may put less focus on using this case to back up Sandifer. On top of that, whether or not Soros' history of domestic violence is of public concern is debatable. It is not concrete this would be a valid protection in a lawsuit and in a scenario such as this one you would want to ensure you are completely protected.

Then there is the nature of the documents themselves. Publishing the private letters may have some more protection depending on how Larkin accessed them. If they were laying out on Soros' office desk while she was meeting with him or something along those lines it could be protected under *B.J.F. vs Florida Star* because it was publicly accessible private information. That being said if they were accessed otherwise that protection would disappear. The psychiatric

records are much more protected legally in terms of them remaining private. The chances of them being obtained legally are slim to none and making them public is a greatly risky move.

Overall, legally the foundation is just too shaky for Sandifer to know that he and the rest of Fletcher's campaign staff would be safe against the law when putting forth this information and documentation. The risk outweighs the possible (but not guaranteed) reward. If he truly wants to make this information public my recommendation would be to use the documentation Larkin gave as a tip. Now Sandifer knows Soros had a history of domestic abuse, he knows the timeline, and he knows the friend he was writing to about it. Use that to do some investigative work that would allow this information to be obtained legally. Talk to people who would have been around Soros at that time, look at public records for clues, note public appearances with him and his wife, but don't make public personal letters and psychiatric documentation. Releasing what Larkin provided would not be advisable legally.

Ethical Issues

When deciding to come forward with the information the Fletcher campaign has on Soros, looking at it from an ethical standpoint is just as important as looking at it from a legal one. Sandifer, as the acting moral agent, must analyze the possible outcomes and consequences of releasing or not releasing the documentation might have on Soros as an individual and the broader audience of the voting public. There is also the issue of Soros' wife who in the end is the true victim of his abuse. Soros needs to ask himself a plethora of questions before coming to a conclusion such as what are his true motives behind releasing the information? Does motive matter ethically if in the end the outcome of bringing the information to the public is the same? What would be the intended and unintended possible consequences? What is the broader impact on Soros, his wife, and voters? Is this information important to the public? And which is morally

more important to him, notifying voters about a violent politician or protecting the privacy of a victim who has yet to come forward about their story? Who is Sandifer's duty to: Fletcher, the victim of the abuse, voters, or himself? Reviewing the perspectives of ethical scholars like Aristotle, Immanuel Kant, John Stuart Mill, and John Rawls may help Sandifer to answer some of these questions and see if his ethical decision sides with his legal one.

Ethical Analysis

The first ethical framework Sandifer should consider is the five moral duties: duty to self, organization, colleagues/peers, society, and object. Starting with the duty to self, that would be Sandifer's responsibility to make an ethical decision he stands by and feels proud of. He has gained his reputation because of his refusal to play into the corruption of dirty politics. As a political media consultant, Sandifer always talks about political issues and not other candidates' dirty laundry. By coming forward with information about Soros that paints him in a bad light, it would be going against the precedent Sandifer has set for himself and therefore against his moral duty to self.

Then there is duty to organization, which in this instance would be Fletcher's campaign as a whole. As the moral agent Sandifer must act within the campaign's best interest at heart and show loyalty. In terms of this duty releasing the information would be ethically the most sound because it gives Fletcher a fighting chance at winning. The duty to colleagues/peers goes hand in hand with the duty to organization because in this case the peers would also be those a part of Fletcher's campaign. Different staffers have brought up varying points to Sandifer such as questioning Larkin's motives and how it reflects on them, this being what they need to win and the importance of exposing Soros' "half-truth" about why he was in counseling. After considering all of his colleagues' viewpoints it would appear that most of them are advocating for

the release of the information and it would boost their candidate in the polls, making them all look good. Because of this the duty to colleagues/peers would be best reflected by releasing the information and doing what it takes to have their candidate win the race.

Outside of the campaign itself there is the duty to society. This involves portraying social responsibility and acting based on public interest, their right to know, and the duty to inform. When voting for a government representative, the public does have a general right to know about the person they are backing with their vote. Something like a history of committing acts of domestic violence, especially after founding your campaign on “family values,” would be something of public interest. Therefore, Sandifer, who holds the information about Soros’ history of abuse, would have the duty to inform society/voters about it.

Lastly, there's the duty to the object, which in this situation, there are three: Soros, his wife, and voters. Soros would be negatively impacted by the decision to make his psychiatric history and personal letters public because they outline him committing acts of physical abuse against his spouse. He did commit a heinous act that is inexcusable, but at the same time, when given an ultimatum by his wife, he did pursue therapy, and there's no proof the abuse has continued after receiving psychiatric help. Without evidence the crime is still taking place, and knowing Soros sought help, it is questionable whether or not it is ethical to do him harm by releasing the information.

Then of course there's the duty to his wife who would also be impacted by the decision to publish Soros’ history of committing abuse and in turn her history of being a victim of domestic violence. She is clearly a strong woman as she got herself out of a dangerous situation and lived separately from her husband for two years. She also was courageous and gave him the ultimatum of either attending therapy or she would pursue legal action. In the end she moved back in with

him, continued the marriage, seemingly supported him on the campaign trail, and has never filed any form of legal statement about her abuse nor come forward publicly as a victim. At the end of the day this is her story to tell and by releasing the information, Sandifer would be taking away her ability to come forward in her own time about her story or keep it private. Autonomy is important to a victim and Sandifer would be taking that away. However, there's also the duty to the voters as an object. Imagine a woman who had experienced physical abuse supporting Soros not knowing he committed the same crime she is a victim of? They, and other voters, have the right to know.

After considering all five ethical duties Sandifer must then take a look at the different ethical thinkers and their philosophies. To begin there is Aristotle and his philosophy of virtue ethics which is the idea that character is more important than behavior and the practice of the golden mean. The golden mean is the notion that between two extremes the most virtuous outcome lies in the middle. Here one extreme would be releasing all of Soros's psychiatric records and private letters while publicly calling him a criminal and abuser. The other extreme would be saying nothing at all. The golden mean would be calling out Soros' hypocrisy for running a campaign on "family values" while mistreating his wife and needing therapy for it.

Next there is Immanuel Kant who practices the Deontological approach which follows the categorical imperative. This was the notion that somebody must do good, not because of the possible outcomes and consequences but simply because it is what is right and just. Here the right thing is complicated depending on which duty Sandifer feels is more important, the duty to society and voters or the duty to himself and Soros' wife. Regardless of which decision he makes, according to Kant it must be because it is what he believes is right not because he likes the outcome.

In a stark contrast to Kant, there is the teleological approach practiced by John Stuart Mill, which follows Utilitarianism, a consequence-based framework. Mill advocates that the moral decision would be whatever creates an outcome that produces the greatest good for the greatest number of people. Because the number of voters far outweighs any campaign staff against publishing the information, Sandifer, and Soros and his wife, the decision that would benefit the greatest number of people would be to come forward with the information.

Lastly, there is Egalitarianism as practiced by John Rawls. This philosophical approach supports the veil of ignorance; the idea that when making an ethical decision, you should first put yourself in the position of the weakest member of a party to understand how the decision may impact them. Soros's wife is one of the most vulnerable parties involved in this dilemma because she is not personally a public figure, and she is the survivor of the abuse. Coming forward about Soros' history would negatively impact her by stripping her of autonomy to decide if and when to share her story. That being said, one could argue that voters are also the most vulnerable group because they are more prone to believing Soros' deceit and don't have access to what they need to make a fully informed decision. Based on this, the most ethical choice would be to release the documentation.

Ethical Decision

Taking all moral duties and philosophies into account, the most ethical thing to do would be to publicize Soros's letters and psychiatric letters, thus proving he had a history of committing acts of domestic violence. While it may not be the best decision for some individuals, it does benefit the largest amount of people. More specifically, it upholds the duties to organization, colleagues/peers, society, and elements of object. This ethical decision is supported by John Stuart Mill because it produces the greatest good for the greatest number of

people. That being said it can also be supported by the Deontological approach assuming Sandifer believes releasing the information is what's right. Egalitarianism also supports this decision under the assumption that the most vulnerable group is the voters who would otherwise be left in the dark and have a right to know information about a candidate who may represent them or win their vote. The most ethically and legally sound decision would be to use the information Larkin has presented the campaign with as a tip and investigate further so there is a more legally sound foundation before pursuing the ethically right thing to do of informing the public of Soros' background of physical domestic abuse.

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