



HOME>POLITICS>POLITICS

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Judge Sides With BuzzFeed Over Publication of Steele Dossier

By Ted Johnson



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WASHINGTON — A federal judge ruled in favor of BuzzFeed

in a defamation lawsuit over its publication of the so-called “Steele dossier” in January, 2017, ruling that because the document was part of an official proceeding, the site was protected by fair reporting privilege.

U.S. District Judge Ursula Ungaro wrote that the “privilege exists to protect the media while they gather information needed for the public to exercise effective oversight of the government.”

The plaintiffs in the case, Aleksey Gubarev, a resident of Cyprus, and his company XBT Holdings, allege that they were defamed because the dossier reported that he and his company were involved in hacking attempts on the Democratic party leadership during the 2016 presidential election. The plaintiffs said that the information about them in the dossier was false, but BuzzFeed never contacted them to determine whether the allegations had merit.

BuzzFeed published the 35-page dossier on Jan. 10, 2017, with the disclaimer that the dossier is “not just unconfirmed: It includes some clear errors.”

The document was prepared by Christopher Steele, a former British intelligence agent tasked by a private research firm to investigate ties between Donald Trump and his business interests. The research firm, FusionGPS, had initially been retained by the conservative website the Washington Free Beacon and later by a law firm working for the Democratic National Committee.

Steele also had been a source for the FBI, although Ungaro noted that before receiving his reports, the agency had already opened a counterintelligence investigation into links between Russia and the Trump campaign.

BuzzFeed published the dossier after CNN reported on its existence, as well as a preparation of a two-page synopsis used to brief President Barack Obama and President-elect Trump. CNN also

reported that the FBI was investigating the credibility of the information in the dossier. BuzzFeed's report linked to the CNN article.

"Defendants argue that their decision to publish the Dossier is protected because the record shows that the President and President-elect were briefed on the Dossier, and that the FBI investigated the truth of the Dossier and Carter Page's alleged connection to Russian intelligence," Ungaro wrote. "They are correct about the record, to a point."

The judge noted that "missing from the record was whether the information about Gubarev was part of that "official action." But she concluded that "such a line-by-line review would curtail the scope of the privilege and thus restrict the press's ability to serve its basic function." She also concluded that the average reader would conclude that the dossier was subject to official action, BuzzFeed was protected by a New York civil rights law.

BuzzFeed's Ken Bensinger obtained the dossier from David Kramer, a former Deputy Assistant Secretary of State responsible for Russia, Ukraine, Belarus, and Moldova. They met at the McCain Institute on Dec. 29, 2016. Ungaro noted that "the parties dispute whether Kramer gave Bensinger a copy or whether Bensinger took photos of the Dossier when Kramer was not looking."

Roy Black, attorney for BuzzFeed, said in a statement that the ruling "is a strong affirmation of the First Amendment. It's more important that the public know what is being discussed at the highest levels of government than anything else."

"If Buzzfeed had not published, citizens would not understand the current conflict between the president and the other branches of government, as well as the conflict between the president and the special counsel."

BuzzFeed editor-in-chief Ben Smith also issued a statement on Twitter.



"When we published the Steele Dossier in 2017, we were met with outrage from many corners – a major news anchor and President Trump both deemed it "fake news"; and several Russian businessmen, plus Michael Cohen, sued for defamation. Today, almost two years later, a federal judge has vindicated our decision. As Judge Ungaro affirmed in her ruling, a key principle underlying the First Amendment is that the public has a right to know about actions taken by its government. As we have said from the start, a document that had been circulating at the highest levels of government, under active investigation by the FBI, and briefed to two successive presidents, is clearly the subject of 'official action.' Moreover, its publication has contributed to the the American people's understanding of what is happening in their country and their government. We are thrilled by today's outcome, and thank Judge Ungaro for taking the time to consider this case on the merits."

— BuzzFeed News Editor-In-Chief Ben Smith

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The plaintiffs have already given notice to the court that they plan to appeal.

Evan Fray-Witzer, the plaintiffs' attorney, said that "first and foremost, nothing in today's ruling by the Court suggests in any way that the allegations concerning Mr. Gubarev, Webzilla, or XBT Holding were true. Instead, the Court ruled on a narrow legal issue, finding that BuzzFeed had a privilege to publish the information even if it was false.

"The Court's ruling was primarily based on its finding that a hyperlink to a CNN article was sufficient for the average reader of the Buzzfed article to believe that BuzzFeed was reporting on some 'official action.' We obviously disagree."

He added, "When we started this case, we knew that it would be a marathon and not a sprint. We remain convinced that, after appeal, this matter will be presented to a jury and that we will succeed in vindicating the Plaintiffs' good names."