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When Hollywood Decides to Make a Movie About Your Life: What are the Consequences? Short Answer – None.

BY [AMANDA TRAKHTENBERG](#)/ ON FEBRUARY 5, 2020



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Recent box office hit, *Hustlers*, featuring a slew of well-established celebrities from Jennifer Lopez to Cardi B, has come under fire for claims of exploitation and defamation from the very woman who inspired the movie plot.^[1] That woman is Samantha Barbash whose story of hustling wall street executives was published in a New York Times article which was subsequently adapted as the screenplay for *Hustlers*.^[2] In her lawsuit, Barbash is claiming that *Hustlers* used her “likeness and story without her permission and defamed her in the movie” and she is now asking for \$20 million in punitive damages and \$20 million in compensatory damages.^[3] Barbash particularly takes issue with a scene that shows lead character Ramona, meant to represent Barbash, using and manufacturing illegal drugs in her home where she lives with her child.^[4] Barbash claims this scene is offensive and inherently untrue.

It is too early to decide the likelihood of success for Barbash’s claims, but if one were to look at history of lawsuits against Hollywood creating movies based on true stories and taking

liberties with facts and characters, then Barbash's future looks pretty grim. One may only look towards lawsuits against movies such as *The Wolf of Wall Street*, *Straight Outta Compton*, and *The Hurt Locker* where the commonality among the lawsuits involved a claim for defamation of character and the conclusion was a loss for each plaintiff.

In *The Wolf of Wall Street*, Andrew Greene, portrayed in the film as the character of "criminal drug user" Nicky "Rugrat" Koskoff, brought a defamation lawsuit over his depiction.^[5] A federal judge denied the claim saying that, "there was no knowledge of falsity or reckless disregard of the truth on the part of the defendants."^[6] Likewise, in *Straight Outta Compton* the judge ultimately rejected the defamation lawsuit and explained that the movie was allowed to, "portray these facts in colorful and hyperbolic terms."^[7] The judge for the claim against *The Hurt Locker* went one step further and dismissed the lawsuit based on the first amendment.^[8] The judge went on to explain that the only way the plaintiff, Master Sergeant Jeffrey S. Sarver, an Iraqi war veteran who claims the film defamed him, could restrict the film's free speech was to show, "A compelling state interest in preventing the defendant's speech."^[9] This is an extremely high benchmark to meet by all reasonable standards.

The question begs itself as to why the endless string of lawsuits keep failing people who simply want their story to be told in the actual way it happened or at least with as little embellishment as possible? In order to bring a claim of defamation in California, as defamation claims operate on a state by state basis, there needs to be publication of a statement of fact, that is false, unprivileged, has a natural tendency to injure or which causes special damage, and the defender's fault in publishing the statement amounted to at least negligence.^[10] However if you are a public figure, in addition to these elements, the plaintiff has the burden of proving falsity of the statement and has to prove that the defamer acted with reckless disregard of the falsity, which is also known as the actual malice standard.^[11] A public figure can be someone who removes themselves from the private arena by voluntarily entering the public eye because of a particular public issue or controversy.^[12]

For instance, someone like Barbash arguably entered the public arena when her story was published in the New York Times article surrounding the controversy of drugging Wall Street executives and 'hustling' them out of their money. Thus, Barbash would have to prove that the producers of *Hustlers* acted with reckless disregard of the truth when portraying her in the film – an extremely high standard of proof and one she is unlikely to meet. If the theoretical conjecture of Barbash's claim's unlikelihood of succeeding is not enough, one need only look to the judgment issued by the California appellate panel in Olivia de Havilland's defamation suit against Ryan Murphy. There the court said, "Publishing a fictitious work about a real person cannot mean the author, by virtue of writing fiction, has acted with actual malice. De Havilland must demonstrate that FX either deliberately cast her statements in an equivocal fashion in the hope of insinuating a defamatory import to the reader, or that it knew or acted in reckless disregard of whether its words would be interpreted by the average reader as

defamatory statements of fact.”^[13] In other words, Barbash is more than likely to be hustled out of her own lifetime story.

There is a delicate balance between having the artistic freedom to tell a story and sticking to the legitimacy of that story that all creators must wrestle with. When Hollywood decides to tell a story ‘based on real life events’ it is clear from the court’s opinion that they do not have to take this balance into consideration.

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^[1] See Ashley Cullins, *Jennifer Lopez’s ‘Hustlers’ Character Sparks Defamation Lawsuit*, The Hollywood Reporter (2020), <https://www.hollywoodreporter.com/thr-esq/jennifer-lopezs-hustlers-character-sparks-defamation-lawsuit-1268049>.

^[2] See Christina D’Zurilla, *‘Hustlers’ inspiration sues Jennifer Lopez’s company for \$40 million*, Los Angeles Times (2020).

^[3] See Julie Miller, *Hustlers: Jennifer Lopez’s Real-Life Inspiration Says She Was Only Offered \$6,000*, Vanity Fair (2020), <https://www.vanityfair.com/hollywood/2020/01/samantha-barbash-real-ramona-hustlers-lawsuit>.

^[4] D’Zurilla, *supra* note 2.

^[5] See Eriq Gardner, *Paramount Defeats ‘Wolf of Wall Street’ Libel Suit From Stratton Oakmont Alum*, The Hollywood Reporter (2019), <https://www.hollywoodreporter.com/thr-esq/paramount-defeats-wolf-wall-street-libel-suit-stratton-oakmont-alum-1169108>.

^[6] *Id.*

^[7] See Eriq Gardner, *‘Straight Outta Compton’ Lawsuit Survives Because of One Implication About Former N.W.A Manager*, The Hollywood Reporter (2019), <https://www.hollywoodreporter.com/thr-esq/straight-outta-compton-lawsuit-survives-907572>.

^[8] See Eriq Gardner, *Appeals Court: ‘The Hurt Locker’ Is Protected By the First Amendment*, The Hollywood Reporter (2020), <https://www.hollywoodreporter.com/thr-esq/appeals-court-hurt-locker-is-866687>.

^[9] *Id.*

[10] See Cal. Civ. Code § 44, 45, and 46.

[11] See *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964).

[12] See *Curtis Pub. Co. v. Butts*, 388 U.S. 130 1975.

[13] Eriq Gardner, *Supreme Court Denies Review of Olivia de Havilland's 'Feud' Lawsuit*, *The Hollywood Reporter* (2019), <https://www.hollywoodreporter.com/thr-esq/supreme-court-denies-review-olivia-de-havillands-feud-lawsuit-1174078>.