

**[J-122-2003]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

JAMES B NORTON, III, ALAN M. WOLFE, AND JAMES MARLOWE	: Nos. 18 and 19 MAP 2003 : : Appeal from the Order of the Superior : Court dated March 18, 2002, Consolidated : Appeal Nos. 633 and 707 EDA 2001, : vacating the judgments of the Court of v. : Common Pleas of Chester County, : Consolidated Action No. 95-06483, : entered on January 19, 2001 and : February 12, 2001 : WILLIAM T. GLENN, SR., TROY PUBLISHING COMPANY, INC., TOM KENNEDY AND WILLIAM CAUFIELD : 797 A.2d 294 (Pa. Super. Ct. 2002) : Appeal of: Troy Publishing Company, Inc., : ARGUED: October 20, 2003 Tom Kennedy and William M. Caufield :
--	---

**OPINION**

**MR. CHIEF JUSTICE CAPPY**

**Decided: October 20, 2004**

At issue in these matters is whether the neutral reportage privilege is encompassed within the Pennsylvania or United States Constitutions. For the reasons that follow, we hold that it is not. We therefore affirm the order of the Superior Court.

These matters arise out of an article (“Article”) written by Tom Kennedy (“Kennedy”) which appeared in the April 20, 1995 edition of the Chester County Daily Local (“Daily Local”). The Article, which was entitled “Slurs, insults drag town into controversy,” detailed heated exchanges that occurred among members of the Parkersburg Borough Council (“Council”); the Article reported that these exchanges occurred both inside and outside of the Council chamber. At issue are extra-Council chamber comments made by William T.

Glenn, Sr. (“Glenn”), a member of the Council, regarding Council President James B. Norton III (“Norton”) and Borough Mayor Alan M. Wolfe (“Wolfe”).<sup>1</sup>

The Article stated that Glenn had claimed that Norton and Wolfe were homosexuals and that Glenn had observed Norton involved in a homosexual act in Norton’s house. The Article also reported that Glenn had issued a written statement strongly implying that Glenn considered Norton and Wolfe to be “queers and child molesters.” The Article related that Glenn had declared that he had a duty to make the public aware of this information as Norton and Wolfe had “access to children . . . .” Finally, according to the Article, Glenn asserted that Norton had made homosexual advances toward Glenn which escalated to Norton grabbing Glenn’s penis, apparently without Glenn’s consent

The Article noted that when informed of Glenn’s claims, Norton responded, “If Mr. Glenn has made comments as bizarre as that, then I feel very sad for him, and I hope he can get the help he needs.”

Wolfe, Norton (collectively, “Appellees”) and Marlowe filed separate actions, each raising defamation claims.<sup>2</sup> They named as defendants Kennedy, the Daily Local, William Caufield, who owned the Daily Local, and the Troy Publishing Company, Inc., which published the Daily Local; these defendants shall collectively be referred to as the “Media Defendants”. Appellees and Marlowe also filed suit against Glenn. Ultimately, these actions were consolidated before the trial court.

---

<sup>1</sup> The Article also reported on Glenn’s comments regarding James J. Marlowe II (“Marlowe”), the Borough solicitor. We need not detail these comments as Marlowe is not before this court and the statements regarding him are of no moment in resolving this appeal.

<sup>2</sup> Appellees and Marlowe also raised false light invasion of privacy claims. The false light claims were dismissed by the trial court prior to the matters being submitted to the jury. No appeal was taken regarding the false light invasion of privacy claims.

The Media Defendants and Glenn filed motions for summary judgment. In an opinion granting relief in part and denying relief in part, the trial court determined that the Media Defendants were entitled to the protection of a privilege known as the neutral reportage privilege. Tr. ct. slip op., 8/02/1999, at 12. The trial court reasoned that this privilege was nothing more than the long-recognized fair report privilege, *id.* at 2 n. 2, a privilege which grants immunity from defamation suits to media entities which accurately report the official proceedings of government. The trial court opined that pursuant to this privilege, “the subjective awareness of the publisher, of the truth or falsity of the statement, is irrelevant.” *Id.* at 12. The trial court explicitly stated that its “holding eliminates the necessity of a determination of actual malice<sup>3</sup> as to the Media Defendants.” *Id.*

At the commencement of trial, the trial court dismissed Marlowe’s action. Appellees’ claims against the Media Defendants and Glenn proceeded to trial. Pursuant to its earlier rulings that evidence of actual malice is irrelevant in a neutral reportage matter, the trial court precluded Appellees from introducing evidence regarding whether the Media Defendants acted with actual malice.

Via special interrogatories, the jury found that Glenn had made the statements attributed to him in the Article and had made them with actual malice; accordingly, it held him liable for defamation. As against Glenn, it awarded Norton \$10,000.00 in compensatory damages and \$7,500.00 in punitive damages; it granted an identical award to Wolfe. Glenn did not appeal.

---

<sup>3</sup> “Actual malice” is a term of art in defamation actions. As detailed more fully below, the United States Supreme Court has determined that where the plaintiff in a defamation action is a public figure or public official, that plaintiff must prove, *inter alia*, that the defendant published the statement with actual malice. Milkovich v. Lorain Journal Co., 497 U.S. 1 (1990). Actual malice is established where the defendant made the statement “with knowledge that it was false or with reckless disregard of whether it was false or not.” *Id.* at 14 (citing New York Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964)).

Pursuant to another set of special interrogatories, the jury determined that the Media Defendants were not liable. Specifically, the jury found that the Article accurately conveyed the gist of the statements Glenn made and did not imply that the Media Defendants adopted or concurred in those statements. Thus, pursuant to the trial court's instruction regarding the neutral reportage privilege, the jury found the Media Defendants not liable in defamation.

Appellees filed post-trial motions, requesting that a new trial be granted. The trial court denied relief. In its opinion explaining its determination, the trial court articulated its definition of the neutral reportage privilege. It interpreted the doctrine as conferring a privilege on the publication of "serious charges of a public official involved in an ongoing controversy and concerning other public officials<sup>4</sup> irrespective of the publisher's belief as to the falsity of the charges, provided that the report does not espouse or concur in the charges and in good faith believe that the report accurately conveys the charges made." Tr. ct. slip op. dated 1/19/2001 at 3-4. The trial court also justified precluding Appellees from introducing evidence regarding whether the Media Defendants acted with actual malice in publishing the Article. It reasoned that "the neutral reportage privilege does offer broader protection than the actual malice standard, and under the neutral reportage privilege the evidence offered was irrelevant." Id. at 8. The trial court noted that in the event that an appellate court determined that the neutral reportage privilege was not viable, then Appellees "would be entitled to a new trial due to [the trial court's] exclusion of their evidence on the issue of actual malice." Id. at 8-9.

---

<sup>4</sup> The trial court found that Norton and Wolfe were public officials. N.T., 3/30/2000, at 649-50. This determination has not been contested.

On appeal, the Superior Court reversed. Norton v. Glenn, 797 A.2d 294 (Pa. Super. Ct. 2002). The Superior Court found that there was no constitutional or statutory basis for the neutral reportage privilege. Thus, it concluded that the trial court had committed an error of law when it determined that such a privilege applied to this case and that a new trial must be awarded.

The Media Defendants filed a petition for allowance of appeal with this court. We granted allocatur, limited to the issue of whether there is a federal<sup>5</sup> or state constitutional basis for declaring that the media enjoy the protections of a doctrine known as the neutral reportage privilege. As this is a question of law, our standard of review is de novo and our scope of review is plenary. See In re Hickson, 821 A.2d 1238 (Pa. 2003).

The Media Defendants urge us to find that the First Amendment encompasses the neutral reportage doctrine. They contend that we should follow the lead of several other jurisdictions and adopt this privilege. See, e.g., Sunshine Sportswear & Electronics, Inc. v. WSOC Television, Inc., 738 F.Supp. 1499 (D.S.C. 1989); In re United Press International, 106 B.R. 323 (D.D.C. 1989); Barry v. Time, Inc., 584 F.Supp. 1110 (N.D. Cal. 1984) (finding that the First Amendment mandates adoption of the neutral reportage doctrine). Appellees, on the other hand, wish us to follow the lead of those jurisdictions which have rejected the privilege. See, e.g., Postill v. Booth Newspapers, Inc., 325 N.W.2d 511 (Mich. Ct. Appeals 1982); McCall v. Courier-Journal, 623 S.W.2d 882 (Ky. 1981).

---

<sup>5</sup> We note that at oral argument before this court, an attorney for one of the Appellees contended that the Media Defendants did not raise the First Amendment issue until they were before this court, and thus the issue was waived. This assertion is erroneous. The Media Defendants have asserted that the neutral reportage privilege has a basis in the First Amendment ever since the earliest stages of this litigation. See Media Defendant's Motion for Summary Judgment, filed 3/15/1999, at 11-12.

We must now determine whether the neutral reportage privilege is grounded in the First Amendment. In analyzing this claim, we find that the logical first step is to discuss at length the decision which first defined the contours of the privilege and declared it to be mandated by the First Amendment. See Edwards v. National Audubon Soc’y, Inc., 556 F.2d 113 (2d. Cir. 1977). At issue in Edwards was an article published by the New York Times (“the Times”). This article stated that the National Audubon Society declared that certain scientists who claimed that bird populations were actually increasing in spite of the use of the insecticide DDT were paid “liars”. Several of the scientists who were named filed suit against, inter alia, the Times seeking damages in defamation. The jury returned a verdict against the Times.

The circuit court reversed on appeal. The court declared that the First Amendment demands the protection of “a robust and unintimidated press . . . .” Id. at 120. It hypothesized that “[t]he public interest in being fully informed about controversies that often rage around sensitive issues demands that the press be afforded the freedom to report such charges without assuming responsibility for them.” Id. Accordingly, it designed a privilege that gave sweeping protection to the media to repeat such newsworthy statements, and determined that this new privilege had its genesis in the federal Constitution. It reasoned that “when a responsible, prominent organization . . . 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 view regarding their validity.” Id. In the view of the Edwards court, “the press may [not] be required under the First Amendment to suppress newsworthy statements merely because it has serious doubts regarding their truth.” Id. The court therefore crafted the neutral reportage

doctrine,<sup>6</sup> which immunizes media defendants from liability for defamation even where the media have “serious doubts regarding the[ ] truth” of the statements they publish. Id.<sup>7</sup> Essentially, this privilege adopts the radical notion that media defendants, in repeating newsworthy comments regarding a public official, will be relieved from liability even where the public official-plaintiff can establish that the media defendants acted with actual malice.

In adopting the neutral reportage doctrine, the Edwards court relied heavily on the U.S. Supreme Court’s decision in Time, Inc. v. Pape, 401 U.S. 279 (1971), implying that Time announced that the First Amendment mandated the adoption of this privilege. Were this reading of Time correct, it would make our task a simple one of merely applying the high Court’s holding to the matters sub judice.

---

<sup>6</sup> As noted supra, the trial court concluded that the neutral reportage privilege is merely another name for the fair report privilege. Tr. ct. slip op., 8/02/1999, at 2 n. 2. It posited that since the fair report privilege has long-since been recognized in this jurisdiction, see Sciandra v. Lynett, 187 A.2d 586 (Pa. 1963) (adopting the fair report privilege), then there was no need to adopt the neutral reportage privilege.

This conclusion was incorrect. As noted by Judge (former Justice) Montemuro in his concurring opinion in the court below, the neutral reportage privilege is an animal distinct from the fair report doctrine. Norton, 797 A.2d at 298-99 (Montemuro, J., concurring). The fair report doctrine adopted by Sciandra is a common-law privilege protecting media entities which publish fair and accurate reports of governmental proceedings. At issue here, however, is whether there is a constitutional privilege to publish accounts of statements that were not made in the course of official proceedings.

<sup>7</sup> We note that some courts have found that Edwards’ pronouncement on the neutral reportage privilege was obiter dictum and thus is not binding precedent. See, e.g., DiSalle v. P.G. Pub. Co., 544 A.2d 1345, 1355 (Pa.Super. 1988). We need not resolve this dilemma because regardless of whether Edwards’ discussion of the neutral reportage privilege is a holding or mere obiter dictum, it would not be binding on this court. Commonwealth v. Ragan, 743 A.2d 390, 396 (Pa. 1999) (“[I]n interpreting federal case law, this Court is not bound by decisions of federal courts inferior to the United States Supreme Court, even though we may look to them for guidance.”)

The Edwards court's reliance on Time, however, was ill-placed. In Time, the media defendant repeated statements regarding a public official that had been made in a civil rights report. The Court did not absolve the media defendant of liability on the basis that the defendant acted merely as a neutral conduit for statements of a third party; rather, the Court found that the defendant escaped liability because the public official-plaintiff could not establish that the defendant had acted with actual malice. Thus, Time did not explicitly or even impliedly adopt a privilege whereby the press could with impunity republish statements made by public figures or officials, escaping liability even where it could be shown that the press published these statements with actual malice. Indeed, Time applied the actual malice standard to the matter before it.

Furthermore, in the years following Edwards, the U.S. Supreme Court has not adopted the neutral reportage doctrine, or in any fashion declared that a defendant (be it a media defendant or simply a private citizen-defendant) will be immune from suit even where the defendant publishes with actual malice. See Harte-Hanks Communications v. Connaughton, 491 U.S. 657, 660 n. 1 (1991) (declining to address the neutral reportage doctrine as the issue had not been presented to the Court).<sup>8</sup> Thus, as the U.S. Supreme Court has not squarely addressed the validity of the neutral reportage privilege, our next task is to determine whether this privilege is a logical extension of decisions issued by the high Court. To answer this question, we must thoroughly review the U.S. Supreme Court's

---

<sup>8</sup> In our opinion, the closest the high Court has come to opining on whether a media defendant enjoys immunity from suit where it acts as a mere conduit for statements of third parties occurred in Pittsburgh Press Co. v. Pittsburgh Commission on Human Relations, 413 U.S. 376 (1973). In passing, the Pittsburgh Press Court noted that a "newspaper may not defend a libel suit on the ground that the falsely defamatory statements are not its own." Id. at 386. Were this statement a holding, we could conclude that the high Court would reject the neutral reportage privilege. This statement, however, was mere obiter dictum; thus, we cannot utilize Pittsburgh Press to answer the question with which we are presented.

decisions regarding the operation of the First Amendment in the context of defamation actions.

Until the early 1960s, the high Court had consistently declared that imposition of civil liability for defamatory publications did not impinge on the First Amendment's guarantee of free expression. See, e.g., Beauharnais v. Illinois, 343 U.S. 250 (1952). Thus, the First Amendment did not constrict the states' power to fashion causes of action for defamation.

The law changed radically when the high Court announced its decision in New York Times Co. v. Sullivan, 376 U.S. 254 (1964), and declared that the First Amendment does protect certain defamatory speech. In that matter, the Times had published an advertisement detailing acts of violence against Dr. Martin Luther King, Jr. as well as several other egregious civil rights violations. L.B. Sullivan ("Sullivan"), who was at the time of the advertisement's publication a Commissioner of the City of Montgomery, Alabama, filed a defamation action. Sullivan asserted that the advertisement had linked him with these nefarious activities, and accordingly he was entitled to damages in defamation. In instructing the jury, the trial court judge stated that falsity and malice were to be presumed. The jury returned a verdict in favor of Sullivan.

Ultimately, the U.S. Supreme Court granted certiorari in the matter. In commencing its analysis, the Court emphasized that there is a "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government or public officials." Id. at 270. The Court concluded that in order to stay true to this "profound national commitment," it had to place certain limitations on the states' ability to craft defamation law with regard to actions filed by public official-plaintiffs. No longer could malice and falsity be presumed; in fact, a public figure-plaintiff would not necessarily be entitled to recover even if the published statements were provably false and defamatory. Rather, the Court concluded that where the plaintiff in a defamation action is a public

official, the plaintiff will not be allowed to recover unless the defendant published the statement with “actual malice”. Id. at 279-80.

The New York Times Court’s actual malice standard announced severe restrictions on a public figure-plaintiff’s rights to recover in defamation. The Court stated that actual malice will be found only where the defendant published the account “with knowledge that it was false or with reckless disregard of whether it was false or not.” Id. at 280. The Court stressed that actual malice will not be made out on a mere showing that the media defendant was negligent in ascertaining the truth of the statement it publishes. Id. at 288. Furthermore, the burden of proof was placed not on the defendant, but rather on the public official-plaintiff. Id. at 279-80. In applying the new standard to the matter before it, the Court found that the evidence adduced by Sullivan could not meet the actual malice standard, and therefore the Times could not be held liable.

Following New York Times, the high Court issued a spate of decisions which further illuminated this new actual malice standard. One instructive decision is St. Amant v. Thompson, 390 U.S. 727 (1968). At issue in that matter was a televised statement made by Phil St. Amant (“St. Amant”), a candidate for public office. In that statement, St. Amant repeated comments made by a third party regarding the shady activities allegedly engaged in by Herman Thompson (“Thompson”), who was the president of the local Teamsters’ Union. Thompson sued St. Amant, seeking damages in defamation. The question presented was whether in establishing that St. Amant acted with “reckless disregard”, his conduct was to be measured against what a reasonably prudent man would have done. The Court rejected using the objective reasonable man standard in determining whether the publisher made the statement with actual malice. It stated that for purposes of establishing actual malice, reckless disregard is “not measured by whether a reasonably prudent man would have published, or would have investigated before publishing.” Id. at 731. Rather, “[t]here must be sufficient evidence to permit the conclusion that the

defendant in fact entertained serious doubts as to the truth of his publication. Publishing with such doubts shows reckless disregard for truth or falsity and demonstrates actual malice.” Id.

The St. Amant Court cautioned would-be defendants in such actions, however, by stating that immunity from liability would not be guaranteed merely by a protestation from the defendant that it published in good faith. Rather, the Court found that actual malice could be made out where “the publisher’s allegations are so inherently improbable that only a reckless man would have put them in circulation. Likewise, recklessness may be found where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports.” Id. at 732.

Decisions following New York Times placed further restrictions on the states’ ability to define defamation actions, making it resoundingly clear how cherished is the First Amendment freedom of expression. For example, the high Court determined that the New York Times actual malice standard was applicable even in matters where the plaintiff was not a public official. It stated that some people who are not public officials must be considered “public figures” because they are “intimately involved in the resolution of important public questions or, by reason of their fame, shape events in areas of concern to society at large.” See Milkovich v. Lorain Journal Co., 497 U.S. 1, 14 (1990) (citations omitted). The Milkovich Court concluded that in defamation actions filed by “public figures”, the First Amendment required that the plaintiff establish actual malice before the plaintiff would be allowed to recover.

Furthermore, while the U.S. Supreme Court rejected application of the actual malice standard to cases involving private figure plaintiffs, it did place limitations on even these actions. It found that the common law presumption of damages in a defamation action was inconsistent with the First Amendment; for a private citizen-plaintiff to recover, he must

show that an actual injury resulted from the defamatory statements. Gertz v. Welch, 418 U.S. 323, 340 (1974).

Finally, we must note that in none of these decisions did the high Court determine that because of the media's special role in our society, the common law cause of action for defamation should be abrogated vis-à-vis the media. In fact, in terms of fashioning legal standards in these defamation matters, the Court has not declared that a media defendant is owed even a scintilla more protection than a private citizen-defendant.

Rather, the Court has declared that "[t]he need to avoid self-censorship by the news media is . . . not the only societal value at issue. If it were, this Court would have embraced long ago the view that publishers and broadcasters enjoy an unconditional and infeasible immunity from liability for defamation." Gertz, 418 U.S. at 340. The Court has repeatedly stated that the claim that the Federal Constitution requires such a blanket immunity for the media constitutes an "an untenable construction of the First Amendment." Herbert v. Lando, 441 U.S. 153, 176 (1979).

Instead, the Court has cautioned that in the area of the law where defamation actions and free expression rights intersect, the courts cannot focus myopically on the preservation of free expression. While it recognized that the First Amendment's "guarantee of free and uninhibited discussion of public issues" is critical to the functioning of our democracy, it has sagely opined that "there is also another side to the equation; we have regularly acknowledged the important social values which underlie the law of defamation, and recognized that society has a pervasive and strong interest in preventing and redressing attacks upon reputation." Milkovich, 497 U.S. at 22 (citing Rosenblatt v. Baer, 383 U.S. 75, 86 (1966); internal quotation marks omitted). "The right of a man to the protection of his own reputation from unjustified invasion and wrongful hurt reflects no more than our basic concept of the essential dignity and worth of every human being--a concept at the root of any decent system of ordered liberty." Milkovich, 497 U.S. at 22. Thus, the

high Court has stated that a balance must be struck between the First Amendment's guarantee of freedom of expression and the states' right to offer protection to a citizen's reputation via a defamation action. See id. at 23; see also Gertz, 418 U.S. at 343.

In synthesizing the numerous cases from the U.S. Supreme Court regarding the First Amendment's interaction with state causes of action for defamation, we arrive at the following conclusions. First, the U.S. Supreme Court has, pursuant to the actual malice standard, provided considerable protection to defendants in defamation actions filed by public officials and public figures. The actual malice standard goes so far as to forbid imposition of liability even in those instances where the defendant negligently publishes false, defamatory statements about a public figure or public official. Yet, the high Court has not declared that the media, because of their special role in our democracy, enjoy a blanket immunity from suit. In fact, it has most clearly stated that the First Amendment does not confer this type of protection upon the media. A primary reason for rejecting such a sweeping privilege for the media is the concern that such a privilege would essentially obliterate the states' power to provide protection, via defamation actions, to a person's reputation; the high Court has explicitly stated that it places value on a person's right to protect his reputation. Finally, in no case has the high Court declared that a defendant will be immune from suit even where a public official-plaintiff could prove that a defendant published with actual malice.

Accordingly, we conclude that the existing case law from the U.S. Supreme Court indicates that the high Court would not so sharply tilt the balance against the protection of reputation, and in favor of protecting the media, so as to jettison the actual malice standard in favor of the neutral reportage doctrine. Rather, the U.S. Supreme Court has placed a burden (albeit a minimal one) on the media to refrain from publishing reports that they know to be false or that they published with reckless disregard of whether it was false. In light of the high Court's consistent application of the actual malice standard in these types of

cases, and its cautions that free expression law should be balanced against, and not be allowed to obliterate, state law protections to reputation, we cannot logically conclude that the high Court would abandon the actual malice standard.

Furthermore, to the extent that the Media Defendants' argument can be characterized as a plea for us to effectuate important public policy goals by charting a new course with regard to federal constitutional law, one apart from that set by the U.S. Supreme Court, we resoundingly reject it. This is not to say that the Media Defendants' position regarding the provision of newsworthy information to the body politic does not have some visceral appeal. Yet, our role in these matters is not to champion what we perceive to be good public policy. Rather, our function, as a state supreme court examining a federal constitutional question on which the U.S. Supreme Court has not yet spoken, is to attempt to anticipate how the federal high Court would dispose of this issue. As detailed supra, our examination leads us to the conclusion that the U.S. Supreme Court will not adopt the neutral reportage doctrine.

Having determined that the First Amendment does not mandate adoption of the neutral reportage privilege, we now turn to the Media Defendants' claim that the privilege is encompassed within the Pennsylvania Constitution's free expression provision.<sup>9</sup> The Media Defendants, along with amicus curiae the Committee of Seventy, present impassioned, erudite arguments detailing how this court has often found that the Pennsylvania Constitution provides greater free speech rights than does the United States Constitution. Resting on this rich history of independent state constitutional law, they assert that even if the United States Constitution's protection of free expression does not

---

<sup>9</sup> The free expression clause of the Pennsylvania Constitution is contained in Article 1, section 7.

encompass the neutral reportage privilege, we should find that the Pennsylvania Constitution does.

The Media Defendants and the Committee of Seventy are correct in their assertion that this court has often declared that the Pennsylvania Constitution recognizes broader free expression rights than does the federal constitution. See, e.g., Pap's A.M. v. City of Erie, 812 A.2d 591 (Pa. 2002). Yet, their lengthy recitation of the law fails to recognize the existence of Sprague v. Walter, 543 A.2d 1078 (Pa. 1988). This is a significant gap in their analysis as it is Sprague which controls whether the Pennsylvania Constitution provides broader free expression protections in these matters than does the federal Constitution.

In Sprague, the plaintiff was a public official who sued a newspaper for printing an article which allegedly defamed the plaintiff. In this context, the Sprague court addressed the issue of whether the federal Constitution provides that representations made by a confidential source are presumptively valid. We concluded that the free expression rights accorded by the U.S. Constitution were not so expansive.

The Sprague court next considered whether the Pennsylvania Constitution provides broader protections to the media in a defamation action filed by a public official than does the federal Constitution. In discussing the free expression rights guaranteed by the Pennsylvania Constitution, we recognized that these rights are in tension with another right guaranteed by our commonwealth's constitution, namely the right to protect one's reputation.<sup>10</sup>

The Sprague court was keenly aware of the seesawing balance between the constitutional rights of freedom of expression and of safeguarding one's reputation: protection of one of those rights quite often leads to diminution of the other. Yet, in the

---

<sup>10</sup> The right to preserve one's reputation is contained in Article I, section 1 of the Pennsylvania Constitution.

quest to strike a balance between these two competing protections, our court cautioned that the freedom of expression should not be seen as dominant and the protection of reputation as inferior. We stressed that the right to protect one's reputation is not a second-class right, amenable to being pressed into oblivion by other constitutional provisions. We made it plain that "a person's interest in his or her reputation has been placed in the same category with life, liberty and property." Id. (citations omitted). Thus, we concluded the constitutional interest in providing for the free flow of information was not so absolute that it granted "a license to the media to use information recklessly and/or maliciously to destroy the reputation of a citizen." Id. Rather, a balance must be struck between these two constitutional rights.

In striking that balance, we reasoned that we could not interpret our state constitution as providing even broader free expression rights than does its federal counterpart. We noted that the U.S. Supreme Court had erected "stringent requirements" in order to protect the federal right of free expression. Were we to go beyond the U.S. Supreme Court, and grant even broader free expression protections in defamation actions, we would concomitantly - and impermissibly - infringe on the protection granted by the Pennsylvania Constitution to reputation. Id. at 1085. Essentially, we determined that the protections accorded at that time by the U. S. Supreme Court to the right of free expression in defamation actions would demarcate the outer boundaries of our Commonwealth's free expression provision.

In accordance with Sprague, we find that with regard to the neutral reportage doctrine, the Pennsylvania Constitution's protection of free expression is no broader than its counterpart in the federal Constitution. And, since we have found that the First Amendment does not encompass this privilege, we conclude that the Pennsylvania Constitution does not as well.

Accordingly, we hold that neither the United States nor the Pennsylvania Constitutions mandate adoption of the neutral reportage doctrine. The order of the Superior Court is affirmed.

Former Justice Lamb did not participate in the decision of this case.

Mr. Justice Castille files a concurring opinion.