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THE RIGHT TO KNOW: FAIR COMMENT — TWENTIETH CENTURY

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Our Liberty depends on freedom of the press and that cannot be limited without being lost.

— Thomas Jefferson

I HAVE CHOSEN to open with this observation because it is important for us to realize that this is actually what we are speaking about when we discuss libel and fair comment: free speech and free press. Despite the fact that this phrase has been bandied about so much that many of us seem to take it for granted, the field of speech and press is in fact one of the fields of greatest foment and discussion in America today. There is a dialogue in progress on the right of the news media to report the activities of the police and courts in criminal proceedings, and the law of libel and privacy is undergoing extensive revision of the greatest importance. Obviously, the law of libel is vastly affected by the first amendment and by its application to the states through the fourteenth amendment. Individual rights protected by other amendments to our Constitution must be accommodated to the first and, as in all constitutional law, there must be give and take under our system of law.

Historically, the law of libel long predated the concept of free speech as a basic right. Mosaic law commands, "Thou shalt not bear false witness against thy neighbor." Defamation was also recognized by the Twelve Tables of Rome. And a book on libel was written in England 300 years ago. On the other hand, freedom of speech appears not to have evolved as a philosophical concept until the eighteenth century.

The reason for this can be attributed to the fact that the power to injure reputation existed with the earliest society, while the existence of an independent judiciary sufficiently strong to protect speech from powerful adverse forces is comparatively recent. Therefore, this diverse development is historical only, and not philosophical. Conceptually, it must be recognized that libel is carved out of the right of free speech — freedom of speech is not simply that which remains after the application of laws of libel. Justice Brennan, writing for the majority of the

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Supreme Court in the case of *New York Times Co.* v. *Sullivan,* recognized this when he said: "Whatever is added to the field of libel is taken from the field of free debate."[1]

This is not just a philosophical abstraction — it is an accurate description based on a knowledge of hard business and political experience. The recent cases are instructive examples. Following newspaper coverage of the integration disturbances in Montgomery, Alabama, a jury awarded Commissioner Sullivan a 500,000 dollar libel judgment,[2] and, in addition, another 2,500,000 dollars were claimed by other Commissioners of Montgomery.[3] Reports of rioting during the integration of the University of Mississippi caused Major General Edwin A. Walker to institute some thirty-five libel suits, each claiming 2,000,000 dollars. In April of 1963 the *New York Times* reported that a total of seventeen libel suits totaling 228,000,000 dollars in damages were pending as an aftermath to the then recent newspaper coverage of racial disturbances. Finally, a recent article in the *Saturday Evening Post* about a football game fix resulted in a jury award of 3,000,000 dollars to the coach involved. This was scaled down by the court to 460,000 dollars as an alternative to a new trial.[4] Certiorari has been granted[5] and the case has been argued in the Supreme Court.

As Justice Black said in his concurring opinion in the *New York Times* case:

> The half-million dollar verdict does give dramatic proof, however, that state libel laws threaten the very existence of an American press virile enough to publish unpopular views on public affairs and bold enough to criticize the conduct of public officials.[6]

With this, the majority of the Court clearly agreed, stating that, "the fear of damage awards under a rule such as that invoked by the Alabama courts here may be markedly more inhibiting than the fear of prosecution under a criminal statute."[7] It must be remembered that the Alabama trial court decision in the *New York Times* case sustained a cause of action arising from an advertisement criticizing the police department and government of Montgomery, in order to realize the close parallel to the Sedition Act of 1798. That act, which provided penalties for "false, scandalous and malicious writing . . . against the

1. 376 U.S. 254, 272 (1964).
2. Sullivan v. New York Times Co., 273 Ala. 646, 144 So. 2d 25 (1962).
3. New York Times Co. v. Sullivan, 376 U.S. 254, 278 n.18 (1964).
4. Butts v. Curtis Publishing Co., 225 F. Supp. 916 (N.D. Ga. 1964).
5. Curtis Publishing Co. v. Butts, 385 U.S. 811 (1966).
6. 376 U.S. 254, 294 (1964).
7. *Id.* at 277.

government of the United States,"[8] met Madison's and Jefferson's opprobrium, and was ultimately recognized by almost everyone as invalid under the first amendment.[9]

In a democracy, there is a special need for uninhibited debate on public issues. The vote is a meaningless privilege if the people do not have the means of knowing both the pros and the cons about the different candidates and issues in an election. Moreover, it is undisputed that the light of public scrutiny is a purifying light, and there are few more effective safeguards against corruption in government. It has also been recognized that the free interchange of ideas is essential for bringing about political and social change in conformance with the public will. Consequently, the Supreme Court has on innumerable occasions reasserted the protection afforded by the first amendment to expression about public questions.

Perhaps it is inevitable that in a democracy, freedom of speech should become entwined with political science. But the emphasis on the political need for discussion has been somewhat overstated. Many, including myself, have long held the conviction that the right to speak — to communicate ideas to others — is a value in itself. This is, of course, the essence of journalism. Anyone who makes the effort to express himself necessarily has a high regard for communication. Furthermore, the public has a corresponding right to know. Curiosity is not idle; its role as the motive force behind the achievements in astronomy by the Druids and Aztecs, not to mention our own culture, cannot be discounted.

Of course, freedom of speech is not an absolute value. Everyone is familiar with the classroom illustration of the anti-social aspects of the man shouting "Fire!" in a crowded theatre. The most obvious and significant exception carved out of free speech is the law of libel. This law protects the individual's right to an uninjured reputation. The validity and importance of this right is attested by its 4,000 year history. The Papyrus of Hunefur depicts the soul of that dignitary bowing before the sun-god, Osiris, declaring his innocence of slander, among some forty-two other offenses forbidden by Egyptian law. As already indicated, defamation is also proscribed by the Mosaic law, and the Twelve Tables of Rome.

But, if freedom of speech is not an absolute value, neither is the law of libel. It is generally recognized that the right to a good reputation is subordinate to certain other interests of society. In short, this is the basis of what is known in the law of libel as privilege. The follow-

8. 1 Stat. 596 (1789).

9. New York Times Co. v. Sullivan, 376 U.S. 254, 273–78 (1964).

ing language from a 1940 Pennsylvania Supreme Court case is frequently seen in this context:

> The principle upon which the doctrine of defeasible immunity rests is that the public interest and the advantage of freedom of publication, and each particular class of cases thus protected, outweigh the occasional private and personal damage thereby caused. It is deemed in certain classes of cases more advantageous for the community at large that particular individuals should occasionally be damaged with impunity, than that men under the exceptional circumstances should not be at liberty to speak and publish what they reasonably believe to be true, although it may be defamatory of the character of individuals.[10]

Thus it is recognized that a judge on the bench must be free to say what he feels should be said in the administration of justice. Similarly, counsel are absolutely privileged to say what they will in the conduct of a case without fear of liability for defamation. It is also well known that the United States Constitution and state constitutions provide that anything said by legislators in the course of legislative proceedings is privileged,[11] and the Supreme Court has extended this immunity to statements made in the line of duty by federal officials in the Executive Branch.[12]

In private relations as well, the law recognizes that reputations must be exposed to detraction for various purposes, provided such statements are not made maliciously. A person may make defamatory statements in order to protect his own interests, or to protect another's interests. An ancient example is the protection accorded erroneous charges made in the apprehension of one reasonably suspected of shoplifting. This qualified privilege extends to complaints made to officials acting in the public interest, such as a policeman. Moreover, communications made where the speaker and recipient have a common interest are protected, as, for example, remarks between business associates about a prospective employee.[13]

Consequently, the right of fair comment is simply the recognition of one more type of social interest which is of sufficient importance to justify the subjection of individual reputations to responsible free speech. The extent to which this exposure should be permitted can be determined by a reasoned analysis of the other social interests to be

10. Williams v. Krozer Grocery & Baking Co., 337 Pa. 17, 19, 10 A.2d 8, 9 (1940). See also, *e.g.*, Fairbanks Publishing Co. v. Francisco, 390 P.2d 784, 793 (Alaska 1964).

11. See PROSSER, TORTS § 109 at 796-99 (3d ed. 1964).

12. See Barr v. Matteo, 360 U.S. 564 (1959).

13. See PROSSER, TORTS § 110 (3d ed. 1964).

protected. However, unlike private communications where the interests are comparatively specific, fair comment deals with publications made to the general public, and the interest supporting this broad publication is correspondingly vague. This concededly vague interest is, however, very real and I equate this with the public's right to know.

What is the value of this right? Justice Black would have us believe that it is absolute. In a 1962 interview concerning the first amendment he stated:

> I have no doubt myself that the provision, as written and adopted, intended that there should be no libel or defamation law in the United States under the United States Government, just absolutely none so far as I am concerned.[14]

He went on to conclude that the fourteenth amendment extended this prohibition to the states. Yet it is difficult to believe that a man's reputation, so highly valued over thousands of years, should be deprived of all protection of law, or that the Congress which proposed the Bill of Rights intended to completely abolish such protection. Nevertheless, the social interest is a very real and positive interest, and has produced numerous niches in the law of libel where there can be no liability for defamation.

In the majority of American jurisdictions, the privilege of fair comment was extended to defamatory statements of opinion about public officials, works of art, athletic endeavors, school officials, or any other matter of legitimate "public concern." The privilege did not extend to misstatements of fact, but only to expressions of opinion, comment or criticism. Furthermore, the comment had to be "fair," that is, both honest and confined to the facts which are of public concern.[15] Under these rules, newspapers labored to perform their public function of providing a vehicle for political comment, literary and artistic criticism, comment on the use of public funds, the management of schools and other charitable institutions, and coverage of sports events and personalities. Any statement which could be construed as factual could result in a libel judgment, if the newspaper was not able to prove its truth in a court of law. It must be remembered, that if the statement implied false facts, it did not matter that the newspaper believed the facts to be true, or that it was not negligent in checking them. You can perhaps envision the problems that this raises in a modern daily newspaper which is not only responsible for its own

14. *Justice Black and First Amendment "Absolutes": A Public Interview,* 37 N.Y.U.L. REV. 549, 557 (1962).

15. See PROSSER, TORTS § 110 (3d ed. 1964).

editorials and articles, but also for the contents of feature articles by syndicated columnists, letters to the editors, and innumerable articles by wire services, such as the Associated Press and United Press-International.

As early as 1908, it was recognized that such a burden might not be consonant with the "freedom of speech" mandated by the Constitution. In the leading case, the Supreme Court of Kansas held that erroneous statements about a state attorney general seeking re-election were privileged if made for a proper purpose, even though they were misstatements of fact.[16] This holding was adopted by a minority of the states. It was said to be coextensive with the fair comment rule, but in practice it seems to have been applied only in cases involving public officials and candidates. Consequently, this rule came to be known as the "public official" rule.

Then in 1964, the Supreme Court of the United States handed down its landmark decision in the case of the *New York Times Co. v. Sullivan*.[17] In this case, which involved a paid advertisement in the *Times* inaccurately describing certain repressive actions ascribed to the Montgomery, Alabama police against student civil rights demonstrators, and naming individuals as signers of the advertisement without authority, the Supreme Court reversed a 500,000 dollar jury verdict in favor of the Commissioner of Public Affairs, the supervisor of the Montgomery police department. The Court held that a public official could not sue for a defamatory statement, though factual, unless he could prove the statement was made "with knowledge that it was false or with reckless disregard of whether it was false or not."[18]

This decision enlarged freedom of speech in two ways: (1) it included false statements of fact in the qualified privilege for discussion of public officials, thus lending the constitutional imperative to the minority rule; and (2) it redefined "malice," the standard determinative of an abuse of the privilege. Thereafter, motive or purpose, such as ill-will, was insufficient to sustain liability; instead, the plaintiff must show that the speaker knew that the statement was false or was reckless.

This holding has been reaffirmed by numerous subsequent decisions of the Supreme Court, and these cases have developed a homogeneous philosophy of speech about public officials. Thus in *New York Times* the Court spoke of

> . . . a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and

16. Coleman v. MacLennan, 78 Kan. 711, 98 Pac. 281 (1908).
17. 376 U.S. 254 (1964).
18. *Id.* at 279-80.

> that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and government officials.
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> . . . .
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> . . . erroneous statement is inevitable in free debate, and . . . must be protected if the freedoms of expressions are to have the 'breathing space' that they 'need to survive' . . . .[19]

And in *Garrison v. Louisiana*,[20] a state district attorney was held privileged to say that the judges of his district were "vacation minded" and subject to "racketeer influences," provided there was no knowledge of falsity or reckless disregard of truth. A similar result was indicated in *Rosenblatt v. Baer*,[21] where an editorial criticized a former supervisor of a county recreation area, asking why the park had lost so much money while the plaintiff was supervisor. Thus, with respect to criticism of government, or of persons responsible for government, it is now established that one can report anything of sufficient interest, provided it is neither a deliberate lie, nor published with a high degree of awareness that the statement is probably not true.

I do not think this presents any real difficulties for any of us. The change is not one of basic philosophy. It has always been difficult to distinguish whether a statement was one of fact or opinion, because most criticism implies some sort of factual substance. As to content, the new rule merely eliminates a confusion which has led in the past to vast amounts of appellate litigation. With respect to motivation, due to the difficulty of proving a defendant's motivation, it is really only a step towards realism to substitute knowledge of falsity for the prior test of ill-will or improper motivation.

Surely, it is not surprising that a public official should be required to answer charges believed by members of the public. While one could always report outright crimes to government bodies, the more subtle improprieties and conflicts of interest could, in the past, be brought into the open only at the critic's absolute peril. Moreover, one expects that those who enter the arena of public life should be exposed to the limelight. And, as subjects of a comparatively large volume of reporting, they should expect a portion of such reporting to be inaccurate. One might say that they have assumed the risk.[22] Protection from deliberate lies seems quite enough for such persons to expect. Any additional protection for such officials can easily be seen as an infringement of freedoms of speech and press espoused by the first amendment.

19. *Id.* at 270, 271–72.
20. 379 U.S. 64 (1964).
21. 383 U.S. 75 (1966).
22. *Cf.* Walker v. Courier-Journal & Louisville Times Co., 246 F. Supp. 231, 234 (W.D. Ky. 1965), *rev'd on other grounds*, 368 F.2d 189 (6th Cir. 1966).

While the Supreme Court has not yet had occasion to pass on the question, the lower courts have made it clear that these same considerations apply to candidates for public office. Aside from the obvious interest of the public in having sufficient facts about candidates upon which to base its vote, it would give a new candidate an unfair advantage if his statements about the incumbent were given greater protection than the incumbent's statements about him.[23]

Similarly, those associated with public officials may find themselves drawn into the limelight. In *Gilberg v. Goffi*,[24] the New York Court of Appeals held that a statement to the effect that the mayor's law firm should be investigated for conflicts of interest in its practice before city courts was within the *New York Times* rule, and the mayor's partner could not, therefore, recover without proving the defendant's knowledge of falsity.

The outstanding question is whether the protection afforded by the *New York Times* rule applies only to comment about public officials, or to comment about all those persons who for various reasons occupy the stage of current events, voluntarily or involuntarily. The Supreme Court in *Rosenblatt v. Baer* certainly used broader language than would be necessary to restrict the rule to government officials, emphasizing that, "when interests in public discussions are particularly strong . . . the Constitution limits the protection afforded by the law of defamation."[25] Thus it has generally been concluded that the Court intends to protect statements about all matters of legitimate public concern as well.

In the case brought by Professor Linus Pauling against the *St. Louis Globe-Democrat,* the Eighth Circuit held that a statement that Professor Pauling had been cited for contempt of Congress for refusing to give the names of persons who had helped him to organize his anti-bomb campaign, was privileged if not a deliberate lie.[26] In fact, Congress had not received the names, but had declined to cite him. Pauling, as an outspoken critic of American bomb–testing, had instituted numerous suits to enjoin the government from such testing. The court held that since he had "projected himself into the arena of public policy, public controversy, and 'pressing public concern,' "[27] the principles of the *New York Times* rule applied, for speech concerning such men was constitutionally protected.

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23. See Dyer v. Davis, 189 So. 2d 678, 685 (La. 1966).
24. 15 N.Y.2d 1023, 207 N.E.2d 620, 260 N.Y.S.2d 29 (1965).
25. 383 U.S. 75, 86 (1966).
26. Pauling v. Globe-Democrat Publishing Co., 362 F.2d 188 (8th Cir. 1966), *cert. denied,* 87 Sup. Ct. 2097 (1967).
27. *Id.* at 197.

Similarly, in *Walker v. Courier-Journal & Louisville Times Co.*,[28] a federal district court held that a newspaper article reporting Walker's presence and activities in connection with the integration of the University of Mississippi was privileged because Walker was a "public man." The defendant newspaper had carried an Associated Press story that Walker had led a charge of rioters against United States Marshals, had participated in the riots, and was a troublemaker. The court observed, and properly, that for a person of Walker's political prominence to go to Oxford, Mississippi, at the time he did was to invite news comment, thus magnifying the chance for inaccurate reporting. If the reporting complained of did not concern official conduct, it clearly concerned conduct which was, and was intended to be, public conduct.

On appeal, the Sixth Circuit reversed and remanded to give the plaintiff an opportunity to prove malice. Applicability of the *New York Times* case was accepted by both courts, but this question is now before the United States Supreme Court as a result of an appeal by the Associated Press from Walker's Texas judgment.[29] No decision has been rendered, but the application of the *New York Times* reasoning to public men like Walker and Professor Pauling appears appropriate.

Other matters of public concern have also been held to be within the privilege. For example, a Texas newspaper charged a shipping company with taking advantage of a legal loophole and shipping goods to Cuba through the British West Indies. The federal district court held that even if defamatory, the article dealt with a matter of public concern protected by the first amendment.[30]

The real issue appears then to be the extent to which the *New York Times* principles protect statements about matters, not of public *concern,* but of healthy public *interest.* What of the affairs of a well-known entertainer, the performance of a sports figure, the work of a famous author or the conduct of a large corporation?

It is certainly arguable that discussion of such matters is within society's right to know. Of course, this privilege would not extend to deliberate lies, and it would not extend to those personal affairs which relate to that aspect of the personality in which the public has no valid interest. This is also true of the privilege applicable to public officials, although it does not exclude very much, since, as has been frequently pointed out, "grapes do not grow on thorns nor figs on thistles." Whatever might affect an official's fitness for office is rele-

28. 246 F. Supp. 231 (W.D. Ky. 1965), *rev'd on other grounds,* 368 F.2d 189 (6th Cir. 1966).

29. Associated Press v. Walker, 393 S.W.2d 671 (Tex. 1965), *cert. granted,* 385 U.S. 812 (1966).

30. H. O. Merren & Co. v. A. H. Belo Corp., 228 F. Supp. 515 (N.D. Tex. 1964), *aff'd per curiam,* 346 F.2d 568 (5th Cir. 1965).

vant, and this might well include many statements about his personal life. But equal freedom to make statements about other persons in the public view would not necessarily follow. For example, it would not be suggested that a report of an athlete's marital problems should be protected, because it is not within his public role. However, Hollywood being what it is, the activities of a notorious Hollywood personality would not seem worthy of the same protection.

Moreover, I would suggest that not only must the statement be within the confines of the limelight, but also that the limelight itself must have an independent source. Thus it should not be privileged to say of an otherwise honest citizen that he is guilty of stealing, on the grounds that the public is always interested in people who steal.[31] On the other hand, I would suggest that a similar remark about a notorious criminal who has made a profession of crime, should be privileged. John Dillinger cannot complain that certain exploits attributed to him are reported with some inaccuracy.

That the law may be taking this path is indicated by the recent case of *Time, Inc. v. Hill*.[32] There, a family was involuntarily in the limelight because of their nineteen hour captivity at the hands of escaped convicts in their home in suburban Philadelphia. Some three years later, *Life* magazine ran a review of a Broadway play, stating that it and the article reenacted the Hills' experience. Various scenes were in fact inaccurate, including scenes of insult and abuse. The Hills sued for invasion of privacy on the grounds that the news interest in their ordeal did not protect a deliberately false story about the event. The Supreme Court reversed a 75,000 dollar judgment on the grounds that, although the Hills had alleged that the falsification was deliberate, the trial judge's instructions did not rule out the possibility of a verdict for the plaintiff on the basis of negligent error. Thus, the *New York Times* principle was extended to a privacy action by a family involuntarily placed in the public limelight.

From the above it would appear that the new definition of malice, and the protection of misstatements of fact as well as comment, may well become general principles applicable to all matters of public interest, and thus not limited to certain categories of people.[33] After all, the newspaper's obligations to report are not limited to politicians. The public also depends upon the press for financial news, social news, sports news, and the like. It is submitted, therefore, that once a person

31. Strangely enough, this seems to be the law in Arizona. See Broking v. Phoenix Newspapers, Inc., 76 Ariz. 334, 264 P.2d 413 (1953).

32. 385 U.S. 374 (1967).

33. *Cf.*, Pearson v. Fairbanks Publishing Co., 413 P.2d 711 (Alaska 1966); see Note, *Defamation of a Public Official*, 61 NW. U.L. REV. 614, 638 (1966).

is in the limelight for true and valid reasons, inaccuracies occurring thereafter in reports relating to the situation creating the limelight should be immune from liability unless deliberately or recklessly false. As was pointed out in the case of *Washington Post Co. v. Keogh:*

> Verification of syndicated news reports and columns is a time consuming process, a factor especially significant in the newspaper business where news quickly goes stale, commentary rapidly becomes irrelevant, and commercial opportunity in the form of advertisements can easily be lost. In many instances, considerations of time and distance make verification impossible. Thus the newspaper is confronted with a choice of publication without verification or suppression. Verification is also a very costly process, and the newspaper business is one in which economic survival has become a major problem, made increasingly grave by the implications of this fact for free debate.[34]

A case is currently before the Supreme Court which should finally indicate the direction of the law in this area. The case is *Curtis Publishing Co. v. Butts,*[35] which involves an article carried by the *Saturday Evening Post* charging Butts, a college football coach, with throwing a game. The jury awarded Butts 3,000,000 dollars in damages. The decision of this case should settle a good many of the issues discussed here. I do not want to try to pre-guess the Supreme Court's decision, but I do hope that I have pointed out some of the considerations.

There is a definite rise in both the number of libel claims and the amount of damages demanded. It takes a courageous publisher to face the possibilty of financial ruin in order to carry out his public function. Our law must not take the protection of this function for granted. The first amendment to our Constitution is that which above all else separates our political life from that of the rest of the world. This is not to say that it is a license for the press — rather it is a public trust in the interest of the people.

ADDENDUM

On June 12, 1967, some seven weeks after delivery of the above address, the Supreme Court handed down its combined opinion in the cases of *Curtis Publishing Co. v. Butts* and the *Associated Press v. Walker.*[a] As the majority opinion was subscribed by only four Justices, with three Justices concurring, at least in part, and two dissenting, the

34. 365 F.2d 965, 972 (D.C. Cir. 1966), *cert. denied,* 385 U.S. 1011 (1967).
35. 351 F.2d 702 (5th Cir. 1965), *cert. granted,* 385 U.S. 811 (1966).
a. 87 Sup. Ct. 1975 (1967).

case hardly provides a stable solution to the issues presented by these cases.

Justices Black and Douglas, of course, adhered to their previous declarations of first amendment absolutism.

Justices Warren, Brennan, and White found both Butts and Walker subject to the *New York Times* rule just as public officials. They concurred with the majority's reversal of *Walker* on the grounds that no knowledge of falsehood or reckless disregard of truth had been shown. They concluded that there was evidence of such disregard in *Butts,* and the Chief Justice voted to affirm, such "malice," in his view, being sufficiently established by the jury's vote for punitive damages; while Justices Brennan and White voted to remand *Butts* to permit more specific instructions.

But the majority, Justices Harlan, Stewart, Clark, and Fortas, created an entirely new rule for "public figures":

> [A] "public figure" who is not a public official may also recover damages for a defamatory falsehood whose substance makes substantial danger to reputation apparent, on a showing of highly unreasonable conduct constituting an extreme departure from the standards of investigation and reporting ordinarily adhered to by responsible publishers.[b]

The majority held that there had been no extreme departure from such standards in the *Walker* case, where "hot news" was involved, but that elementary precautions were ignored in the preparation of the *Butts* story by Curtis. These deviations included failure to interview known witnesses, failure to assign an experienced football analyst to the story, and failure to screen films of the games to check the accuracy of the article. Such care, the Court held, was especially warranted in view of the informant's criminal record and the obviously defamatory character of the article.

In support of the new rule which it espoused, the majority reasoned that libel of public figures as opposed to public officials cannot be analogized to seditious libel. Moreover, there is no countervailing privilege for statements made by such persons, as there is for officials.

It is important to note, in relation to the principal topic discussed on April 21st at Villanova Law School, that all the opinions recognize that statements about public figures are as important to the public as those about elected officials. In fact, in the decision itself, the majority specifically stated that, "[T]he public interest in the circulation of the materials herein involved, and the publisher's interest in circulating

b. *Id.* at 1991.

them, is not less than that involved in *New York Times.*"[c] And the opinion of the concurring Justices referred to the merging of intellectual, governmental, and business power in our society, concluding that, "Our citizenry has a legitimate and substantial interest in the conduct of such persons, and freedom of the press to engage in uninhibited debate about their involvement in public issues and events is as crucial as it is in the case of 'public officials.' "[d]

Therefore, despite the holding of *Butts,* which was based upon carelessness so clear that three Justices thought the publisher guilty of a reckless disregard of truth, it is apparent that "A Right to Know" is continuing to emerge from the various decisions of the Supreme Court as well as the other courts in our country. There is an increasing abandonment of the absolute liability concepts, at least where newsworthy material is concerned, and development of doctrines related to negligence and recklessness, as in other tort law. The role of modern publishing, overwhelmingly important to an educated society, certainly deserves this dissociation from the laws applicable to dynamite and wild beasts.

It should also be noted that on the same day the Supreme Court denied *certiorari* in *Pauling v. Globe-Democrat Publishing Co.*[e]

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c. *Ibid.*

d. *Id.* at 1996 (concurring opinion).

e. 87 Sup. Ct. 2097 (1967).