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# Constitutional Law--Libel and Slander--Defamation of Political Candidates

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# CASE COMMENTS

## CONSTITUTIONAL LAW—LIBEL AND SLANDER—DEFAMATION OF POLITICAL CANDIDATES

In the fall of 1968, James M. Sprouse was the democratic gubernatorial candidate in West Virginia. Two weeks prior to the November election, the *Charleston Daily Mail,* a newspaper printed in Charleston, West Virginia, and distributed in Kanawha and surrounding counties, published two consecutive articles concerning a land transaction in which Sprouse had engaged and which would return to him significant financial benefit. The misleading statements in the oversized headlines used by the newspaper implied the transaction had been illegal, while the contents of the articles recited truthful facts.[1]

Sprouse filed a libel action against the newspaper in the Kanawha County Circuit Court, alleging that the newspaper had printed a defamatory, untrue story knowing it to be false at the time of publication, and had published the articles as part of a plan or scheme to injure him. The action was dismissed for failure to state a claim of action upon which relief could be granted.[2] Plaintiff then filed an action in Circuit Court of Fayette County alleging the same facts.[3] Following a jury trial, judgment was rendered for Sprouse for $250,000 actual damages and $500,000 punitive damages. On appeal, defendants argued that plaintiff had failed to prove actual malice, as required by *New York Times Co. v. Sullivan,*[4] and that the damage award was excessive. *Held:* Re-

[1] Sprouse v. Clay Communication, Inc., 211 S.E.2d 674 (W. Va. 1975), *cert. denied,* 96 S. Ct. 145 (1975). The entire text of the two published articles are reproduced in the appendix of the case. The words "disclosed," "bonanza" and "cleanup" were used in the headlines of the first article, and "land grab" and "dummy firm" were contained in the headlines of the second article. Sprouse alleged that the use of these terms implied illegality of his land transactions.

[2] W. VA. R. CIV. P. 12(b)(6).

[3] This was a major point of error argued on appeal by the defendant. The defendant charged that the prior dismissal barred the present suit because of res judicata. The court acknowledged that this would be the correct rule for future dismissals unless the lower court specifically dismisses without prejudice (Sprouse had been dismissed without the specific statement) but declined to include the *Sprouse* case in the new rule. 211 S.E.2d at 693-96.

[4] 376 U.S. 254 (1964).

versed in part, affirmed in part. *Sprouse v. Clay Communication, Inc.*, 211 S.E.2d 674 (W. Va. 1975), *cert. denied* 96 S. Ct. 145 (1975). The West Virginia Supreme Court of Appeals held that "once an overall plan or scheme to injure has been established, an unreasonable deviation between headlines and the remainder of the presentation is in and of itself evidence of actual malice, which, along with other evidence, supports a jury verdict for libel."[5]

Because this was an issue of first impression in the United States, the West Virginia court was faced with the difficult task of developing new law in this constitutional area without the benefit of precedent. Thus, the court could only be guided by the landmark case of *New York Times* and its progeny.[6]

Prior to the 1964 *New York Times* decision, the law of defamation was governed by state law.[7] The *Times* decision established constitutional protection for false or defamatory statements, on the basis of the first amendment.[8] In West Virginia, prior to *Times*, the victim of a defamatory statement could recover unless the defendant could prove the truth of his statement and his good motives for publishing it,[9] or establish that his statement was privileged and that he had not abused that privilege.[10] If the article was found to be defamatory on its face—libel per se—malice and damage to the plaintiff's reputation were presumed.[11] The publisher's effort to ascertain the truth of the story was immaterial, as he published at his own peril.[12]

In *New York Times Co. v. Sullivan* the United States Supreme Court established a constitutional standard of protection, based on the first amendment, for a publisher of alleged defama-

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[5] 211 S.E.2d at 680-81.

[6] *Id.* at 680.

[7] W. PROSSER, HANDBOOK OF THE LAW OF TORTS § 112 (4th ed. 1971).

[8] 376 U.S. at 268.

[9] "In prosecutions and civil suits for libel, the truth may be given in evidence; and if it shall appear to the jury, that the matter charged as libelous, is true, *and was published with good motives, and for justifiable ends,* the verdict shall be for the defendant." W. VA. CONST. art. 3, § 8 (emphasis added).

[10] Parker v. Appalachian Electric Power Co., 126 W. Va. 666, 30 S.E.2d 1 (1944).

[11] Rigney v. Keesee & Co., 104 W. Va. 168, 139 S.E. 650 (1927); *accord,* City of Mullens v. Davidson, 133 W. Va. 557, 57 S.E.2d 1 (1949). (The burden of proving malice is on the plaintiff unless the language is so calumnious as to infer malice).

[12] Rigney v. Keesee & Co., 104 W. Va. 168, 139 S.E. 650 (1927).

tory statements. The new standard compelled an individual who was a public official to prove, with "convincing clarity,"[13] that the defendant published the defamatory statement with knowledge of its falsity or reckless disregard for the truth or falsity of the statement.[14] This is the "actual malice" standard. The *Times* case eliminated the presumption of malice and damages in such cases.[15]

Following *Times,* in *Garrison v. Louisiana,*[16] the Court held that a truthful statement concerning a public official was constitutionally protected regardless of whether common law malice was present.[17] The Court later extended the *Times* doctrine to include public figures[18] and candidates for public office.[19]

In a 1971 case, *Rosenbloom v. Metromedia, Inc.,*[20] the Court, in a plurality decision, held that a private individual who was involved in a newsworthy event would be bound by the *Times* standard.[21] *Rosenbloom* enabled the newspaper to decide what standard would apply merely by publishing an event and thus rendering it newsworthy. In 1975 the Court severely limited *Rosenbloom* with its decision in *Gertz v. Robert Welch, Inc.*[22] In *Gertz* the Court determined that merely being involved in a newsworthy event was not sufficient to require a plaintiff to meet the burden of the *Times* actual malice standard. The Court held that absent clear evidence of general fame or notoriety in the community and pervasive involvement in the affairs of society, an individual would not be deemed a public figure, and the more meaningful test is to consider the nature and extent of an individ-

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[13] 376 U.S. at 285-86.

[14] *Id.* at 279-80.

[15] *Id.* at 267, 278.

[16] 379 U.S. 64 (1964). *Garrison* held that the *New York Times* standard also measured the constitutional restriction upon state power to impose criminal sanctions for criticism of the official conduct of public officials.

[17] 379 U.S. at 73. The Supreme Court cited with approval a New Hampshire decision, State v. Burnham, 9 N.H. 34, 42, 31 A.D. 217 (1837), stating: "If upon a lawful occasion for making a publication, he has published the truth, and no more, there is no sound principle which can make him liable, even if he was actuated by express malice."

[18] Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967) (former football coach against publisher of magazine).

[19] Monitor Patriot Co. v. Roy, 401 U.S. 265 (1971) (candidate for Senate against newspaper).

[20] 403 U.S. 29 (1971).

[21] *Id.* at 31-32.

[22] 418 U.S. 323 (1974).

ual's participation in the particular controversy giving rise to the defamation.[23]

Beginning with the *Times* decision the Court has established limitations upon state libel prosecutions imposed by the constitutional guarantees of freedom of speech and of the press. It is in this context that the *Sprouse* decision must be analyzed, considering the constitutional requirements of the actual malice standard and the amount of evidence necessary to satisfy such a constitutional demand.

The West Virginia Supreme Court of Appeals in *Sprouse* made several important and new findings of law in holding that the plaintiff had met the constitutionally imposed burden of actual malice. The court construed the oversized headlines separately, without regard to the mitigating material in the body of the story, in deciding whether the newspaper had published defamatory statements. The court also determined the mere existence of misleading headlines, unsupported by the body of the story, to be evidence of intent to injure through publication of false, defamatory statements known at the time of publication to be false.[24]

The court in *Sprouse* found that no clear rule had been established regarding whether headlines which were not libelous per se could be considered separately from the body of the story.[25] The court concluded that each case must be considered on its facts, and since the defendant had used oversized headlines with the intention of misleading the reader, the headlines could be considered separately from the body.[26] The court cited *Empire Printing Co. v. Roden*[27] in support of its conclusion, but a careful reading of *Roden* reveals that its holding was contrary to the court's conclusion in *Sprouse*. The court in *Roden* held that headlines alone could contain language capable of supporting a libel action, but the headlines and story must still be construed as a whole.[28] The *Roden* court found support in the United States Supreme Court

[23] *Id.* at 352.

[24] 211 S.E.2d at 682.

[25] *Id.* at 686.

[26] *Id.*

[27] 247 F.2d 8 (9th Cir. 1957).

[28] *Id.* at 13. The court stated: "This is a question of fact for the jury to determine, from a consideration of all of the evidence in the case, and from a careful consideration of the publications in their entirety, including headlines, and any reasonable imputations or deductions arising therefrom." *Id.*

case of *Washington Post Co. v. Chaloner,* which held that "[a] publication claimed to be defamatory must be read and construed in the sense in which the readers to whom it is addressed would ordinarily understand it. So the whole item, including display lines, should be read and construed together, and its meaning and signification thus determined."[29] In another Supreme Court case, *Greenbelt Cooperative Publishing Association v. Bresler,*[30] a case factually similar to *Sprouse,* the defendant newspaper company had been held liable for describing a land transaction between plaintiff and city officials as "blackmail," thus implying that the plaintiff had committed a crime. The newspaper had published headlines containing the word "deal" and a sub-headline consisting solely of the word "blackmail."[31] The same terminology had been used by several citizens at a town meeting which was covered by the defendant's reporters. The Supreme Court found the use of such double meaning words was not libel because any reader who reached the word "blackmail" in the body of the story in either article would have understood exactly what was meant.[32] Thus the Court implied that the entire article, headlines and body, must be construed as a whole in determining whether the newspaper intended to impute the commission of a crime or merely to report on the town meeting.[33]

Therefore, the better rule, espoused in *Chaloner* and the majority of other cases confronting the issue,[34] is that in order to determine the intent of a newspaper article it should be construed

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[29] 250 U.S. 290, 293 (1919).

[30] 398 U.S. 6 (1970).

[31] *Id.* at 7-8.

[32] *Id.* at 14. The Court stated: "It is simply impossible to believe that a reader who reached the word 'blackmail' in either article would not have understood exactly what was meant . . . ." *Id.*

[33] This is similar to *Sprouse.* In both cases the plaintiff alleged that the writings were defamatory because of the implied illegality. Yet, in *Greenbelt,* the Supreme Court implied that the entire article must be considered as a whole, while in *Sprouse* the West Virginia court construed the headlines separately.

[34] See Reardon v. News-Journal Co., 53 Del. 29, 164 A.2d 263 (1960); Floyd v. Atlanta Newspapers, Inc., 102 Ga. App. 840, 117 S.E.2d 260 (1960); Cook v. Atlanta Newspapers, Inc., 98 Ga. App. 818, 107 S.E.2d 906 (1959); Ledger-Enquirer Co. v. Brown, 214 Ga. App. 442, 105 S.E.2d 229 (1958); Wade v. Sterling Gazette Co., 56 Ill. App. 2d 101, 205 N.E.2d 44 (1965); Beyl v. Capper Publications, Inc., 180 Kan. 525, 305 P.2d 817 (1957); Powers v. Durgen-Snow Publishing Co., 154 Me. 108, 144 A.2d 294 (1958); Rouse v. Olean Times Herald Corp., 219 N.Y.S. 2d 835 (1961); Painter v. E.W. Scripps Co., 104 Ohio App. 237, 148 N.E.2d 503 (1957).

in its entirety—headlines and body. This is contrary to the holding in *Sprouse*.[35]

In the second part of its decision, the court in *Sprouse* concluded that the mere existence of misleading headlines, unsupported by the body of the story, was evidence of intent to injure through publication of false, defamatory statements known at the time of publication to be false.[36] The court inferred that the defendant must have had knowledge that the headlines were misleading or false, or recklessly disregarded the truth because the body did not support the conclusion that could be drawn from the headlines alone.[37] The court then coupled the discrepancy between the headlines and the body with the evidence of a scheme or plan to injure the plaintiff and concluded that this satisfied the constitutional requirement of actual malice.[38] Such a formula does not prove, with clear and convincing evidence,[39] that the defendant had knowledge of the falsity of the articles[40] or reckless disregard for the truth or falsity of the articles.[41]

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[35] 211 S.E.2d at 686.

[36] *Id.* at 682.

[37] The Supreme Court, in Cantrell v. Forest City Publishing Co., 419 U.S. 245 (1974), applied the doctrine of *respondeat superior* to find the publisher liable for an employee publishing a story with knowledge of its falsity, but in *Sprouse*, the West Virginia court, citing *Cantrell*, used *respondeat superior* to impute knowledge of falsity or reckless disregard for the truth from the staff writer of the headlines to the author of the body of the articles. 211 S.E.2d at 690. This was not the purpose of the doctrine in *Cantrell*, as it imputed liability, not knowledge of falsity. Mere negligence could have caused the discrepancy between the headlines and body in *Sprouse*, without anyone having actual knowledge of falsity or reckless disregard for the truth.

[38] 211 S.E.2d at 680-81. The court recognized that the discrepancy alone would be insufficient to support a finding of actual malice, but when coupled with a scheme to injure, it found that the jury could permissibly infer actual malice. *Id.* at 682-83.

[39] 376 U.S. at 285-86.

[40] Since the court upheld the inference of actual malice because of the inconsistency between the headlines and the body, the defendant would have fared better on appeal if he had printed misleading statements in the body as well! In the latter instance the court would have at least required the plaintiff to produce more evidence of knowledge of falsity or reckless disregard because the inference based on the inconsistency would not be present.

[41] The imputation of the defendant's reckless disregard for the truth of the articles was based on the evidence that the newspaper had schemed with Sprouse's opponents in order to injure him, coupled with the defendant's lack of responsible reporting standards. But why, then, did the defendant go to Elkins, the location

The court's language of "an overall plan or scheme to injure"[42] is nothing more than a definition of traditional common law malice, which the court concedes is present between adversaries of every political campaign.[43] Common law malice is not an element of the constitutional standard of actual malice, which was required in *Sprouse*.[44] Common law malice is ill will toward the plaintiff or wanton disregard for his rights. In contrast, actual malice is merely a term of art used to describe one's actual knowledge of the truth or falsity of a published statement, or his reckless disregard for its truth or falsity.[45] The court in *Sprouse* described actual malice as consisting of a deliberate intent to injure (common law malice) coupled with an intent to injure through the publication of false or misleading defamatory statements, known to be false, or an intent to injure through publication of defamatory statements with reckless and willful disregard for their truth.[46] Somewhere in this labyrinth of words is the actual malice standard as defined by *Times*, but the court in *Sprouse* added the requirement of common law malice and used it to subvert the actual malice standard. Once the plaintiff had proved intent to injure, through a scheme or plan, then the court in *Sprouse* permitted the inference of actual malice from the discrepancy between the headlines and the body of the article.[47] Such an inference is constitutionally insufficient to establish actual malice because the plaintiff is relieved from proving that the defendant actually knew that the statement was false or that the defendant had a high degree of awareness of probable falsity.[48] Thus a defendant who merely negligently places misleading headlines over a factually true article and has ill will towards the plaintiff could be held liable if the jury is permitted to make the inference of actual malice from the language of the article itself,[49] without really ascertaining whether the defendant had ac-

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where the land transactions had occurred, and investigate the story? Surely if the defendant's intention were to injure Sprouse, he would not have investigated at all.

[42] 211 S.E.2d at 680-81.

[43] *Id.* at 681.

[44] Rosenblatt v. Baer, 383 U.S. 75, 84 (1966).

[45] Cantrell v. Forest City Publishing Co., 95 S. Ct. 465, 470 (1974).

[46] 211 S.E.2d at 681-82.

[47] *Id.* at 680-81.

[48] St. Amant v. Thompson, 390 U.S. 727, 731 (1968), holding that for reckless disregard of the truth to be established one must have a high degree of awareness of probable falsity.

[49] 211 S.E.2d at 681.

tual knowledge of falsity or a reckless disregard for the truth. A publisher would be better protected if he printed misleading statements in the body as well so that no discrepancy would exist on which to base the inference. In essence, the West Virginia court has allowed liability to be found on the basis of a combination of general hostility and a contradiction (discrepancy between the headlines and body of the story) in the language of the article itself. A similar holding was reversed by the Supreme Court in *Greenbelt,* where liability had been based on general hostility and a falsehood.[50] The Court stated in *Greenbelt* that this definition of (common law) malice is constitutionally insufficient where discussion of public affairs is concerned.[51] The *Sprouse* court repeatedly discussed common law malice in its opinion, almost to the point of confusion.

The *Sprouse* court found support for its inclusion of common law malice in the actual malice standard in the Supreme Court case of *Curtis Publishing Co. v. Butts.*[52] In *Butts,* the defendant, *Saturday Evening Post,* had accused Butts of "fixing" a college football game. The article published by the defendant was in no sense "hot news,"[53] requiring immediate dissemination, and the *Saturday Evening Post* could have conducted a thorough investigation. In *Sprouse* the defendant had only two weeks in which to publish his story before the election took place. This was undoubtedly "hot news" in *Sprouse,* but the defendant still made a reasonable effort to investigate the validity of the story before publishing it.[54] In *Butts,* the defendant had relied on a single source of information, who was of questionable veracity, and the defendant made no investigation whatever.[55] Thus the cases are easily distinguishable on their facts; however, the *Butts* decision is inapplicable to *Sprouse* for a much more compelling reason.

The *Butts* case was the first in which the Supreme Court granted first amendment protection to a public figure in addition to the public official. As the *Times* standard was relatively new, the Court was quite cautious in applying the constitutional protec-

[50] 398 U.S. at 10.

[51] *Id.*

[52] 388 U.S. 130 (1967).

[53] *Id.* at 157. In *Butts,* the magazine had eight months in which to investigate the story.

[54] 211 S.E.2d at 683.

[55] 388 U.S. at 157.

tion, and thus made a distinction between a public official and a public figure[56] by holding that a lesser standard than the *Times* actual malice standard could be applied.[57] This holding is no longer valid, as it has continuously been eroded by subsequent Supreme Court decisions.[58] The distinction between a public official and a public figure is no longer made by the Court, as the actual malice standard applies to both with equal force.[59]

The jury had awarded the plaintiff in *Sprouse* $500,000 in punitive damages, but the court struck this as being excessive. It held that such excessiveness violated the policy embodied in the first amendment of encouraging broad dissemination of public information and would also result in self-censorship.[60] Although the court struck the punitive damages, it boldly stated in dicta that a plaintiff in Sprouse's position could be permitted to recover punitive damages because of the high degree of proof required to sustain any libel action.[61] The court based this conclusion on its interpretation of the Supreme Court case, *Gertz v. Robert Welch, Inc.*[62] It appears that the West Virginia court would sustain a reasonable

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[56] *Id.* at 148.

[57] *Id.* at 155. The Court stated:

> We consider and would hold that 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.

*Id.*

[58] Monitor Patriot Co. v. Roy, 401 U.S. 265, 271 (1971). The Court stated:

> But the question is of no importance so far as the standard of liability in this case is concerned, for it is abundantly clear that, whichever term is applied, publications concerning candidates must be accorded at least as much protection under the First and Fourteenth Amendments as those concerning occupants of public office. That *New York Times* itself was intended to apply to candidates, in spite of the use of the more restricted "public official" terminology, is readily apparent from that opinion's text and citations to case law.

*Id.* See Ocala Star-Banner Co. v. Damron, 401 U.S. 295 (1971); Greenbelt Cooperative Publishing Ass'n v. Bresler, 398 U.S. 6 (1970); Beckley Newspapers Corp. v. Hanks, 389 U.S. 81 (1967).

[59] See note 57 *supra*.

[60] 211 S.E.2d at 692.

[61] *Id.*

[62] 418 U.S. 323 (1974).

[63] 211 S.E.2d at 681.

punitive damage award in a libel action against a public official-public figure. Such a conclusion is not supported by *Gertz*. *Sprouse* did not involve a private individual,[63] as did *Gertz*;[64] thus contrary to the court's finding in *Sprouse*, *Gertz* does not clearly permit a public figure to recover punitive damages. The Court in *Gertz* addressed itself only to the issue of whether a private defamation plaintiff could recover punitive damages, and it concluded that a private individual could recover punitive damages if the higher standard of actual malice were proven.[65] A recent federal district court case, *Maheu v. Hughes Tool Co.*,[66] held that a public figure defamation plaintiff could not recover punitive damages. In a well written opinion, the court stated that "the additional state interest to protect reputation and privacy from special dangers arising out of highly motivated tortious defamation is not compelling or substantial in public figure actions."[67] The court then concluded "that the First Amendment precludes plaintiff's recovery of punitive damages . . . . [T]o grant exemplary damages in public figure defamation actions . . . is unconstitutional."[68] The Supreme Court has yet to rule definitively whether a public figure or public official may constitutionally recover punitive damages in a libel action, but it has questioned the constitutional propriety of such damages for defamation in recent cases.[69] In *Gertz* the Supreme Court discussed the practical effect of punitive damages as "bearing no necessary relation to the actual harm caused," thus enabling the jury to selectively punish expressions of unpopular views. Such jury discretion would be contrary to the purpose of the first

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[64] 418 U.S. at 352.

[65] 418 U.S. at 349-50. The Court stated:

> It is necessary to restrict defamation plaintiffs who do not prove knowledge of falsity or reckless disregard for the truth to compensation for actual injury.
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> . . . In short, the private defamation plaintiff who establishes liability under a less demanding standard than that stated by *New York Times* may recover only such damages as are sufficient to compensate him for actual injury.

[66] 384 F. Supp. 166 (C.D. Cal. 1974).

[67] *Id.* at 172-74.

[68] *Id.*

[69] *See generally* Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974); Rosenbloom v. Metromedia, Inc., 403 U.S. 29, 59 (White, J., concurring), 65-78 (Harlan, J., dissenting), 82-86 (Marshall and Stewart, JJ., dissenting) (1971); see also RESTATEMENT (SECOND) OF TORTS, Explanatory Notes § 621, comments b and f at 286 and 288 (Tent. Draft No. 20, 1974).

amendment of preventing self-censorship and promoting "uninhibited, robust, and wide-open"[70] discussion of public issues.[71] The above analysis would indicate that the Supreme Court will probably not allow punitive damage recovery in public official-public figure defamation actions when faced with the issue.

The *Sprouse* case is the most recent opinion by the West Virginia Supreme Court of Appeals concerning libel law. The court may have upheld a just verdict, but in doing so, several dubious precedential interpretations were handed down, as well as a bold statement in dicta that punitive damages could be recovered by a public official-public figure plaintiff.

The court interpreted the *Gertz* case as clearly allowing recovery of punitive damages by a public official-public figure plaintiff. Such an assertion was unnecessary and somewhat contradictory considering the ultimate decision by the court on the issue of Sprouse's $500,000 punitive damage award. If the court struck the punitive damages as being excessive under West Virginia damage law, the statement indicating that nevertheless they are recoverable in such instances was unnecessary and premature, but the court then held that such a large punitive damage award was repugnant to the first amendment's policy of promoting robust and uninhibited discussion of public affairs. It appears that the court artfully included its determination that punitive damages could be awarded but simultaneously struck the entire award, which eliminated any possible constitutional conflict.

The *Sprouse* decision also contained two questionable interpretations of constitutional libel law. By relying on *Curtis Publishing Co. v. Butts,* the court adopted an actual malice standard of suspect validity. The more recent Supreme Court cases, especially *Gertz* and *Monitor Patriot Co. v. Roy,* have severely limited, if not overruled, the less onerous actual malice standard used in *Butts.*

The court also intermingled the concept of common law malice with the constitutional actual malice standard. The introduction of common law malice into the definition of actual malice only confuses the jury with regard to the real issue to be resolved. Consequently, the defendant is judged according to his motives for

[70] New York Times Co. v. Sullivan, 376 U.S. at 270.
[71] *Id.*

publishing the story and not according to whether he knew the story to be false or whether he had recklessly disregarded the truth.

The *Sprouse* case was undoubtedly a difficult one to decide, but when such a fundamental first amendment issue is presented, the court must review the law applied to the case by the trial court. More importantly, it must scrutinize the entire evidence of the trial and determine that the defendant's constitutional rights have been fully protected.

An unintimidated press is the only way to keep the public informed about the character and activities of political candidates and elected officials. Financial intimidation from a libel suit can be as effective in deterring the publication of an important story as can governmental censorship. The real impact of the *Sprouse* decision has yet to be felt, but it is certain that this decision will retard, in West Virginia, the robust and uninhibited reporting by the press that the Constitution has sought to protect.*

*David John Romano*

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* *Editors Note:* After this article was written the United States Supreme Court decided *Time, Inc. v. Firestone*, 44 LW 4262 (March 2, 1976). The case primarily involved two issues, (1) whether the individual, Mary Alice Firestone, was a public figure under *Gertz v. Robert Welch, Inc.*, and prior cases, and, (2) whether the truthful reporting of a judicial proceeding is fully protected under the first amendment.

The Court held that Mrs. Firestone was not a public figure because she had not voluntarily "thrust herself to the forefront of any particular public controversy in order to influence the resolution of the issues involved in it" (even though there was evidence that she had), and that the nature of the controversy (divorce action) was not the type of public controversy referred to in *Gertz*. Both of these holdings were criticized in dissents by Justices Brennen and Marshall.

The Court also rejected the contention that the truthful reporting of a judicial proceeding is fully protected by the *New York Times* standard. The Court held that not all judicial proceedings were of "public or general interest." Thus some reports of judicial proceedings could be actionable even if truthful. This rationale seems to be more in accord with a privacy action rather than one for defamation. The dissents also explore this area.