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TORTS-LIBEL AND SLANDER-ABSOLUTE PRIVILEGE TO PRESS RELEASES OF EXECUTIVE OFFICIALS

Constantine D. Kasson
University of Michigan Law School

TORTS—LIBEL AND SLANDER—ABSOLUTE PRIVILEGE TO PRESS RELEASES OF EXECUTIVE OFFICIALS—Defendant, Attorney General for the state of Pennsylvania, wrote a letter to a District Attorney demanding the dismissal of the plaintiff, an Assistant District Attorney, because of the plaintiff's alleged communistic activities and associations, information of which had been brought to the attention of the defendant by the State Police. Before delivery of the letter to the District Attorney, the defendant released it to the newspapers. Plaintiff brought a libel action alleging the statements to be false and maliciously made. The defendant demurred and the court sustained. On appeal, *held,* affirmed. Although the defendant himself has no power to dismiss or to compel the dismissal of the plaintiff, the letter supplying information about the plaintiff was written within the scope of his powers, and it is in the public interest that he keep the public advised of his official acts; therefore, release of the letter to the press is absolutely privileged. *Matson v. Margiotti,* 371 Pa. 188, 88 A. (2d) 892 (1952).

The rationale of the doctrine of absolute privilege, which affords complete immunity to defamatory statements made by certain classes of people, is based on a public policy which insures freedom of speech where it is essential to the general public interest.[1] Absolute privilege in libel actions was originally limited to judicial and legislative proceedings, and to communications made by military and naval officers.[2] Later, in the leading case of *Spalding v. Vilas,*[3] it was extended to heads of executive departments when engaged in the discharge of duties imposed upon them by law, and has since been further extended to include subor-

[1] 9 COL. L. REV. 463 at 469 (1909).
[2] ODGERS, LIBEL AND SLANDER 227 (1911).
[3] 161 U.S. 483, 16 S.Ct. 631 (1896).

dinate government officials.[4] This appears to be the prevailing view among both federal and state courts with regard to official communications of executive officials.[5] On the general question of whether or not press releases of these officials should be absolutely privileged, the courts are somewhat divided. Some courts have treated them as official communications coming within the rule of the *Spalding* case, viz., official communications of executive officials when made in the exercise of duties imposed upon them by law are absolutely privileged, and if there is any doubt that it is an official communication, an absolute privilege may be granted on the ground that the public interest in the acts of the official creates a duty on his part to inform the public.[6] Courts following this view require a fairly substantial public interest, and will consider the status of the official and the importance of the matter.[7] Other courts tend to confine the application of absolute privilege in press releases by requiring the act of the official to be clearly within the scope of his authority, and appear reluctant to use the "duty to inform the public" theory to reach a different result.[8] Assume the communication to be of an official character, and that the case arises in a jurisdiction following what might be termed the broader application of absolute privilege, should the result be any different if the communication is released

[4] DeArnaud v. Ainsworth, 24 App. D.C. 167 (1904); Miles v. McGrath, (D.C. Md. 1933) 4 F. Supp. 603.

[5] Love v. Snyder, (6th Cir. 1950) 184 F. (2d) 840; Catron v. Jasper, 303 Ky. 598, 198 S.W. (2d) 322 (1946); Powers v. Vaughan, 312 Mich. 297, 20 N.W. (2d) 196 (1945); Donner v. Francis, 255 Ill. App. 409 (1930); Stivers v. Allen, 115 Wash. 136, 196 P. 663 (1921). *Contra:* Tanner v. Stevenson, 138 Ky. 578, 128 S.W. 878 (1910); Peterson v. Steenerson, 113 Minn. 87, 129 N.W. 147 (1910); Ranson v. West, 125 Ky. 457, 101 S.W. 885 (1907).

[6] In Glass v. Ickes, 73 App. D.C. 3, 117 F. (2d) 273 (1940), the Secretary of the Interior issued a press release, allegedly containing defamatory statements, in which he informed the public that the plaintiff had been barred from handling claims before the Department of Interior. The court held the press release to be within the scope of the Secretary's duties and therefore absolutely privileged, the then Justice Vinson saying in the footnote at 277-278: ". . . such announcements serve a useful if not essential role in the functioning of the democratic processes of government." One may have difficulty understanding what useful purpose the defendant's press release in the principal case served. See also Schlinkert v. Henderson, 331 Mich. 284, 49 N.W. (2d) 180 (1951) (public interest in the reorganization of personnel in the liquor control commission) and Ryan v. Wilson, 231 Iowa 33, 300 N.W. 707 (1941) (public interest in the receivership division of the state department of banking).

[7] Colpoys v. Gates, (D.C. Cir. 1941) 118 F. (2d) 16. The court reasoned that a marshal had no duty to reveal to the public the results of an investigation of charges made against his deputies, and so was not absolutely privileged when doing so, distinguishing the functions of a marshal from those of a cabinet officer, who has political functions to perform and who should not be subject to libel suits when explaining his acts and policies publicly.

[8] Murray v. Brancato, 290 N.Y. 52, 48 N.E. (2d) 257 (1943). Though involving a member of the judiciary rather than an executive official, the issue presented was the same, the court holding that a judge who is under a statutory duty to deliver to the State Reporter copies of his opinions, but who instead sends copies of his opinion to the New York Law Journal and New York Supplement with a request that they be published is not acting within his judicial authority; consequently the publication was not official and therefore not absolutely privileged.

to the press prior to its delivery to the one who is to receive it? The authorities on this precise question are few, but the inquiry has been given some treatment by courts passing on the issue of whether or not to grant an absolute privilege to the communication of an official. A federal court[9] applying the rule of the *Spalding* case held a communication absolutely privileged on the assumption that it was delivered to the addressee prior to its release to the press, thus leaving open the question of what effect an advance release of the letter would have had on the result.[10] The Pennsylvania court is one of the few courts which has faced this exact question and held that the absolute privilege given to the heads of executive departments over their official communications remains unaffected by a release of the letter to the press prior to its receipt by the addressee[11] However one might abhor such a practice, it is difficult to understand why the result should be any different since an absolute privilege by its very nature is not affected by excessive publication.[12] Courts should, however, weigh seriously any extension of the privilege, for to cloak executive officials with this immunity, especially as in the principal case where the authority to write the letter in the first instance was seriously questioned, may easily lead to great abuse in the hands of the unprincipled. A bestowal of this privilege on the theory that there is a duty to inform the public because of the public interest in the matter presents the serious problem of drawing the line between matters which are of public interest and those which are not. Examination of the authorities indicates a reluctance on the part of numerous courts to extend the doctrine of absolute privilege,[13] and raises considerable doubt if they would reach the same result as did the Pennsylvania court if faced with the same question. The better rule would seem to be to apply a qualified privilege to such press releases, and accord absolute immunity only in those rare situations where, for compelling reasons of public policy, it is desirable that the executive official be left free to communicate to the general public without being subject to civil suit.

Constantine D. Kasson

[9] Mellon v. Brewer, 57 App. D.C. 126, 18 F. (2d) 168 (1927), cert. den. 275 U.S. 530, 48 S.Ct. 28 (1927).

[10] Cf. Bingham v. Gaynor, 203 N.Y. 27, 96 N.E. 84 (1911).

[11] In Ryan v. Wilson, 231 Iowa 33, 300 N.W. 707 (1941), the court held absolutely privileged a report released to the press by the Governor prior to its delivery to the Attorney General.

[12] Where a qualified privilege is available, it must be exercised in a reasonable manner, so deliberate adoption of a method of communication which gives unnecessary publicity to defamatory statements may be an abuse of the privilege, resulting in its forfeiture. See PROSSER, TORTS §94 (1941).

[13] Laun v. Union Electric Co. of Missouri, (Mo. 1943) 166 S.W. (2d) 1065; Pecue v. West, 233 N.Y. 316, 135 N.E. 515 (1922).