

IN THE SUPREME COURT OF OHIO

JAMES G. JACKSON : CASE NO. 06-2096
: :
Appellant, : :
: : On Appeal from the
: : Franklin County Court of Appeals
v. : : Tenth Appellate District
: :
CITY OF COLUMBUS, *et al.*, : : Court of Appeals
: : Case No. 05 APE09 1035
: :
Appellees. :

APPELLEES THOMAS W. RICE, SR. AND THE CITY OF COLUMBUS'
MEMORANDUM IN RESPONSE TO APPELLANT'S
MEMORANDUM IN SUPPORT OF JURISDICTION

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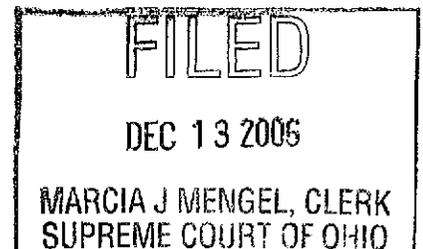


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THIS CASE IS NOT A CASE OF PUBLIC OR GREAT GENERAL INTEREST

The Franklin County Court of Appeals affirmed the Trial Court's grant of summary judgment in favor of Appellees Thomas W. Rice, Sr., and the City of Columbus on the one claim remaining in this case at that time – the claim that, Director Rice libeled Appellant James G. Jackson by including within his Report to the Mayor allegations made by Keith Lamar Jones, a then-incarcerated inmate, that Chief Jackson had fathered a child with a juvenile prostitute. In his Report to the Mayor, Director Rice advised the Mayor how these allegations had come to his investigative team's attention, what efforts had been made to determine the truth of these allegations, what reservations the investigators had regarding Mr. Jones' credibility,¹ and what the team ultimately concluded -- that these allegations against Chief Jackson "are unproven at this time and are dependent on evidence in the future from new sources or places." (Report at 156-158.) Consequently, these allegations were referred back to the Division of Police for further investigation. (Report at 6.)

In its Decision the Court of Appeals held that, even assuming for purposes of the appeal that Director Rice and the investigating officers were "substantially aware of the likely falsity" of the Jones allegations when he republished them in his Report to the Mayor, the inclusion of these allegations in the Report was protected by Ohio's public interest privilege because they were republished in an official report detailing the results of an official investigation and appropriately disclosed the investigators' concerns regarding Keith Lamar Jones' credibility.

¹The Report explicitly acknowledges, at page 158, that some law enforcement officers who had had previous contact with Mr. Jones on other matters believed he was "a scam artist," "a liar," and "very knowledgeable but not reliable as he uses information to his advantage." Due to a printing error, these pages should be read out of order. They should be read as follows: page 158, the last two paragraphs of page 156, and then page 157.

The existence of the public interest privilege is well established. This Court has held that the privilege applies to “communications made to those who may be expected to take official action of some kind for the protection of some interest of the public.” *A & B-Abell Elevator Co. v. Columbus/Cent. Ohio Bldg. of Constr. Trades Council* (1995), 73 Ohio St.3d 1, 9; *see also Jacobs v. Frank* (1991), 60 Ohio St.3d 111, 113-114. The Court of Appeals applied well-settled law in finding that statements in investigative reports are protected by the qualified public interest privilege. *See Black v. Cleveland Police Dept.* (1994), 96 Ohio App.3d 84, 89. It is not an issue of public or great general interest to apply this body of law to the Mayoral Report which was, in fact, an investigative report made by a person with a duty to prepare and submit it.

The appellate court’s determination that the privilege was not lost by publication of the allegations even if it were assumed that Rice knew that the allegations were likely false does not create an issue of public or great general interest. In fact, Ohio law recognizes a privilege to publish allegations “as allegations” as part of an investigation, regardless of one’s belief or lack of belief in the truth of such allegations. *See Burkes v. Stidham* (Cuyahoga 1995), 107 Ohio App.3d 363, 379; *Early v. The Toledo Blade* (Lucas 1998), 130 Ohio App.3d 302, 330, *appeal not allowed in* (1999), 85 Ohio St.3d 1405, *cert. denied* (1999), 528 U.S. 964. Ohio law further recognizes that the “disclosure of concerns or credibility problems regarding a source displays a lack of actual malice rather than malice.” *Burns v. Rice* (2004), 157 Ohio App.3d 620, 639.

Although Appellant argues that any qualified privilege is lost any time a third person’s allegations are published with knowledge of their falsity or probable falsity, this would lead to absurd results if applied to a case such as the present one, where the allegations were simply identified in a report of an official investigation as being among the allegations that were actually investigated and found to be unproven as a result of that investigation. Indeed, if Appellant’s

argument were adopted, no police officer or other governmental investigator could ever report to his superior, or to anyone else, that he had investigated certain allegations “and found them – or believed them – to be false or probably false,” without thereby being automatically liable for defaming the subject of these allegations! This cannot and should not be the law, as the courts below properly held. Indeed, as another court has aptly observed:

If merely repeating an accusation that has been made in the context of determining what should be done about it constituted defamation, then employers would be severely crippled in their abilities to verify rumors and accusations by employees about management, or about employees by management, for that matter.

Vanderselt v. Pope (Oregon App. 1998), 155 Ore. App. 334, 346, 963 P.2d 130, *review denied* (1998), 328 Ore. 194, 977 P.2d 1172.

Appellant’s suggestion that the Court of Appeals applied the neutral reportage privilege is completely unfounded. The Court of Appeals never discussed the neutral reportage privilege, which is reserved for media defendants in those jurisdictions recognizing such a privilege. *See, e.g., Time, Inc. v. Pape* (1971), 401 U.S. 279; *Medina v. Time, Inc.* (1st Cir. 1971), 439 F.2d 1129; *Edwards v. National Audubon Soc.* (2d Cir. 1977), 556 F.2d 113, 120. To the contrary, the Court of Appeals’ analysis and holding were expressly limited to “the context of the public interest privilege as applied to an official investigation.” (Decision at 11.)

Furthermore, even though the Court of Appeals assumed for purposes of appeal that Director Rice was substantially aware of the likely falsity of the Jones allegations when he republished them in his Report to the Mayor, Director Rice’s uncontroverted Affidavit filed in support of his Motion for Summary Judgment establishes that, in fact, while Director Rice recognized that the Jones allegations might be false, he simply did not know at the time whether the allegations actually were false or probably false. As this Court held in *Varanese v. Gall*

(1988), 35 Ohio St.3d 78, 82, in reinstating summary judgment for the defendant in that case, such awareness that a third party's allegations might be false is "immaterial," "cannot be considered probative of actual malice," and "cannot be deemed to have established actual malice with 'convincing clarity.' "

Accordingly, this case is not a case of public or great general interest warranting review by this Court.

STATEMENT OF THE CASE AND FACTS

This case arises from the efforts of the Mayor of the City of Columbus, and Thomas W. Rice, Sr., its then-Director of Public Safety, to investigate allegations of misconduct within the highest levels of the Division of Police. The investigation summarized in the Mayoral Report started as an administrative investigation concerning Chief Jackson's failure to render what Director Rice considered was appropriate discipline to Police Commander Walter Burns at the conclusion of an Internal Affairs Bureau investigation which focused on Burns' mishandling of evidence during a significant prostitution investigation. The administrative investigation thereafter was expanded by the Mayor, acting pursuant to Section 63 of the Charter of the City of Columbus, into a Mayoral Investigation of broader concerns. (Affidavit of Thomas W. Rice, Sr., ["Rice Aff.,"] ¶¶ 5-9, R. 115, at Exhibit A.)

Both phases of the investigation were headed by Assistant Safety Director David Sturtz. (Rice Aff. ¶¶ 9-10.) Sturtz was employed by the Ohio State Highway Patrol for 28 years, during which time he received continuous in-service training and seminars on how to conduct an investigation. (Affidavit of David Sturtz ["Sturtz Aff.,"] ¶ 1, R. 115, at Exhibit C.) Sturtz also served as the Inspector General for the State of Ohio, conducting and supervising investigations of public official misconduct for six and one-half years. (Sturtz Aff. ¶ 1.) Sturtz was assisted in

the investigation by Commander D. James Dean, who at the time headed the Internal Affairs Bureau of the Division of Police. (Rice Aff. ¶ 11; Sturtz Aff. ¶ 3; Affidavit of D. James Dean [“Dean Aff.”] ¶ 1, R. 115, at Exhibit D.) In April 1997, Sturtz presented Director Rice with a report summarizing the allegations that had surfaced during the investigation, what the investigators had done to investigate the allegations, and the conclusions the investigators were able to draw (the “April Report”).²

The Mayoral Report was issued June 30, 1997. The Mayoral Report includes Commander Dean’s and Assistant Safety Director Sturtz’s report of their investigation into allegations by Keith Lamar Jones, a prisoner at Chillicothe Correctional Institute, that Chief Jackson had had a sexual relationship with a minor prostitute and impregnated her and that Chief Jackson had had relationships with one or more exotic dancers at a nightclub. The allegations are included in the Mayoral Report at pages 156-58 under the topic heading “Other Related Matters Considered,” and referenced on page 6 of the Mayoral Report, at paragraph 4, as one of the “concerns identified during [the Mayoral Investigation] that were forwarded to either the Division of Police or an external agency for further action.” (Report at 6, 156-58.)

The Mayoral Report incorporates the investigators’ factual information, perceptions and conclusions. (*See* Report at 156-57.) It states what the allegations were; how they arose; what was done to investigate them; issues related to Jones’ credibility; and the investigators’ conclusion that the allegations were unproven based upon the evidence available to them and therefore forwarded to the Vice Squad for further investigation. (*See* Report at 156-58.)

Rice believed that the Mayoral Report accurately repeats the allegations made by Jones about Chief Jackson. (Second Supplemental Affidavit of Thomas W. Rice, Sr. [“Rice Second

² A complete copy of the April Report, with all Report references, is attached as Appendix Volumes I-III to Rice’s Motion for Summary Judgment, R. 115.

Supp. Aff.”] ¶ 12, R. 158.) He also believed that the Mayoral Report accurately sets forth all the information the mayoral team had about the credibility of these allegations and the witness who made them. (*Id.* ¶¶ 10-12.) This includes both the reasons to doubt Jones’ credibility, including that he was viewed by some law enforcement personnel as “a scam artist,” and “a liar,” and reasons why Jones’ credibility ought not to be discounted entirely, including that other law enforcement personnel viewed him as a “reliable” source, and that he had provided “substantial assistance” in a prior murder case. (*See* Report at 156-158; Endnotes at pp. 851-907.)

Thus, as the Mayoral Report indicates, and as Rice’s Second Supplemental Affidavit confirms, while Director Rice recognized that the Keith Lamar Jones allegations might be false, the evidence was simply too equivocal for him to conclude either that they were certainly or probably true or certainly or probably false. (Rice Second Supp. Aff. ¶¶ 11, 15.)

Despite his recognition that these allegations might be false, Director Rice included the Jones allegations in the Mayoral Report because he believed he had a duty to do so. (Rice Second Supp. Aff. ¶¶ 3-12.) Rice believed it was his duty to prepare a written report for Mayor Lashutka of the allegations that had been made which related to the subject areas outlined in the Mayor’s letter ordering the investigation to be commenced, what efforts had been made to investigate those allegations, the results of the investigation and his recommendations for further action. (*Id.*) He believed it was his duty to provide Mayor Lashutka with the candid professional opinion of the team of investigators about the merits of the various allegations and the evidence supporting or undermining the allegations based upon the information developed by the investigative team. (*Id.*) Consequently, where the investigative team believed the evidence uncovered was sufficient to prove or disprove an allegation, that is stated in the Mayoral Report;

where, as here, however, the investigators could not reach a firm conclusion and believed further investigation to be required, that is stated as well. (*Id.*)

Chief Jackson filed this suit on July 17, 2001, alleging numerous defamatory statements.³ On November 5, 2004, Rice was granted summary judgment in his favor on all but two of the allegedly defamatory statements, one based on the re-publication of the Keith Lamar Jones allegations and one based on allegations made by two prostitutes concerning Chief Jackson. Chief Jackson did not appeal that decision. On May 19, 2005, the trial court granted a renewed motion for summary judgment by Rice on the republished Jones allegations, and on August 29, 2005, Chief Jackson amended his Complaint to delete any claim with reference to republication of the prostitutes' allegations about him.

On August 29, 2005, following the amendment of the Complaint to delete the sole remaining claim, the Trial Court signed an Agreed Judgment Entry stating that “[f]or the reasons stated in the November 5, 2004 Decision and Entry and the May 19, 2005 Decision and Entry, Final Judgment is entered in favor of Defendants on all claims in the Amended Complaint. This is a Final Appealable Order.” (Judgment Entry, R. 197.)

An appeal was timely filed on September 27, 2005. The only claim before the Court of Appeals was Chief Jackson's claim that he was defamed by the re-publication of the allegations made by Keith Lamar Jones. On September 29, 2006, the Tenth District Court of Appeals issued a Decision affirming the Trial Court's grant of summary judgment to Rice.

³ Chief Jackson originally filed suit in Federal court, raising a wide variety of constitutional and other claims. His state court action was filed following the dismissal of his Federal claims.

LAW AND ARGUMENT

- A. **As held by the Court of Appeals, “[m]ere republication of allegations that might be false, or even that more than likely are false, will not establish of itself actual malice in the context of the public interest privilege as applied to an official investigation.” Further, “the Report’s disclosure of concerns or credibility problems regarding a source displays a lack of actual malice rather than malice.” (Decision at 11.)**

The Court of Appeals’ decision was based on the qualified public interest privilege, which has been previously adopted by this Court. As stated in *Hahn v. Kotten* (1975), 43 Ohio St.2d 237, and followed in *Jacobs v. Frank*:

“A publication is conditionally or qualifiedly privileged where circumstances exist, or are reasonably believed by the defendant to exist, which cast on him the duty of making a communication to a certain other person to whom he makes such communication in the performance of such duty, or where the person is so situated that it becomes right in the interests of society that he should tell third persons certain facts, which he in good faith proceeds to do. This general idea has been otherwise expressed as follows: A communication made in good faith on any subject matter in which the person communicating has an interest, or in reference to which he has a duty, is privileged if made to a person having a corresponding interest or duty, even though it contains matter which, without this privilege, would be actionable, and although this duty is not a legal one, but only a moral or social duty of imperfect obligation. . . .”

Jacobs v. Frank, 60 Ohio St.3d at 113-14 (emphasis added).

The Court of Appeals appropriately determined that the public interest privilege was applicable to the facts in this case. In *Jacobs v. Frank*, in holding that the privilege exists for communications to a licensing board or peer review, the Court recognized that in such circumstances “an obvious need exists for candor”; that “[t]he public has a right to feel secure in the knowledge that the professional services it receives are rendered by competent and qualified practitioners”; that there was a need “to receive a frank straightforward appraisal from those in positions to judge”; and that “[m]ore important, the evaluators must be free to make truthful

professional judgments . . . without fear of retaliatory lawsuits.” *Id.* at 116. Obvious parallels exist in the present case where what is involved is an official report of an investigation into possible police misconduct at the highest levels of the Division of Police.

Moreover, this Court in *A & B-Abell Elevators* explicitly recognized the privilege found to exist in *Jacobs v. Frank* to be only one instance of a “‘public interest’ privilege,” which “involves communications made to those who may be expected to take official action of some kind for the protection of some interest of the public.” 73 Ohio St.3d at 9 (citing *Prosser & Keeton, The Law of Torts*). The Court there held that “[p]ublic policy dictates . . . that those who provide information to government officials who may be expected to take action with regard to the qualifications of bidders for public-works contracts be given a qualified privilege, thereby improving the quality and safety of public work.” *Id.* at 9-10. Again, the importance of a Safety Director providing information to a Mayor regarding issues of possible misfeasance, malfeasance and non-feasance in the Division of Police can hardly be deemed to have lesser importance.

As the Director of Public Safety, Rice believed he had a duty and obligation to accurately report to the Mayor the results of his Section 63 investigation into allegations that included police involvement in prostitution, including what allegations were investigated, the investigators’ conclusions regarding those allegations and recommendations for further action. As recognized by the Court of Appeals, there can be little question that such statements in the Report qualify for the “public interest” privilege under the standards thus articulated in *Hahn, Jacobs v. Frank*, and *A & B-Abell Elevators*. (See Decision at 10-11.)

There is, moreover, well-reasoned Ohio appellate authority that statements in investigative reports are covered by a qualified privilege under Ohio law. See *Black v. Cleveland Police Dept.* (1994), 96 Ohio App.3d 84, *appeal not allowed in* (1994), 71 Ohio St.3d 1421, *cert.*

denied (1995), 514 U.S. 1115; *Davis v. City of Warrensville Hts.* (Jan. 15, 1998), Cuyahoga App. No. 72722, 1998 WL 12337.

In *Black*, the officer stated in his report that he believed the alleged victim “to be mentally unstable” and “his facts not believable re this alleged incident” and that “this report made as alleged only; no material evidence to prove any of the allegations.” See 96 Ohio App.3d at 85-86. The Court of Appeals affirmed the summary judgment entered on behalf of the officer on the grounds that the statements in question were qualifiedly privileged in *Black* and noted that “the existence of a qualified privilege has been recognized in cases involving allegedly defamatory statements made during the course of criminal or governmental investigations.” See 96 Ohio App.3d at 89 (citing *Atkinson v. Stop-N-Go* (1992), 83 Ohio App.3d 132; *Gaumont v. Emery Air Freight Corp.* (1990), 62 Ohio App.3d 220; and *Barnes v. Mosack* (June 7, 1984), Cuyahoga App. No. 47575, 1984 WL 5033). The court continued:

In the present case, we agree that statements made in the internal police communications are protected by a qualified privilege. The statements were made between law enforcement officers and concern matters in which the officers have a common interest. See *Smith v. Klein* (1985), 23 Ohio App.3d 146. Additionally, this court recognizes that the officers in question have both a legal and moral obligation to speak on matters involving the investigation of alleged criminal occurrences. See *Hahn v. Kotten* [43 Ohio St.2d at 244].

Id.

The Court of Appeals below thus recognized that application of the public interest privilege to a claim of defamation in the context of an official investigation must be distinguished from a more “conventional action against, for example, a media defendant publishing defamatory statements under more typical circumstances.” (Decision at 10.) And the Court further recognized that under these unique circumstances, and as a matter of simple common sense, the investigators must be free to report on the allegations investigated, and to

republish those allegations as allegations, even if they ultimately concluded that they were false or probably false. The Court of Appeals cogently explained its reasoning as follows:

Actual malice in the cases falling under public interest privilege, particularly in the context of an official investigation, must be assessed in light of the possible need to republish some statements, even if known to be false, as necessary products of the investigation and support for its completeness and the reliability. . . [D]uring the course of the investigation, many persons of questionable repute were given the opportunity to make statements, some choosing, inevitably if not necessarily truthfully, to take the opportunity to implicate various members of the division of police in illegal or immoral activity. Reproduction of those statements in the resulting Mayoral report, even with knowledge that some were likely to be complete fabrication, does not establish malice solely on the basis of the possible unreliability of some of the statements. With regard specifically to the statements by Keith Lamar Jones, the report, in any event, went some length to reflect the belief of various law enforcement personnel that the source was unreliable, and could be characterized as a “scam artist,” although a corroborating history of occasional reliability as a police informant was also presented. As this court held in *Burns*, “contrary to plaintiff’s contentions, the Report’s disclosure of concerns or credibility problems regarding a source displays a lack of actual malice rather than malice.”

(Decision at 10-11, *quoting Burns v. Rice*, 157 Ohio App.3d 620, at ¶ 50, 2004-Ohio-3228 (which involved the identical allegations in the Report).)

This Court should recognize, therefore, that the Court of Appeals correctly applied the qualified public interest privilege that exists under Ohio law for the republication of allegations that were investigated as part of an official investigation into possible misconduct by a public official, and decline Appellant’s request for further review.

B. The Court of Appeals did not rely upon the “neutral reportage” privilege.

In the case at hand, the Court of Appeals correctly determined that Director Rice’s publication of the Jones allegations was not done with actual malice and, therefore, did not waive

the public interest privilege. Contrary to Appellant's assertion, the Court's determination that Rice did not publish the allegations with actual malice is not an adoption of the neutral reportage privilege. Indeed, Rice never invoked, and the appellate court never discussed, the neutral reportage privilege, a privilege some jurisdictions afford to media defendants, but which has been previously rejected by this Court. *See Young v. The Morning Journal* (1996), 76 Ohio St.3d 627. In fact, the Court below was careful to distinguish the "unique protections" afforded by the public interest privilege in the present context of a report of an official investigation from the analysis required "in a conventional action against, for example, a media defendant publishing defamatory statements under more typical circumstances." (Decision at 9, 10.)

Focusing then on the context of a report of an official investigation, the Court below recognized that, under these unique circumstances, the public interest privilege must protect the investigators' ability to repeat allegations that were investigated, as well as the investigators' conclusions regarding those allegations. The Court further recognized that especially where, as here, the very subject of the investigation was the extent of police involvement in activities such as prostitution, the investigators would have been derelict in their duty if they failed to interview or account for witnesses of questionable reputation. (*See* Decision at 10-11.) Hence, as the Court explained:

The investigating officials, including appellee Rice, were charged by the mayor with going forward with a full investigative report. Refraining from pursuing and eventually accounting for certain allegations on grounds of unreliability might have left the investigators short of fulfilling their duty to completely and fully investigate every known avenue of information to compile the best possible assessment of the state of the division of police. The mayoral report, not only with respect to this particular inmate but many other interviewed sources, presents much evidence both for and against the credibility of the informants and witnesses, and in most cases notes that credibility could not be completely resolved without extensive further investigation. Given the nature of the

investigation and the type of witnesses encountered, to refrain from publishing any potentially defamatory allegation because of the unreliability of the informant might have left little to include in the mayoral report.

(Decision at 12-13.)

In *Burkes v. Stidham*, the court similarly recognized that under certain circumstances a person may have an affirmative duty to report a third person's allegations of misconduct to a supervisor or supervising body "as allegations" even where there may be substantial reason to doubt their accuracy:

Adrine's publication to the Executive Committee was not presented as truth that the [Burkes] statements were made. Adrine stated that the remarks were "allegedly" made and it was clear Burkes denied making the statements. Appellants never explain how Adrine was reckless with regard to the truth or falsity of publication when Adrine did not represent the statements as being true anywhere in appellants' transcript of the meeting. Adrine did not act with actual malice if the statements are not represented as being true. Appellants presented no evidence of actual malice.

107 Ohio App.3d at 374-75.

This same principle is recognized by other courts and by Section 602 of the Restatement of Torts 2d. As was well stated by one of these courts: "If merely repeating an accusation that has been made in the context of determining what should be done about it constituted defamation, then employers would be severely crippled in their abilities to verify rumors and accusations by employees about management, or about employees by management, for that matter." *Vanderselt v. Pope*, 155 Ore. App. at 346 (emphasis added). As the facts of record make plain, in this case the allegations in question were likewise repeated "in the context of determining what should be done about [them]," and, accordingly, were privileged as a matter of law, and common sense.

C. Director Rice's awareness that the allegations might have been false did not destroy his privilege to publish the allegations.

Because the Court of Appeals assumed for purposes of the appeal that Rice was substantially aware of the likely falsity of Jones' allegations, it never addressed Rice's contention that he was entitled to judgment as a matter of law based upon this Court's decision in *Varanese v. Gall*. In *Varanese*, this Court squarely held that awareness of possible falsity is not sufficient to create a genuine issue for trial of "actual malice," and reinstated the summary judgment that had been issued to the defendant by the trial court.

In *Varanese* this Court considered allegations contained in a political advertisement appearing in the defendant's publications. The statements at issue were attributed to various sources by footnotes within the advertisement. 35 Ohio St.3d. at 79. The plaintiff relied most heavily on deposition testimony of Robert Curran, the publication's editor, that, upon seeing the political advertisement prior to its publication, he had remarked to the general manager that it was "bullshit," by which, he explained during his deposition, he meant to express "his concern that if the ad were false," his company would be exposed to suit. As stated by this Court:

Curran never stated that he knew the charges were false, or that he entertained any doubt whatsoever as to their probable falsity. He merely expressed concern that the charges *might* be false, and if they were, then appellant might be sued. The fact that Curran may have entertained doubts as to the *possible* falsity of the ad is immaterial. For liability to attach, a defendant must proceed to publication despite a "high degree of awareness of . . . [the] *probable* falsity of the published statement. *Garrison v. Louisiana* [(1964), 379 U.S. 64] at 74." Given Curran's explanation that his remark was not an expression of knowledge of falsity or serious doubt as to the probable falsity, his statement cannot be considered probative of actual malice, and certainly cannot be deemed to have established actual malice with "convincing clarity."

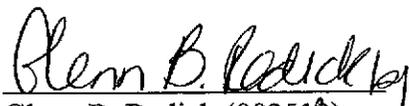
Id. at 82 (emphasis in the original).

Here, it is uncontroverted that while Rice was similarly aware of the *possibility* that Keith Lamar Jones' allegations *might* be false, he simply did not know whether they actually were false or probably false as of the date of the Report's publication. (See Rice Second Supp. Aff ¶¶11, 15.) Therefore, as in *Varanese*, Rice was entitled to judgment in his favor on this basis alone.

Moreover, it is significant to note that, unlike the publisher in *Varanese*, Director Rice went to some length to include within the Report itself both a statement of the reasons why the Jones allegations might be false, as well as the investigative team's conclusion that those allegations were, in any event, "unproven at this time and are dependent on evidence in the future from new sources or places." (Report at 156-158.) Clearly, as recognized by the Court of Appeals below, the publication of the Jones allegations in this context where they were clearly identified as allegations that were investigated and found to be unproven, along with candid acknowledgment of credibility issues surrounding the source of these allegations, "displays a lack of actual malice rather than malice." (Decision at 11.)

For all these reasons, this Court should hold that this appeal does not present any issue of public or great general interest, requiring further review of the judgment below.

Respectfully submitted,



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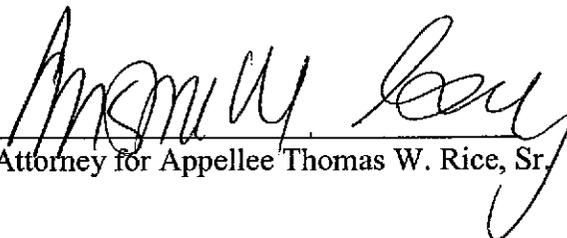
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Appellees Thomas W. Rice, Sr. and the City of Columbus' Memorandum in Response to Appellant's Memorandum n Support of Jurisdiction was served upon the following counsel of record by first-class, U.S. Mail, postage prepaid, this 13th day of December, 2006:

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