

**CASE NO. 17-002  
SUPREME COURT**

**KWAN V. SAINT PAUL POST**

**Parties:**     **Appellant - John T. Kwan**  
                  **Respondent - Saint Paul Post**

**Issues:**

- (1) Does the Minnesota Constitution prevent a party from enforcing a reporter's promise of source confidentiality?
- (2) Are there legally significant public policy concerns which direct the court to prevent enforcement?

**Facts:**

In July of 2004, John T. Kwan was a Director of Public Relations with J.A. Donaldson and Associates, an advertising firm. He had previously worked as a freelance columnist for the *Saint Paul Post*. Kwan was active in the Reform Party as a campaign worker and party official. In 2003, he brought the Raymond Marshall campaign for State Representative in as a client of J.A. Donaldson and Associates.

On October 4, 2004, Kwan obtained a copy of a public court record concerning Marshall's opponent, Jose Orta. The document recorded a 1981 case against Orta charging petty theft, but did not show that the incident involved leaving a convenience store without paying for \$5.50 worth of candy bars. The legal limit for petty theft at the time was \$150.00. Eight months after Orta's conviction, the court vacated the conviction.

Kwan decided to leak this information to the press, knowing it would severely hurt Orta's chances of winning the race for State Representative. He met with representatives of the *Post* as well as other papers and television stations. Kwan agreed to pass along information relating to one of the candidates, provided the press agrees not to use his name in connection with the story. Kwan did not want to be identified as the leak because of possible retaliation from the media and other politicians, as well as the potential damage it could do to the Marshall campaign. The reporters agreed to Kwan's request. Reporter Andrew Carlisle agreed on behalf of the *Post*.

Each media outlet honored the promise of confidentiality, except for the *Post*. Carlisle's editors decided that Kwan's name was important to the story and printed Kwan's name as the source of the information, over Carlisle's objections.

On October 6, 2004, the *Post* ran a front-page story entitled "Kwan Leaks Marshall Conviction". Kwan was immediately fired from J.A. Donaldson and Associates. Kwan has since been unable to find a job in the advertising industry because of the publicity surrounding the *Post's* story.

Kwan commenced action against the *Saint Paul Post* asserting the newspaper's promise not to reveal him as the source was enforceable and that he should receive damages due to the breach of contract. A jury awarded \$250,000 in compensatory damages and \$1 million in punitive damages.

The Court of Appeals struck down the award, ruling that the promise of confidentiality was unenforceable because of the freedom of the press and public policy concerns.

### **Authorities:**

The following is a brief summary of some things you should think about and keep in mind when you read the cases and as you prepare your briefs and arguments. You are not limited to these points. Instead, consider them good starter questions to think about. You will also notice some cases are available on the YIG website. These cases represent some of the materials you can use to begin your research. Other case citations are listed below but are **not** included in this packet-you are required to seek out these case materials (denoted by \*\*) to complete your briefs and oral arguments.

### **Restrictions:**

Participants may not refer to or rely upon the case of *Cohen v. Cowles Media Company* as they prepare their case briefs or oral arguments. Participants should only use the cases cited in the "Cases and Related Materials" section of this packet.

### **Summary:**

#### Issue #1-Enforcement of Source Confidentiality

Does the Minnesota constitution bar a reporter from enforcing a promise of confidentiality?

Under what conditions may a reporter reveal a confidential source?

How does the First Amendment support or conflict with a promise of confidentiality?

Should a reporter necessarily expect that a promise of confidentiality be honored?

#### Issue #2-Legal and Public Policy Concerns in Enforcing Confidentiality

Are there significant reasons for a reporter to reveal a source of information?

Do legal or public policy concerns override the enforcement of any promises of source?

Was public knowledge of the source important to bolster the credibility of the information, so as to require public disclosure of the source?

## **Cases and Related Materials:**

Restatement (Second) Contracts Section 178 (1)

Lydiard v. Wingate, 131 Minn. 355, 150 N.W. 212 (1915)

Cherne Industrial, Inc. v. Grounds and Assoc., Inc. 278 N.W. 2d 81 (1979)

\*\*In re: Peterson's Estate, 42 N.W. 2d 59 (1950)

\*\*Perkins v. Hegg, 3 N.W. 2d 671 (1942)

\*\*State ex rel. Olson v. Guliford, 174 Minn. 457, 219 N.W. 770 (1928)

\*\*Minnesota Constitution, Article I, Section 3