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IN HEALTHCARE: BRANDING NURSES WHO
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Simon Says Protect My Reputation: Understanding Pennsylvania’s Constitutional Right To Reputation

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ABSTRACT

Unlike the United States Constitution, the Pennsylvania Constitution explicitly identifies reputation as a fundamental right. Although Pennsylvanians have enjoyed this right since 1790, jurists largely ignored reputation’s constitutional status until the 1970s. Courts in the Commonwealth have since construed Pennsylvania’s constitutional right to reputation as requiring state actors to afford due process—namely, notice and an opportunity to respond—to any person or entity whose reputation is threatened by a state-sanctioned report. Practitioners have come to refer to these due process guarantees as “Simon rights,” based on the Commonwealth Court’s seminal opinion in Simon v. Commonwealth. This article explores the history of Pennsylvania’s constitutional right to reputation, examines the relevant case law, and provides practical examples of how Simon rights have been afforded in recent state investigations.

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I. INTRODUCTION

Pennsylvanians enjoy the constitutional right to protect their reputation.²

Since 1790, the Pennsylvania Constitution has placed reputation in the same class of protected rights as life, liberty, and property. But the origins of this remarkable right are unclear.

Although the right first appeared in the Pennsylvania Constitution of 1790, the minutes from the Convention of 1789–1790 fail to explain why the framers added reputation as a protected right. That said, the right may be attributable to William Lewis, a member of the drafting committee who once described reputation as “the most delicate of human possessions.”³

After debuting in 1790, the right to reputation spent nearly two centuries in hibernation. Only a handful of opinions from the 19th century discuss the right, typically as a check on the freedom of press or speech in a libel case.⁴

A dissenting opinion from 1972 was first to recognize that under the Pennsylvania Constitution, state actors must afford due process to anyone whose reputation may be impugned by the state.⁵ But it would take another five years for the Pennsylvania Supreme Court to hold that as a protected right, reputation “cannot be abridged without compliance with state constitutional standards of due process and equal protection.”⁶ Even then, Pennsylvania’s intermediary courts were left to define those standards.

Nearly two decades later, in *Simon v. Commonwealth*, the Commonwealth Court determined that due process requires the state to provide advance notice and an opportunity to respond to persons whose reputations are threatened by a state-sanctioned report.⁷ The seminal opinion addressed a Pennsylvania Crime Commission report that associated the plaintiffs with organized crime in the bingo industry. The Commonwealth Court found that the Commission had violated the plaintiffs’ constitutional right to reputation in two ways.

First, the Commission had provided “no notice to an individual that is being investigated that his or her reputation may be at stake prior to the public dissemination of information that may cause an injury to one’s reputation.”⁸ Second, the plaintiffs had no right to rebuttal until after the Commission publicized its findings.⁹ Because the report threatened the plaintiffs’ reputation, they were enti-

Because Pennsylvania’s Constitution classifies reputation as a fundamental right, state actors must afford due process to anyone whose reputation is impugned by a state-sanctioned report.

2. Pa. Const. art. I, §1 (“All men . . . have certain inherent and inalienable rights, among which are . . . life and liberty . . . protecting property and reputation, and . . . pursuing . . . happiness.”). At least three other states—Alabama, Arkansas, and Kansas—have constitutional provisions explicitly protecting reputation, and Wisconsin and perhaps others protect “character.” See Steven Gow Calabresi, et al., *Individual Rights Under State Constitutions in 2018*, 94 NOTRE DAME L. REV. 49, 100, 109-110, 125-126 (2018). The United States Constitution, in contrast, does not explicitly protect reputation.

3. See *Respublica v. Oswald*, 1 U.S. 319, concluding paragraph (Pa. 1788).

4. See, e.g., *Comm’n v. Swallow*, 8 Pa. Super. 539 (1898) (holding that “[t]he rights of the [publisher] and of the [persons] alleged to have been libeled . . . rest on the same constitutional ground. They demand an exact balance of the scales of justice. . .”).

5. *Pa. Crime Comm’n v. Nacrelli*, 5 Pa. Cmwlth. 551, 586–87 (1972) (Rodgers, J., dissenting).

6. *Hatchard v. Westinghouse Broad. Co.*, 532 A.2d 346, 350 (Pa. 1987) (citing *Wolfe v. Beal*, 384 A.2d 1187 (Pa. 1978)).

7. *Simon v. Commonwealth*, 659 A.2d 631 (Pa. Commw. Ct. 1995).

8. *Id.* at 639.

9. *Id.*

tled to an advance copy of the report and an opportunity to respond, the Commonwealth Court held. “[T]he fact that the Commission [was] investigatory [did] not justify the abrogation of petitioners’ right to possess and protect their reputations without due process of law.”¹⁰

The *Simon* opinion has become synonymous with the rights afforded to individuals named in a state-sanctioned report. For that reason, “*Simon* rights” are often visible in high-profile investigations. Geoffrey Moulton, Jr.’s *Report to the Attorney General on the Investigation of Gerald A. Sandusky*, for example, included “written responses submitted by certain individuals who were provided either the entire report or the sections of the report in which they [were] mentioned and who elected to respond.”¹¹

This article discusses the history of Pennsylvania’s right to reputation, the case law on *Simon* rights, and recent investigations implicating these rights.

II. A HISTORY OF PENNSYLVANIA’S CONSTITUTIONAL RIGHT TO REPUTATION

A. The Pennsylvania Constitution of 1776

Days after the Continental Congress ratified the Declaration of Independence, Pennsylvania called its first constitutional convention. Led by Benjamin Franklin, the convention ratified the Commonwealth’s first constitution on September 28, 1776.¹²

Influenced by the Declaration of Independence and the Virginia Declaration of Rights, the Pennsylvania Constitution of 1776 included its own declaration of rights:

That all men are born equally free and independent, and have certain natural, inherent and inalienable rights, amongst which are, the enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety.¹³

The Pennsylvania Constitution of 1776 also included a “Plan or Frame” for three branches of government. A unicameral legislature would have “supreme legislative power.”¹⁴ A “Supreme Executive Council” would administer the government and appoint judges.¹⁵ And a “Council of Censors” would act as a check on the executive and legislature by meeting every seven years to evaluate government affairs and amend the constitution accordingly.¹⁶

The first Council of Censors convened in Philadelphia on November 10, 1783 to debate whether to amend Pennsylvania’s new constitution.¹⁷ Two months later, the Council decided that parts of Pennsylvania’s first constitution were “materially defective” and “absolutely require[d] alteration and amendment.”¹⁸

10. *Id.*

11. H. GEOFFREY MOULTON, JR., REP. TO THE ATT’Y GEN. ON THE INVESTIGATION OF GERALD A. SANDUSKY (May 30, 2014), available at http://filesource.abacast.com/commonwealthofpa/mp4_podcast/2014_06_23_REPORT_to_AG_ON_THE_SANDUSKY_INVESTIGATION.pdf.

12. PA. CONST. CONVENTION, THE PROCEEDINGS RELATIVE TO CALLING THE CONVENTIONS OF 1776 AND 1790: THE MINUTES OF THE CONVENTION THAT FORMED THE PRESENT CONST. OF PA., TOGETHER WITH THE CHARTER TO WILLIAM PENN 54–66 (1825) (hereinafter, “CONVENTION PROCEEDINGS”).

13. Pa. Const. ch. I, §1 (1776).

14. Pa. Const. ch. II, §§2, 9 (1776).

15. Pa. Const. ch. II, §§3, 19, 20 (1776).

16. Pa. Const. ch. II, §47 (1776).

17. CONVENTION PROCEEDINGS 66.

18. CONVENTION PROCEEDINGS 68.

B. The Pennsylvania Constitution of 1790

Pennsylvania's second constitutional convention began in March 1789. The drafting committee produced its first draft in December 1789.¹⁹ Resembling a modern constitution, the draft replaced the unicameral legislature, Supreme Executive Council, and Counsel of Censors with a two-chamber legislature, a governor, and a judiciary.²⁰

The first draft of Pennsylvania's second constitution also expanded the universe of inalienable rights to include one's reputation:

[A]ll men . . . have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing, and protecting property and reputation. . . .²¹

In the same vein, the draft declared, "all courts shall be open, and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by the due course of law, and right and justice administered, without sale, denial or delay."²²

There are no minutes from the drafting committee meetings at the Convention of 1789–1790. So why the nine-member panel included reputation as a fundamental right remains a mystery. But there is one clue. A year before the convention, William Lewis, a member of the drafting committee, described reputation as "the most delicate of human possessions."²³

Lewis had been elected to the Pennsylvania Legislature in 1787 and then to the state Constitutional Convention in 1789, the same year he was named the United States Attorney for the District of Pennsylvania.²⁴ He would later serve as a district court judge in the Eastern District of Pennsylvania before returning to private practice.

During Lewis's time as a legislator, the Pennsylvania House of Representatives investigated allegations of judicial misconduct stemming from the Pennsylvania Supreme Court's decision in *Respublica v. Oswald*.²⁵ Eleazer Oswald, a pugnacious newspaper editor, had published anonymous pieces criticizing Andrew Browne, a school master and friend of Oswald's political opponents. Browne sued for libel, leading to Oswald's civil arrest.

In response, Oswald published an article accusing the court of conspiring with his enemies and asking that his "fellow citizens" vindicate him in the pending jury trial. The Supreme Court summoned Oswald to defend himself against contempt of court charges.

The opinion of Chief Justice McKean—himself a past victim of Oswald's attacks—struck a balance between the "doctrine of libels" and the "freedom of the press":

If . . . the liberty of the press is regulated by any . . . principle [it is] that he, who attempts to raise a prejudice . . . in the minds of those that must ultimately determine the dispute between them; who, for that purpose, represents himself as a persecuted man, and asserts that his judges are influenced by passion and prejudice, willfully seeks to corrupt the source, and to dishonor the administration of justice.²⁶

19. CONVENTION PROCEEDINGS 155–63.

20. CONVENTION PROCEEDINGS 155–63.

21. Pa. Const. art. IX, §1 (1790).

22. Pa. Const. art. IX, §11 (1790).

23. *Oswald*, *supra* note 3, at 328.

24. Univ. Archives and Recs. Ctr., Univ. of Pa., *William Lewis*, <https://archives.upenn.edu/exhibits/penn-people/biography/william-lewis/> (last visited Jan. 4, 2023).

25. *Supra* note 3.

26. *Id.*, at 326–27.

Because Oswald had published his articles to prejudice the public against the plaintiff and judges, the Court found him guilty of contempt.

The opinion concludes by noting that the Pennsylvania Legislature had also rejected Oswald's claims after three days of hearings in the House. In a footnote, Chief Justice McKean recounts then-Representative Lewis's "very elaborate argument" in the House:

[Lewis] observed, that the injuries which could be done to any other property, might be repaired; but reputation was not only the most valuable, but, likewise, the most delicate of human possessions. It was the most difficult to acquire; when acquired, it was the most difficult to preserve; and when lost, it was never to be regained.²⁷

A year after making his "elaborate argument" in the House, Lewis was elected to the drafting committee at the Convention of 1789–1790. Lewis and the committee's eight other members rewrote the state's founding document to include reputation as "an inherent and indefeasible" right.²⁸ Thus, the inclusion of reputation as a fundamental right in the Pennsylvania Constitution may owe its genesis to Lewis's interest in the *Oswald* case.

C. The Current Text

After ratifying the Constitution of 1790, Pennsylvania held additional constitutional conventions in 1838, 1874, and 1968. The Constitution of 1874 moved the declaration of rights from Article IX to Article I. But the right to reputation has remained intact. Article I, Section 1 of the current text reads:

All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness.²⁹

The current text also guarantees a remedy at law for anyone who suffers reputational harm:

All courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due course of law, and right and justice administered without sale, denial or delay. Suits may be brought against the Commonwealth in such manner, in such courts and in such cases as the Legislature may by law direct.³⁰

III. THE RELEVANT CASE LAW ON SIMON RIGHTS

A. General Overview

"[T]he Pennsylvania Constitution establishes reputation as one of the fundamental rights that cannot be abridged without compliance with state constitutional standards of due process and equal protection."³¹ In other words, the "right cannot be impaired by governmental actors—or those operating under governmental authority—absent the affordance of due process of law to affected individuals."³² Even the mere threat of reputational harm entitles a person to due process.³³

27. *Id.* at 328.

28. Pa. Const. art. IX, §1 (1790).

29. Pa. Const. art. I, §1.

30. Pa. Const. art. I, §11.

31. *Hatchard*, *supra* note 6, at 350.

32. *In re Fortieth Statewide Investigating Grand Jury*, 190 A.3d 560, 578 (Pa. 2018).

33. *Pa. Bar Ass'n v. Commonwealth*, 607 A.2d 850, 856–57 (Pa. Commw. Ct. 1992).

“Due process is measured in terms of a meaningful opportunity to be heard, encompassing participation at a time when it will be meaningful.”³⁴ And there is “a general preference that procedural safeguards apply in the pre-deprivation time-frame.”³⁵ Ideally, the person whose reputation is in jeopardy would be allowed to “evaluate [the state’s report] for veracity or probative value.”³⁶ Then that person would have “an opportunity to present objections” to the government’s findings.³⁷

In most cases, the state satisfies due process by providing an advance copy of its report to any persons whose reputation may be at stake and by giving those individuals an opportunity to respond in writing.³⁸ But how much notice must be given and what constitutes a meaningful opportunity to respond depends on three factors:

- (1) the private interest affected by the governmental action;
- (2) the risk of an erroneous deprivation together with the value of additional or substitute safeguards; and
- (3) the state interest involved, including the administrative burden the additional or substitute procedural requirements would impose on the state.³⁹

Because each consideration is case-specific, practitioners will often marshal factually analogous cases when arguing for specific due process remedies. The following opinions offer guidance on how much due process is needed to protect a person’s right to reputation under the Pennsylvania Constitution.

B. Opinions Finding Inadequate Due Process

In *Wolfe v. Beal*, an individual committed to a state mental hospital based on an invalid court order sued to have the hospital records destroyed.⁴⁰ The Pennsylvania Supreme Court ordered the hospital to destroy the records because they posed a threat to the individual’s constitutional right to reputation.⁴¹

In *Pa. Bar Ass’n v. Commonwealth*, attorneys challenged the constitutionality of a statute requiring insurers to report suspected fraudulent claims to the Motor Vehicle Fraud Index Bureau, along with the names of the claimants and their counsel.⁴² The Pennsylvania Commonwealth Court declared the statute to “be unconstitutional inasmuch as it requires the maintenance of records containing the names of attorneys who represent insurance claimants suspected of fraud[.]”⁴³ “[S]uch a scheme ignores the basic due process requirement of notice, and permits the compilation of secret records that tend to unfairly stigmatize an attorney who is reported to the Index Bureau without any opportunity for the attorney to raise an objection to such listing, or even become informed that such a listing will occur.”⁴⁴ The court also held that the Fraud Index Bureau implicated the attorneys’ reputa-

34. *In re Fortieth Statewide Investigating Grand Jury*, *supra* note 29, at 578.

35. *Bundy v. Wetzel*, 184 A.3d 551, 557 (Pa. 2018).

36. *Pa. Bar Ass’n*, *supra* note 33, at 856–57.

37. *Simon*, *supra* note 7, at 638.

38. See Section IV below.

39. *In re Fortieth Statewide Investigating Grand Jury*, 197 A.3d 712, 717 (Pa. 2018) (quoting *Bundy*, 184 A.3d at 557).

40. 384 A.2d 1187 (Pa. 1978).

41. *Id.* at 1189; see also *Com. v. J. T.*, 420 A.2d 1064, 1065 (Pa. Super. 1980); *Com. v. C.B.*, 452 A.2d 1372, 1375 (Pa. Super. Ct. 1982).

42. 607 A.2d 850 (Pa. Commw. Ct 1992).

43. *Id.* at 857.

44. *Id.*

tional rights, even though access to the records was largely limited to participating insurers.⁴⁵

In *In re J.B.*, the Pennsylvania Supreme Court addressed the issue of irrebuttable presumptions under the Sex Offender Registration and Notification Act (SORNA).⁴⁶ The Court held that “SORNA [lifelong] registration requirements, premised upon the presumption that all sexual offenders pose a high risk of recidivating, impinge[d] upon juvenile offenders’ fundamental right to reputation as protected under the Pennsylvania Constitution.”⁴⁷ Because “SORNA [did] not provide juvenile offenders a meaningful opportunity to challenge the presumption,” the registration provisions were unconstitutional.⁴⁸

In *In re Fortieth Statewide Investigating Grand Jury (“Grand Jury I”)*, the Pennsylvania Supreme Court considered whether a report naming over 300 “predator priests” could be published under the Investigating Grand Jury Act.⁴⁹ The Pennsylvania Attorney General had conducted confidential grand jury proceedings to investigate allegations of child sexual abuse by individuals associated with the Roman Catholic Church in Pennsylvania.⁵⁰ Under the Act, the supervising judge had discretion to permit public release of the grand jury report if the findings were supported by a preponderance of the evidence.⁵¹ The supervising judge could also allow individuals who were not indicted, but about whom the report was critical, to submit written responses.⁵²

After accepting the grand jury report, the supervising judge opined that the findings were supported by a preponderance of the evidence, thus signaling that the report would be publicly filed.⁵³ The supervising judge also gave persons named in or implicated by the report, but who were not indicted, an opportunity to respond to the findings.⁵⁴ In response, dozens of individuals (primarily members of the clergy) challenged the report as infringing on their constitutional right to reputation without adequate due process.⁵⁵ Some asked the supervising judge to allow them to participate in new evidentiary hearings or to excise portions of the report shown to be false or misleading.⁵⁶

Despite agreeing that the grand jury report triggered due process requirements, the supervising judge rejected the petitioners’ challenges and proposals.⁵⁷ The judge reasoned that lesser due process protections were needed because the grand jury had served as an investigative—not adjudicative—body.⁵⁸ Allowing named but uncharged persons to respond to the report before its public release satisfied that lesser standard, and anything more would fundamentally change the Grand Jury Act’s procedures, the judge concluded.⁵⁹ The Pennsylvania Supreme Court disagreed.

45. *Id.* at 854 (“[T]he attorney must deal with these insurers in the course of his business, and his reputation in their eyes is at least as valuable as it is in the eyes of the general public, if not more so.”).

46. 107 A.3d 1 (Pa. 2014).

47. *Id.* at 16–17.

48. *Id.*; see also *Taylor v. Pennsylvania State Police of Com.*, 132 A.3d 590, 598 (Pa. Commw. Ct. 2016); *Commonwealth v. Torsilieri*, 232 A.3d 567 (Pa. 2020).

49. 190 A.3d 560 (Pa. 2018).

50. *Id.* at 563.

51. 42 Pa.C.S. §4549(b).

52. 42 Pa.C.S. §4549(e).

53. *Grand Jury I*, 190 A.3d at 564.

54. *Id.* at 565.

55. *Id.*

56. *Id.*

57. *Id.* at 566.

58. *Id.*

59. *Id.* at 566–67.

On appeal, the Court delivered five pertinent holdings. First, “that protection of one’s reputation is a fundamental right under the Pennsylvania Constitution.”⁶⁰ Second, the Investigating Grand Jury Act is “subordinate to the Constitution.”⁶¹ Third, in terms of due process, the distinction between investigative and adjudicative grand juries is meaningless because all grand jury reports carry “the weight of governmental and judicial authority.”⁶² Fourth, because the report was incendiary and the reputational stakes were so high, the Act’s provision for written responses was an inadequate due process safeguard.⁶³ Fifth, the supervising judge’s preponderance-based review was also insufficient because the grand jury process is too one-sided and offered the petitioners no opportunity to address the grand jury’s concerns.

The Court could not, however, reach a majority consensus “concerning what process-related remedial measures” could be taken at that late juncture.⁶⁴ “Ideally, living persons so identified would have been afforded the opportunity to appear before the grand jury and to respond, in some reasonable fashion, to the grand jury’s concerns.”⁶⁵ Because the grand jury had already been dismissed, the Court ordered the temporary redaction of names and identifying information in the report and directed additional briefing on whether more process could be afforded.⁶⁶

In *In re Fortieth Statewide Investigating Grand Jury (“Grand Jury II”)*, the Court adopted a three-factor test for evaluating how much process is due when a person’s reputation is impugned.⁶⁷ The factors include the private interest, the public interest, and the risk of an erroneous deprivation, together with the value and cost of additional or substitute safeguards.⁶⁸ Applying this test, the Court found that the grand jury process had failed to provide adequate due process to the petitioners.⁶⁹

Still, the Court refused to reassemble the grand jury or to allow the supervising judge to hear more evidence. The “investigating grand jury process is solely a creature of statute,” so altering its procedure by ordering such remedies would “usurp the province of the legislature.”⁷⁰ In the end, the only “viable due process remedy” still available was to “make permanent the redaction of . . . identifying information,” the Court concluded.⁷¹

In *Fraternal Ord. of Police Lodge No. 5 v. City of Phila.*, police officers sued over the Philadelphia District Attorney’s “Do Not Call List.”⁷² The List purported to identify officers that prosecutors should avoid calling as witnesses because of alleged misconduct.⁷³ According to the Commonwealth Court, “the trial court erred by categorically concluding on [preliminary objections] that the . . . police officers [were] not entitled to prior notice that they [were] being considered for placement

60. *Id.* at 566.

61. *Id.* at 575.

62. *Id.* at 573.

63. *Id.* at 574.

64. *Id.* at 576.

65. *Id.* at 578.

66. *Id.*

67. 197 A.3d 712, 717 (Pa. 2018).

68. *Id.*

69. *Id.* at 715–16.

70. *Id.* at 721.

71. *Id.*

72. 267 A.3d 531 (Pa. Commw. Ct. 2021).

73. The Philadelphia Inquirer subsequently published the “Do Not Call List” in 2018. See <https://www.inquirer.com/philly/news/crime/29-philly-officers-do-not-call-list-krasner-20180306.html>.

on the updated Do Not Call List or afforded a timely and meaningful opportunity to be heard concerning whether they should be placed on the List.”⁷⁴

The petitioners in *Pa. Crime Comm’n v. Nacrelli* unsuccessfully challenged subpoenas to appear and testify before the Pennsylvania Crime Commission regarding gambling operations and bail-bond racketeering in Delaware County.⁷⁵ In dissent, Judge Rogers opined that under the Pennsylvania Constitution, the petitioners had the right to protect their good names.⁷⁶ On that basis, he asserted that the Pennsylvania Crime Commission procedures had to satisfy minimum due process requirements. In his view, requiring petitioners to testify at public hearings without notice of the subject matter violated due process.⁷⁷

The Superior Court in *In re Sharpe*, affirmed an order finding that a child was “deprived” (i.e., without proper parental care).⁷⁸ Concurring and dissenting, Judge Spaeth agreed that the child should have been taken from the parents.⁷⁹ But he argued that before the parents could be labeled “abusers,” their right to reputation entitled them to notice and a fair hearing.⁸⁰

C. Opinions Finding Adequate Due Process

A former township employee sued for wrongful discharge in *Brozovich v. Dugo*.⁸¹ The Commonwealth Court held that the employee’s discharge did not deprive him of his fundamental right to reputation, even though a newspaper article about the discharge had damaged the employee’s reputation. The township had given the employee an opportunity to resign and, in so doing, acted to prevent harm to his reputation. There was also no suggestion that the township had played a role in the article’s publication.

In *R. v. Commonwealth, Dep’t of Pub. Welfare*, the Pennsylvania Supreme Court held that a father had received adequate due process in a proceeding to expunge an indicated report of child abuse.⁸² The Court reasoned that allowing the daughter to testify about abuse in camera and outside the father’s presence, but in the presence of the father’s attorney, created little risk that the father would suffer an erroneous deprivation of his right to reputation.

In *Summit Academy v. Dep’t of Hum. Services*, the Commonwealth Court rejected a treatment center’s argument that procedures for license inspection summaries (“LIS”) violated due process.⁸³ The court found that the “LIS contain[ed] sufficient and detailed notice of the violations, and before the LIS [was] posted on the internet, the Department provide[d] the Facility with the opportunity to protect its reputational interests.”⁸⁴ For example, the facility could “contest the violations by making comments . . . , which [were] also posted on the internet and made available to the public.”⁸⁵ These procedures amounted to adequate notice and an opportunity to be heard, the court concluded.

74. *Id.* at 550.

75. 5 Pa. Commw. 551 (1972).

76. *Id.* at 586–87.

77. *Id.*

78. 374 A.2d 1323 (Pa. Super. Ct. 1977).

79. *Id.* at 1326.

80. *Id.* at 1331–34.

81. 651 A.2d 641 (Pa. Commw. Ct. 1994).

82. 636 A.2d 142 (Pa. 1994).

83. 2015 WL 8190829 (Pa. Commw. Ct. Dec. 7, 2015).

84. *Id.* at *6.

85. *Id.*

IV. EXAMPLES OF *SIMON* RIGHTS IN STATE INVESTIGATIONS

The examples below show how state actors have afforded *Simon* rights in high-profile investigations.

A. H. Geoffrey Moulton, Jr., Rep. to the Att'y Gen. on the Investigation of Gerald A. Sandusky (May 30, 2014)⁸⁶

Background: The Special Deputy Attorney General's investigation focused on the actions of law enforcement, child protective services, and school officials in relation to child abuse claims against former Penn State assistant football coach, Gerald Sandusky. The investigation covered the period from the initial complaint made by a student in November 2008 through the filing of charges in November 2011.

***Simon* Rights:** After the report was submitted to the judge, but before the report was made public, certain individuals were allowed to review portions of the report pertaining to them and to respond before publication. The responses were included with the published report.

B. Pa. Off. of Att'y Gen., Rep. 1 of the Fortieth Statewide Investigating Grand Jury (2018)⁸⁷

Background: The grand jury report documented findings from a two-year grand jury investigation that identified over 300 individuals associated with the Roman Catholic Church who allegedly sexually abused children. The grand jury investigated six dioceses in the Commonwealth.

***Simon* Rights:** As noted in Section III. B., *supra*, although the supervising judge had allowed named but uncharged persons to respond to the report before its release, the Pennsylvania Supreme Court found that—on balance—the grand jury procedures failed to provide adequate due process to those who challenged the report. The Court thus ordered that their names and identifying information be permanently redacted. Additionally, the supervising judge allowed named but uncharged persons to respond to the report, and their responses were published with the report.⁸⁸

C. Pa. Off. of Att'y Gen., Rep. 1 of the Forty-Third Statewide Investigating Grand Jury (2020)⁸⁹

Background: The grand jury report assessed the environmental impact of the oil and gas industry on Pennsylvania. The report claimed that government agencies had failed to oversee the industry and protect residents of Pennsylvania.

***Simon* Rights:** Before the report was made public, the Court of Common Pleas for Allegheny County exercised its discretion to receive responses and ordered that the responses of certain departments and individuals be attached to the published report.

86. Report and responses available at http://filesource.abacast.com/commonwealthofpa/mp4_podcast/2014_06_23_REPORT_to_AG_ON_THE_SANDUSKY_INVESTIGATION.pdf.

87. Report and responses available at <https://www.attorneygeneral.gov/report/>.

88. See *supra* notes 67-71.

89. Report and responses available at <https://www.attorneygeneral.gov/wp-content/uploads/2020/06/FINAL-fracking-report-w.responses-with-page-number-V2.pdf>.

D. Claire J. Rauscher, Sarah Motley Stone, Womble Bond Dickinson (US) LLP, Internal Investigation Rep. to The PSERS Bd. of Trs.: Risk Share and Harrisburg Props. (2022)⁹⁰

Background: The Board of Trustees for the Pennsylvania Public School Employees' Retirement System ("PSERS") retained the law firm of Womble Bond Dickinson (US) LLP to investigate the misstatement of the nine-year investment performance rate used for the System's risk share calculation in December 2020. The Board also authorized Womble Bond to investigate the System's acquisition of properties in Harrisburg, Pennsylvania.

Simon Rights: Womble Bond did not find any evidence of wrongdoing. Even so, Womble Bond allowed individuals named in the report to review and respond to the report prior to its publication. The responses were attached to Womble Bond's final report.

V. CONCLUSION

Nearly two centuries before the Pennsylvania Constitution of 1790 enshrined reputation as a fundamental right, Shakespeare wrote:

Good name in man and woman, dear my lord,
Is the immediate jewel of their souls.
Who steals my purse steals trash; 'tis something, nothing;
'Twas mine, 'tis his, and has been slave to thousands.
But he that filches from me my good name
Robs me of that which not enriches him
And makes me poor indeed.⁹¹

The wisdom of that observation continues to stand the test of time.

Thus, practitioners in the Commonwealth should understand Pennsylvania's constitutional right to reputation so they can better protect their clients' good names. Practitioners should know, for example, when to invoke their clients' *Simon* rights, including the right to receive and respond to a state-sanctioned report before its publication.

90. Report and responses available at <https://www.psers.pa.gov/About/Board/Documents/Reports/Womble%20Bond%20Report%2001312022.pdf>.

91. Iago in WILLIAM SHAKESPEARE, *OTHELLO*, act 3, sc. 3.