

■ *New York Times Co. v. Sullivan*

Date: March 9, 1964

Author: U.S. Supreme Court; Justice William J. Brennan Jr.

Genre: court opinion

Summary Overview

New York Times v. Sullivan is a landmark Supreme Court case that established the legal standard for freedom of the press and protection against defamation. The Court ruled that to win a libel suit, public officials must prove that false statements were made with “actual malice”—meaning reckless disregard for the truth. This decision strongly supports liberal principles of free expression, open debate, and an unrestricted press.

L.B. Sullivan, the city commissioner of Montgomery, Alabama sued the *Times* and four African American clergymen affiliated with the Committee to Defend Martin Luther King and the Struggle for Freedom in the South, the organization behind the ad. The court cited the First and Fourteenth Amendments in overturning the Alabama Supreme Court which favored Sullivan. The decision marked a victory for both Freedom of Speech and the Civil Rights Movement. It emphasized the importance of protecting honest journalism, especially when government officials are subjected to criticism.

Defining Moment

New York Times Co. v. Sullivan grew out of an advertisement concerning the struggle for civil rights that appeared in the *Times* on March 29, 1960. L.B. Sullivan sued the newspaper and four African American clergymen that produced the ad, despite the fact that Sullivan was not named in the piece. He claimed that he had been libeled by the ad’s assertion that truckloads of armed police—men his office was charged with overseeing—had circled the Alabama State University campus in Montgomery. In addition, as the defendants readily admitted, the ad contained a number of minor errors—for example, the statement that protesting students had sung “My Country, ‘Tis of Thee” on the steps of the capitol, when in fact they had sung “The Star-Spangled Banner.” These errors, Sullivan claimed, were indicative of the falsity of the ad. The state trial court bought this argument, calling the advertisement’s claims false and misleading and the *Times* irresponsible. Sullivan was awarded \$500,000 in damages against each of the defendants, a verdict upheld by the Alabama Supreme Court.

Prior to *Sullivan*, libel had been a matter of state rather than federal law. The U.S. Supreme Court

nonetheless granted the newspaper’s application for reconsideration of the state courts’ decision. After the case was argued before the Court on January 6, 1964, a majority of the justices felt that the libel verdict could be dismissed on narrow ground: Because the advertisement had not named Sullivan, he had not been libeled. What is more, Sullivan had failed to demonstrate how the statements in the ad had harmed him. Justice Brennan, however, approached the case differently. The Court had an opportunity to preserve the constitutional ideals enshrined in the First Amendment by making the test of libel more rigorous. A mere showing of factual error should not, in itself, provide a cause of action for libel; what was required was proof of “actual malice” behind the error. Chief Justice Earl Warren assigned Brennan to write the opinion for what would in the end be a unanimous Court.

Sullivan revolutionized the law of libel, making it less dependent upon formulaic, often fine distinctions between protected and unprotected speech and upon muddy distinctions between truth and untruth. What mattered henceforth were the defendant’s intent and, more important, the framers’ intent as embodied in the First Amendment. Sullivan left

The New York Times.

NEW YORK, TUESDAY, MARCH 29, 1960.

Heed Their Rising Voices

"The growing movement of peaceful mass demonstrations by Negroes is something new in the South, something understandable. . . . Let Congress heed their rising voices, for they will be heard."

—New York Times editorial
Saturday, March 19, 1960

As the whole world knows by now, thousands of Southern Negro students are engaged in widespread non-violent demonstrations in positive affirmation of the right to live in human dignity as guaranteed by the U. S. Constitution and the Bill of Rights. In their efforts to uphold these guarantees, they are being met by an unprecedented wave of terror by those who would deny and negate that document which the whole world looks upon as setting the pattern for modern freedom. . . .

In Orangeburg, South Carolina, when 400 students peacefully sought to buy doughnuts and coffee at lunch counters in the business district, they were forcibly ejected, tear-gassed, soaked to the skin in freezing weather with fire hoses, arrested en masse and herded into an open barbed-wire stockade to stand for hours in the bitter cold.

In Montgomery, Alabama, after students sang "My Country, 'Tis of Thee" on the State Capitol steps, their leaders were expelled from school, and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission.

In Tallahassee, Atlanta, Nashville, Savannah, Greensboro, Memphis, Richmond, Charlotte, and a host of other cities in the South, young American teenagers, in face of the entire weight of official state apparatus and police power, have boldly stepped forth as

protagonists of democracy. Their courage and amazing restraint have inspired millions and given a new dignity to the cause of freedom.

Small wonder that the Southern violators of the Constitution fear this new, non-violent brand of freedom fighter . . . even as they fear the upswelling right-to-vote movement. Small wonder that they are determined to destroy the one man who, more than any other, symbolizes the new spirit now sweeping the South—the Rev. Dr. Martin Luther King, Jr., world-famous leader of the Montgomery Bus Protest. For it is his doctrine of non-violence which has inspired and guided the students in their widening wave of sit-ins; and it this same Dr. King who founded and is president of the Southern Christian Leadership Conference—the organization which is spearheading the surging right-to-vote movement. Under Dr. King's direction the Leadership Conference conducts Student Workshops and Seminars in the philosophy and technique of non-violent resistance.

Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him seven times—for "speeding," "loitering" and similar "offenses." And now they have charged him with "perjury"—a felony under which they could imprison him for ten years. Obviously, their real purpose is to remove him physically as the leader to whom the students and millions

of others—look for guidance and support, and thereby to intimidate all leaders who may rise in the South. Their strategy is to beachhead this affirmative movement, and thus to demoralize Negro Americans and weaken their will to struggle. The defense of Martin Luther King, spiritual leader of the student sit-in movement, clearly, therefore, is an integral part of the total struggle for freedom in the South.

Decent-minded Americans cannot help but applaud the creative daring of the students and the quiet heroism of Dr. King. But this is one of those moments in the stormy history of Freedom when men and women of good will must do more than applaud the rising-to-glory of others. The America whose good name hangs in the balance before a watchful world, the America whose heritage of Liberty these Southern Upholders of the Constitution are defending, is our America as well as theirs . . .

We must heed their rising voices—yes—but we must add our own.

We must extend ourselves above and beyond moral support and render the material help so urgently needed by those who are taking the risks, facing jail, and even death in a glorious re-affirmation of our Constitution and its Bill of Rights.

We urge you to join hands with our fellow Americans in the South by supporting, with your dollars, this Combined Appeal for all three needs—the defense of Martin Luther King—the support of the embattled students—and the struggle for the right-to-vote.

Your Help Is Urgently Needed . . . NOW !!

Stella Adler
Raymond Pace Alexander
Shelly Asplendon
Harry Van Andale
Harry Belafonte
Julie Belafonte
Dr. Algenon Black
Marc Blatstein
William Bove
William Branch
Maion Brando
Mrs. Ralph Bunche
Dahane Carroll
Dr. Alan Knight Chalmers

Joseph Cohen
Richard Coe
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Cheryl Crawford
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Harry Duff
Scotty Eldred
Dr. Philip Elliott
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Anthony Franciosa
Mathew Guinn
Lorraine Hansbury
Rev. Donald Harrington
Nat Hantoff
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Mary Hobson
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Mamie Lubowitz
Mahalia Jackson
Paul Jennings
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John Killens

Eartha Kitt
Rabbi Edward Klein
Happi Lange
John Lewis
Vivica Lindfors
David Livingston
William Michelson
Carl Murphy
Don Murray
John Murray
A. J. Muste
Frederick O'Neal
Peter Orlely
L. Joseph Overton

Albert P. Palmer
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Sidney Poller
Michael Posolon
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Mrs. Eleanor Roosevelt
Rayald Rubin
Robert Ryan
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Frank Silvera
Louis Simon
Happi Stevens
David Sullivan
Julius Sum
George Tabori
Rev. Gardner C.
Taylor
Norman Thomas
Kenneth Tynan
Charles White
Shelley Winters
Max Youngstein

We in the south who are struggling daily for dignity and freedom warmly endorse this appeal

Rev. Ralph D. Abernathy
(Montgomery, Ala.)
Rev. Fred L. Shuttlesworth
(Birmingham, Ala.)
Rev. Kelley Miller Smith
(Nashville, Tenn.)
Rev. W. A. Dennis
(Chattanooga, Tenn.)
Rev. C. K. Steele
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COMMITTEE TO DEFEND MARTIN LUTHER KING AND THE STRUGGLE FOR FREEDOM IN THE SOUTH
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The advertisement published in The New York Times on March 29, 1960, that led to Sullivan's defamation lawsuit. Photo via Wikimedia Commons. [Public domain.]

unanswered the question of whether or not the actual malice standard extended to other libel plaintiffs. A few years later, in *Curtis Publishing Co. v. Butts* (1966) and *Associated Press v. Walker* (1967), the Court extended the standard to cases involving movie stars, athletes, high-profile business executives, and other individuals well known to the public. A decade after *Sullivan*, however, in *Gertz v. Robert Welch, Inc.*, the Court limited its prior holdings, ruling that the actual malice standard did not apply to cases brought by private individuals, even when the alleged libel concerned matters of public concern.

Sullivan cannot be properly understood unless it is viewed in the context of the times in which it was decided. As numerous commentators have noted, the case is as much about civil rights as it is about free speech. As previously applied, the law of libel had been used to curtail the civil rights movement; if the Warren Court had refused to hear *Sullivan* or had left the Alabama courts' argument unanswered, not only

free speech but also racial equality would have been curtailed.

Author Biography

Born on April 25, 1906, William J. Brennan served as a progressive bulwark on the Supreme Court for over three decades. Trying to boost his 1956 reelection campaign, Dwight Eisenhower nominated Brennan, then an Irish Catholic New Jersey Supreme Court Justice, to the federal Supreme Court. Eisenhower won reelection, and Brennan remained on the court until 1990. Issuing opinions such as this document, he became a powerful liberal voice during the influential Warren Court, a distinction he retained even after the Court lost its progressive bent. Three years after Brennan's retirement, President Bill Clinton awarded him the Presidential Medal of Freedom; he died four years later from health complications at the age of ninety-one.



Historical Document

New York Times Co. v. Sullivan

The question before us is whether this rule of liability, as applied to an action brought by a public official against critics of his official conduct, abridges the freedom of speech and of the press that is guaranteed by the First and Fourteenth Amendments.

Respondent relies heavily, as did the Alabama courts, on statements of this Court to the effect that the Constitution does not protect libelous publications. Those statements do not foreclose our inquiry here. None of the cases sustained the use of libel laws to impose sanctions upon expression critical of the official conduct of public officials.... In deciding the question now, we are compelled by neither precedent nor policy to give any more weight to the epithet “libel” than we have to other “mere labels” of state law.... Like insurrection, contempt, advocacy of unlawful acts, breach of the peace, obscenity, solicitation of legal business, and the various other formulae for the repression of expression that have been challenged in this court, libel can claim no talismanic immunity from constitutional limitations. It must be measured by standards that satisfy the First Amendment.

The general proposition that freedom of expression upon public questions is secured by the First Amendment has long been settled by our decisions. The constitutional safeguard, we have said, “was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.”... Thus we consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.... The present advertisement, as an expression of grievance and protest on one of the major public issues of our time, would seem clearly to qualify for the constitutional protection. The question is whether it forfeits that protection by the falsity of some of its factual statements and by its alleged defamation of respondent.

That erroneous statement is inevitable in free debate, and ... it must be protected if the freedoms of expression ... are to have the “breathing space” that they “need ... to survive.”... Injury to official reputation affords no more warrant for repressing speech that would otherwise be free than does factual error.... Criticism of their official conduct does not lose its constitutional protection merely because it is effective criticism and hence diminishes their official reputations.

If neither factual error nor defamatory content suffices to remove the constitutional shield from criticism of official conduct, the combination of the two elements is no less inadequate. This is the lesson to be drawn from the great controversy over the Sedition Act of 1798, 1 Stat. 596, which first crystallized a national awareness of the central meaning of the First Amendment.

These views reflect a broad consensus that the Act, because of the restraint it imposed upon criticism of government and public officials, was inconsistent with the First Amendment.

There is no force in respondent's argument that the constitutional limitations implicit in the history of the Sedition Act apply only to Congress and not to the States.

What a State may not constitutionally bring about by means of a criminal statute is likewise beyond the reach of its civil law of libel. The fear of damage awards under a rule such as that invoked by the Alabama courts here may be markedly more inhibiting than the fear of prosecution under a criminal statute....

A rule compelling the critic of official conduct to guarantee the truth of all his factual assertions—and to do so on pain of libel judgments virtually unlimited in amount—leads to a comparable “self-censorship.” Allowance of the defense of truth, with the burden of proving it on the defendant, does not mean that only false speech will be deterred. Even courts accepting this defense as an adequate safeguard have recognized the difficulties of adducing legal proofs that the alleged libel was true in all its factual particulars.... Under such a rule, would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is in fact true, because of doubt whether it can be proved in court or fear of the expense of having to do so. They tend to make only statements which “steer far wider of the unlawful zone.”... The rule thus dampens the vigor and limits the variety of public debate. It is inconsistent with the First and Fourteenth Amendments.

The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made ... with “actual malice”—that is, with knowledge that it was false or with reckless disregard of whether it was false or not.

We conclude that such a privilege is required by the First and Fourteenth Amendments.



Glossary

defamation: the communication of demonstrably false information concerning a party, thus giving that party legal standing to bring a lawsuit on the issue

foreclose: bring an end to

libelous: characterized by a demonstrable effort to bring libel, or the issuing, in the form of writing or some other physical representation, of deliberately false information about another party

precedent: a past case whose outcome provides a model for dealing with similar cases in the future

respondent: the party against whom a lawsuit is brought by another party, the petitioner

Sedition Act of 1798: one of the four Alien and Sedition Acts, a body of legislation issued under President John Adams that became notorious for its assault on civil liberties as a means of stifling disagreement with the administration

talismanic immunity: a legal “free pass” or “get-out-of-jail-free card”

Document Analysis

Justice Brennan begins by quickly disposing of Sullivan's legalistic but misguided arguments, first that the Fourteenth Amendment does not mandate that the First Amendment be applied to a civil rather than a state action and, second, that even if the First Amendment applies, the protections afforded to free speech and press freedom do not, because the alleged libel appeared in a "commercial" advertisement. Brennan is also obliged to dispense with the Court's prior holdings that libel is not an essential part of any expression of ideas and is not constitutionally protected speech. He does so by arguing that libel is not in a category by itself, with "talismanic immunity" from constitutional restraints; libel must, in fact, be measured against the requirements of the First Amendment. The background of this case is of the utmost importance, for it involves a national debate on public issues that needs to be uninhibited. Such debate can involve unpleasant attacks in public. Like the long-discredited Sedition Act of 1798, the civil law of libel as applied by the Alabama court has been invalidated by "the court of history," owing to the undue restrictions it imposes on criticism of the government and public officials.

The state rule of law cannot be saved just because it allows for a defense of truthfulness. Such a defense does not simply deter false speech but leads instead to the kind of self-censorship that is especially damaging to public debate. As such, the law is at odds with the intent of the First Amendment, even as it applies to the states through the Fourteenth Amendment. What the Constitution requires is a law that permits a public official to recover damages for an allegedly libelous statement not merely because it is false but also because he is able to prove that it was made with "reckless disregard" for whether or not it was false.

Essential Themes

This document addresses an intersection between the two themes of freedom and truth. The court repeatedly cites the freedoms protected by the First and Fourteenth Amendments, especially the former. Justice Brennan references the amendments in the introduction and concludes that the establishment of "actual malice" is required by the First and Fourteenth Amendments. The freedom of speech protected by the First Amendment is not contingent on truth. "Allowance of the defense of truth, with the burden of proving it on the defendant, does not mean that only false speech will be deterred." In other words, it is necessary to defend the press' right to publish the untrue in order to ensure its freedom to seek the truth. The influence of this landmark decision continues to be challenged. On February 26, 2016 among other instances, then-candidate Donald Trump, self-proclaimed enemy of the press, vowed to "open up our libel laws." It is not clear exactly how he would go about doing so, but both the need for this 1964 decision in the first place and the continued resistance to it since its issuance showcase the fact that the Freedom of the Press is not beyond attack; it must be fought and protected if it is to persist.

—Anthony Vivian, PhD

Bibliography and Additional Reading

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