29

NEW YORK TIMES CO. V. SULLIVAN

376 U.S. 254 (1964)

On March 29, 1960, civil rights leaders published a full-page ad in the *New York Times* alleging an "unprecedented wave of terror" against those pressing for desegregation—black students, Dr. Martin Luther King, Jr., and their white allies. The ad, which concluded with an appeal for funds, illustrated this "wave of terror" by describing certain events in Montgomery, Alabama. A Montgomery city commissioner named L. B. Sullivan claimed that the ad defamed him even though it did not mention him by name. The ad contained some errors, most of which were minor factual ones, and the trial judge found the errors to be "libelous per se." The judge instructed the jury that the defendants—which included both the *Times* and four black Alabama clergymen listed in the ad as its endorsers—could be held liable if the jury found that the ad had been published and that what it said concerned Sullivan. The jury returned a verdict for Sullivan in the amount of $500,000 against all the defendants. The Alabama Supreme Court affirmed the judgment, but the U.S. Supreme Court voted unanimously to reverse.

Before *Sullivan* the law of defamation had been a matter decided by the states and, according to the Supreme Court, did not ordinarily raise any constitutional issues. With few exceptions, the law in the states defined libel in broad terms and favored plaintiffs. As a general matter, defendants could "prove their innocence" by demonstrating the truth of the allegedly false utterance. In some states defendants were allowed to invoke the "privilege" of "fair comment" in behalf of libelous opinions—though usually not in behalf of libelous facts; defendants were denied such privileges, however, if they were guilty of malice toward those claiming injury.

Sullivan fundamentally changed the law of libel. The Court, with Justice Brennan writing, said that the defense of truth traditionally available to defendants was inadequate to protect First Amendment values, and made it clear that the defendant's privilege in cases of libel of public officials had to be much broader than it was in most states. The holding in the case was that public officials may recover damages in a libel action concerning their official conduct only if they can prove by clear and convincing evidence "actual malice," i.e., "that the statement was made with . . . knowledge that it was false or with reckless disregard of whether it was false or not."

Later libel cases have shown that *Sullivan* was by no means the final word on these matters. But the case remains enormously significant, and not simply because it nationalized and

revolutionized the law of libel. For in *Sullivan* the Court also set forth, perhaps more clearly than it has in any other case, the libertarian understanding that has informed its approach to many First Amendment questions. "We consider this case," the Court said, "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." Erroneous statements are "inevitable in free debate," the Court continued, and such statements must be protected if freedom of expression—obviously now a very "preferred" freedom—is to survive.

In earlier years the Court had taken a different view of libel and indeed a different approach to the First Amendment generally. In *Chaplinsky* v. *New Hampshire* (1942), the Court had said that libelous utterances are no essential part of any exposition of ideas and are not protected by the First Amendment. It reiterated this position in *Beauharnais* v. *Illinois* (1952). Had the Court followed this doctrine and held for Commissioner Sullivan, the decision would have encouraged other public officials opposed to desegregation and equal rights to bring libel suits in hopes of thwarting the civil-rights movement. *New York Times Co.* v. *Sullivan* had the effect of denying to these officials a powerful means of counterattack.

Opinion of the Court: **Brennan**, Warren, Clark, Harlan, Stewart, White. Concurring opinions: **Black**, Douglas; **Goldberg**, Douglas.

New York Times Co. v. *Sullivan* was decided on March 9, 1964.

OPINIONS

JUSTICE BRENNAN DELIVERED THE OPINION OF THE COURT . . .

We are required in this case to determine for the first time the extent to which the constitutional protections for speech and press limit a State's power to award damages in a libel action brought by a public official against critics of his official conduct. . . .

Under Alabama law as applied in this case, a publication is "libelous per se" if the words "tend to injure a person . . . in his reputation" or to "bring [him] into public contempt"; the trial court stated that the standard was met if the words are such as to "injure him in his public office, or impute misconduct to him in his office, or want of official integrity, or want of fidelity to a public trust. . . ." The jury must find that the words were published "of and concerning" the plaintiff, but where the plaintiff is a public official his place in the governmental hierarchy is sufficient evidence to support a finding that his reputation has been affected by statements that reflect upon the agency of which he is in charge. Once "libel per se" has been established, the defendant has no defense as to stated facts unless he can persuade the jury that they were true in all their particulars. . . . Unless he can discharge the burden of proving truth, general damages are presumed, and may be awarded without proof of pecuniary injury. A showing of actual malice is apparently a prerequisite to recovery of punitive damages, and the defendant may in any event forestall a punitive award by a retraction meeting the statutory requirements. Good motives and belief in truth do not negate an inference of malice, but are relevant only in mitigation of punitive damages if the jury chooses to accord them weight. . . .

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 *Beauharnais* v. *Illinois* [1950], the Court sustained an Illinois criminal libel statute as applied to a publication held to be both defamatory of a racial group and "liable to cause violence and disorder." But the Court was careful to note that it "retains and exercises authority to nullify action which encroaches on freedom of utterance under the guise of punishing libel"; for "public men, are, as it were, public property," and "discussion cannot be denied and the right, as well as the duty, of criticism must not be stifled." . . . [W]e 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. *NAACP* v. *Button* [1963]. 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." *Roth* v. *United States* [1957]. "The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system." *Stromberg* v. *California* [1931]. . . .

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.

Authoritative interpretations of the First Amendment guarantees have consistently refused to recognize an exception for any test of truth—whether administered by judges, juries, or administrative officials—and especially one that puts the burden of proving truth on the speaker. . . .

. . . [E]rroneous statement is inevitable in free debate, and . . . must be protected if the freedoms of expression are to have the "breathing space" that they "need . . . to survive." *Button*. . . .

Injury to official reputation affords no more warrant for repressing speech that would otherwise be free than does factual error. . . . Criticism of . . . official conduct does not lose its constitutional protection merely because it is effective criticism and hence diminishes . . . 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, . . . which first crystallized a national awareness of the central meaning of the First Amendment. . . . That statute made it a crime, punishable by a $5,000 fine and five years in prison, "if any person shall write, print, utter, or publish . . . any false, scandalous, and malicious writing or writings against the government of the United States, or either house of the Congress. . ., or the President . . ., with intent to defame . . . or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States." The Act allowed the defendant the defense of truth, and provided that the jury were to be judges both of the law and the facts. Despite these qualifications, the Act was vigorously condemned as unconstitutional in an attack joined in by Jefferson and Madison.

Although the Sedition Act was never tested in this Court, the attack upon its validity has carried the day in the court of history. Fines levied in its prosecution were repaid by Act of Congress on the ground that it was unconstitutional. . . . The invalidity of the Act has also been assumed by Justices of this Court. See Holmes, J., dissenting and joined by Brandeis, J., in *Abrams* v. *United States* [1919]; Jackson, J., dissenting in *Beauharnais* v. *Illinois* [1952]. . . . 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. It is true that the First Amendment was originally addressed only to action by the Federal Government, and that Jefferson, for one, while denying the power of Congress "to controul the freedom of the press," recognized such a power in the States. . . . But this distinction was eliminated with the adoption of the Fourteenth Amendment and the application to the States of the First Amendment's restrictions. See, e.g., *Gitlow* v. *New York* [1925]. . . .

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. . . . Alabama, for example, has a criminal libel law which subjects to prosecution "any person who speaks, writes, or prints of and concerning another any accusation falsely and maliciously importing the commission by such person of a felony, or any other indictable offense involving moral turpitude," and which allows as punishment upon conviction a fine not exceeding $500 and a prison sentence of six months. . . . Presumably a person charged with violation of this statute enjoys ordinary criminal-law safeguards such as the requirements of an indictment and of proof beyond a reasonable doubt. These safeguards are not available to the defendant in a civil action. The judgment awarded in this case—without the need for any proof of actual pecuniary loss—was one thousand times greater than the maximum fine provided by the Alabama criminal statute, and one hundred times greater than that provided by the Sedition Act. And since there is no double-jeopardy limitation applicable to civil lawsuits, this is not the only judgment that may be awarded against petitioners for the same publication. Whether or not a newspaper can survive a succession of such judgments, the pall of fear and timidity imposed upon those who would give voice to public criticism is an atmosphere in which the First Amendment freedoms cannot survive. . . .

The state rule of law is not saved by its allowance of the defense of truth. . . . 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 . . . "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. . . . 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. . . . 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 hold today that the Constitution delimits a State's power to award damages for libel in actions brought by public officials against critics of their official conduct. Since this is such an action, the rule requiring proof of actual malice is applicable. While Alabama law apparently requires proof of actual malice for an award of punitive damages, where general damages are concerned malice is "presumed." Such a presumption is inconsistent with the federal rule. . . . Since the trial judge did not instruct the jury to differentiate between general and punitive damages, it may be that the verdict was wholly an award of one or the other. But it is impossible to know, in view of the general verdict returned. Because of this uncertainty, the judgment must be reversed and the case remanded. . . .

Since respondent may seek a new trial, we deem that considerations of effective judicial administration require us to review the evidence in the present record to determine whether it could constitutionally support a judgment for respondent. . . . Applying these standards, we consider that the proof presented to show actual malice lacks the convincing clarity which the constitutional standard demands, and hence that it would not constitutionally sustain the judgment for respondent under the proper rule of law. . . .

REVERSED and remanded.

JUSTICE BLACK, CONCURRING . . .

I concur in reversing this half-million-dollar judgment against the New York Times Company and the four individual defendants. . . . Unlike the Court, . . . I vote to reverse exclusively on the ground that the *Times* and the individual defendants had an absolute, unconditional constitutional right to publish in the *Times* advertisement their criticisms of the Montgomery agencies and officials. . . .

The half-million-dollar verdict does give dramatic proof, however, that state libel laws threaten the very existence of an American press virile enough to publish unpopular views on public affairs and bold enough to criticize the conduct of public officials. The factual background of this case emphasizes the imminence and enormity of that threat. One of the acute and highly emotional issues in this country arises out of efforts of many people, even including some public officials, to continue state-commanded segregation of races in the public schools and other public places, despite our several holdings that such a state practice is forbidden by the Fourteenth Amendment. Montgomery is one of the localities in which widespread hostility to desegregation has been manifested. This hostility has sometimes extended itself to persons who favor desegregation, particularly to so-called "outside agitators," a term which can be made to fit papers like the *Times*, which is published in New York. The scarcity

of testimony to show that Commissioner Sullivan suffered any actual damages at all suggests that these feelings of hostility had at least as much to do with rendition of this half-million-dollar verdict as did an appraisal of damages. Viewed realistically, this record lends support to an inference that instead of being damaged Commissioner Sullivan's political, social, and financial prestige has likely been enhanced by the *Times'* publication. . . .

In my opinion the Federal Constitution has dealt with this deadly danger to the press in the only way possible without leaving the free press open to destruction—by granting the press an absolute immunity for criticism of the way public officials do their public duty. . . . Stopgap measures like those the Court adopts are in my judgment not enough. This record certainly does not indicate that any different verdict would have been rendered here whatever the Court had charged the jury about "malice," "truth," "good motives," "justifiable ends," or any other legal formulas which in theory would protect the press. Nor does the record indicate that any of these legalistic words would have caused the courts below to set aside or to reduce the half-million-dollar verdict in any amount. . . .

We would, I think, more faithfully interpret the First Amendment by holding that at the very least it leaves the people and the press free to criticize officials and discuss public affairs with impunity. This Nation of ours elects many of its important officials; so do the States, the municipalities, the counties, and even many precincts. These officials are responsible to the people for the way they perform their duties. While our Court has held that some kinds of speech and writings, such as "obscenity," *Roth* v. *United States* [1957], and "fighting words," *Chaplinsky* v. *New Hampshire* [1942], are not expression within the protection of the First Amendment, freedom to discuss public affairs and public officials is unquestionably, as the Court today holds, the kind of speech the First Amendment was primarily designed to keep within the area of free discussion. To punish the exercise of this right to discuss public affairs or to penalize it through libel judgments is to abridge or shut off discussion of the very kind most needed. This Nation, I suspect, can live in peace without libel suits based on public discussions of public affairs and public officials. But I doubt that a country can live in freedom where its people can be made to suffer physically or financially for criticizing their government, its actions, or its officials. . . . An unconditional right to say what one pleases about public affairs is what I consider to be the minimum guarantee of the First Amendment.

I regret that the Court has stopped short of this holding indispensable to preserve our free press from destruction.

RESPONSES

FROM THE *NEW YORK TIMES*, MARCH 10, 1964, "FREE PRESS AND FREE PEOPLE"

The unanimous decision of the Supreme Court yesterday in a case involving this newspaper is a victory of first importance in the long—and never-ending—struggle for the rights of a free press. But it is more than that. It is also a vindication of the right of a free people to have unimpeded access to the news and to fair comment on the news. . . .