



***New York Times Co. v. Sullivan*, 376 U.S. 254 (1964)**

**Resources for Teachers and Facilitators**

**Key Points to Keep in Mind:**

- The case was decided by a unanimous Supreme Court and changed prior law in a significant way. Until *Sullivan*, the right of states to create their own rules on tort law (libel law, the subject of the case, is a type of tort) was unquestioned.
- The case involves an ad placed in the newspaper. The Supreme Court did not make a distinction between the ad, which it labeled a political ad, and other content in the newspaper.
- Although “Sullivan” is the party here, the case really concerns the rights of Alabama to determine its own law in the area of libel.
- A possible tricky area for students is the fact that some of the advertisement was false or misstated. Brainstorming should include some consideration of the pros and cons of protecting such errors, but it is important not to make that aspect of the case overwhelm other important issues.
- The Court determined that Sullivan is a “public figure” and, as such, to protect the First Amendment rights of *The New York Times* to free speech and press, libel law must require Sullivan to meet a higher burden, that of showing actual malice by *The New York Times*. Actual malice requires establishing that the defendant had knowledge of the false nature of the publication or that it published the statement with a reckless disregard for the truth.
- Recently, in a concurring opinion, Justice Clarence Thomas called for the Court to revisit the holding in *New York Times Co. v. Sullivan*, stating that the decision had no basis in the Constitution and was a “policy” decision.

**Additional Resources**

[Oyez: \*New York Times Co. v. Sullivan\*](#)

[United States courts 4-minute podcast on \*New York Times v. Sullivan\*](#)

[ABA Journal: Fifty Years After \*New York Times v. Sullivan\*](#)

[NYT: Justice Clarence Thomas Calls for Reconsideration of Landmark Libel Case](#)



### ***New York Times Co. v. Sullivan***

The subject of this moot trial is the seminal case of *New York Times Co. v. Sullivan* which pitted the First Amendment guarantees of freedom of speech and press against the Tenth Amendment which guarantees to Alabama and all of the states the right to create law in any area not specifically delegated by the Constitution to the federal government.

#### **Background / Case Summary**

The case took place against the backdrop of the Civil Rights Movement of the 1960's. A full page ad<sup>1</sup> entitled, "Heed Their Rising Voices" was placed in *The New York Times* by supporters of both Martin Luther King Jr. and student-protesters. The purpose of the ad was to solicit funds for Dr. King's defense on charges of perjury. The ad included several inches of small print detailing recent events in the Civil Rights movement, some of which were incorrect or inaccurate. The ad also criticized the Montgomery, Alabama police for their treatment of protesters. Montgomery Public Safety Commissioner Sullivan, who was not mentioned by name or title in the ad, felt that untrue words libeled him insofar as the ad criticized the police in his charge. As required under Alabama law, Commissioner Sullivan sent *The Times* a letter demanding a retraction. The newspaper, through its attorney, expressed bewilderment at the request and replied asking for clarification. Sullivan did not respond and filed a lawsuit in the trial court of Alabama. A trial was held, and the judge instructed the jury that the case presented was one of libel *per se*. After deliberating for three hours, the jury returned a verdict in favor of Sullivan in the amount of \$500,000. *The New York Times* appealed to the Alabama Supreme Court which affirmed the judgement of the lower court. *The New York Times* filed a petition for writ of *certiorari* to the Supreme Court of the United States which granted the petition.

#### **Important Legal Concepts**

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<sup>1</sup> An image of the ad can be found [here](#).

## **The Tenth Amendment and a question of federalism**

The concept of federalism is basic to our system of government. In a nutshell, it means that there are two government structures -- the state and federal or national government. The United States Constitution embraces this system and the rights of states are expressly preserved in the Tenth Amendment to the Constitution which states:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the States respectively, or to the people."

Remember that the Constitution as originally drafted did not include what we now call the "Bill of Rights," and the failure to include such guarantees was one of the issues seized upon by opponents of the Constitution's ratification. The First Congress was presented with a host of proposals for rights that should be enumerated, and it fell to Congressman James Madison to draft amendments that would be sent to the states for ratification. Ten of the twelve proposed by Congress were ratified by the states and are known as the federal "Bill of Rights." All were intended as limits upon the federal government ("Congress shall make no law. . ."). The tenth and last of these amendments explicitly guaranteed to the states powers that are generally referred to as the "reserved powers" of the states or the "police powers" of the states as opposed to the "delegated powers" of the federal government.

The sovereignty of each state continues in importance today. Much of the law and regulation that govern our everyday life comprises state, not federal law. For example, the vast majority of criminal law is state law and the definition of crimes, available defenses and possible punishments varies from state to state. Marriage and divorce law, estate law and contract law are other significant legal areas which are largely defined by each state. The case of *New York Times Co. v Sullivan* presents another major area of state control, tort law.

## **Tort Law and the States**

Tort law is the area of law which is concerned with civil not criminal wrongs. In a tort case there is no possibility of the defendant going to prison -- the goal of the plaintiff in a tort case is to obtain compensation for a wrong allegedly committed by the defendant. The key to keep in mind for our consideration of *New York Times v. Sullivan* is that **tort law is state law** -- states determine which specific tort actions are recognized, what must be proven, the statute of limitations to bring a tort action and the types of monetary damages available to a successful plaintiff. Typical causes of action in tort include negligence cases, cases where one person intentionally harms another, defamation and products liability suits. In all of these cases (and in many others) each state defines what the tort action means and how a plaintiff must prove their case.

### **Specific Tort Law Cause of Action: Libel**

This case involves a defamation cause of action. Defamation is a tort action in which the plaintiff must prove that the defendant communicated or published a false statement about the plaintiff which harmed the plaintiff's reputation. The general category of defamation includes slander, which is oral, and libel, which is written. Here a newspaper's printed words are at issue, so the lawsuit filed by Sullivan against the New York Times Company is a tort action for libel under Alabama law.

### **Libel Per Se**

A special category of libel is called libel *per se*. That generally means that the words that were spoken or published were so outrageous that the plaintiff need not prove damages from the statements. Under Alabama law, which is the relevant law here, libel *per se* exists if the words "tend to injure a person. . .in his reputation" or bring him into public contempt. The trial court found that in showing the falsities that were published by the *Times*, this standard was met and the *Times* only defense was to establish that the publication was true in all respects. In considering Alabama's rights in this case, keep in mind that it has the authority under the Tenth Amendment to create tort law as it deems appropriate.

### **First Amendment: Freedom of Speech and Press**

The First Amendment to the Constitution states in pertinent part:

"Congress shall make no law. . .abridging the freedom of speech, or of the press. . . ."

Beginning with the 1925 case of *Gitlow v. New York*, the Supreme Court has proceeded to find that the due process clause of the Fourteenth Amendment ("No State shall. . . deprive any person of life, liberty, or property, without due process of law. . . .") carries over all of the guarantees of the First Amendment -- originally only restrictions against the federal government on to the states as well. Therefore, Alabama is obligated to "make no law which abridges the freedom of speech or press."

### **A Procedural Note: Petition for Writ of Certiorari**

In order for *The New York Times* to bring its case from the Alabama courts to the Supreme Court of the United States, its attorney had to petition that Court to issue a writ of *certiorari* (Latin: to make more certain). Less than two percent of such petitions are granted. To succeed, the issue must involve what a minimum of four justice determine to be "a substantial federal question."



### **Our Mission in this Moot Court**

Our moot court begins at the point that the United States Supreme Court is considering whether to agree with *The New York Times*: that Alabama's application of its libel law constitutes an unconstitutional restraint on freedom of speech and press. Alabama, through Sullivan, will contend that as a state sovereign under the Tenth Amendment to the Constitution it has the right to regulate its own tort law, particularly in the area of providing a remedy for the victims of untrue published statements. Some of you will represent *The New York Times* and your job is to consider why freedom of speech and press exist and the role it plays in our society and develop arguments to support your position. Some of you will represent Sullivan, who will argue in favor of Alabama's right to provide him with a tort remedy where untrue statements concerning him are printed. Attorneys representing Sullivan must likewise develop arguments in support of his position.

### **Brainstorming**

Break into three groups:

Group 1: Attorneys representing *The New York Times*

Group 2: Attorneys representing Sullivan (remember that you are essentially representing the rights of the state of Alabama)

Group 3: Justices who will ask probing questions and decide the case.

Each side will have 15 minutes to present their arguments. Those representing *The New York Times* will go first and may reserve 5 minutes for rebuttal. Justices who will hear the case will have engaged in brainstorming and will interrupt the arguments with questions.

**Hints for attorneys representing *The New York Times*:** Brainstorm about the importance of free speech and free press. Consider the possible impact of tort actions against newspapers all across the country. Also consider whether the rules for libel should be the same for public figures as for ordinary citizens. You must argue not only that freedom of speech and press should outweigh the state of Alabama's Tenth amendment rights but that they must do so even when what is printed is incorrect. As

the side bringing the case, remember that you can reserve five minutes for rebuttal. This means you can have the last word to counter what the other side says.

**Hints for attorneys representing Commissioner Sullivan:** Remember that Sullivan is a conduit for the arguments of the State of Alabama. In essence, this case puts First Amendment rights against the Tenth Amendment rights of the state of Alabama. Think about the concept of sovereignty, that is the right of a state to rule itself and the Constitution's division of authority between the federal government and the states. Finally, consider that several aspects of the ad were wrong - what right should the state have to remedy damages to its citizens from untruths?

**Hints for Justices:** Your job is to think about both sides of the case and develop questions for each side. Good questions will dig deeper into the arguments made and help clarify both sides.

**Hints for Everyone:** The arguments on page 8 (*check for page number after formatting*) and the definitions and background on the previous pages will be helpful.

**Summary of tasks:**

1. Engage in general brainstorming of arguments for your side or if you are a justice of questions to ask.
2. As part of that brainstorming, review and consider the arguments on the Argument Sheet.
3. Attorneys: Write out a bullet point list of the arguments you want to make and begin with the most persuasive.
4. Attorneys: Think of counters to those arguments and develop answers.
5. Justices: Fill out the Justice worksheet.
6. Attorneys: Designate the person to make the argument. (All attorneys can answer questions posed by the Justices.)

Attorneys making argument: Introduce yourself by saying, "May It Please the Court, I'm \_\_\_\_\_ and I represent \_\_\_\_\_ in this matter."



### **Arguments:**

Review the arguments below and use them to help you craft your argument to the Supreme Court or if you are a Justice to help you in developing questions for the parties. Consider whether each argument helps your side or helps the other side or helps both side or neither side. Then determine how you will use these arguments for the side you are representing in your overall presentation to the Court.

\_\_\_\_\_ Sullivan was not mentioned by name in the advertisement but the police officers he supervised were criticized.

\_\_\_\_\_ Under Alabama law the complaining public official must first request a retraction of the printed matter that it contends is libelous. Sullivan did request a retraction but instead of retracting the content of the ad, *The New York Times* sent Sullivan a letter requesting more information and Sullivan did not respond. Alabama law did not require that Sullivan respond.

\_\_\_\_\_ *The Times* issued a retraction of the advertisement with respect to any implications it made against the Governor of Alabama.

\_\_\_\_\_ The subject of the libel suit was an advertisement written by an advertiser in *The New York Times*, not by any reporter or other employee of the *Times*.

\_\_\_\_\_ Sullivan is considered a public figure under the law.

\_\_\_\_\_ The following statements in the ad were untrue.

- The statement that the police ringed Alabama State College. In fact, the police deployed several times near the college with a number of officers.
- The statement that Martin Luther King was arrested seven times. He had been arrested three times and two of those occasions predated Sullivan's tenure as commissioner.

- The ad stated that the student protesters sang “My Country Tis of Thee” on the steps of the Capital. In fact, they sang the “Star Spangled Banner.”
- The ad stated that the students, in protest, refused to register for the Spring semester at Alabama State College. The vast majority of the students did register for class. Not the entire student body, but most of it, had protested the expulsion, not by refusing to register but by boycotting classes on a single day.
- The ad stated that students were locked and blockaded in the school cafeteria. That did not happen.
- Four of the prominent ministers, listed as sponsors of the ad, never saw it before publication and had not agreed to sponsoring it.
- Although nine students were expelled by the State Board of Education, this was not for leading the demonstration at the Capitol as stated in the ad, but for demanding service at a lunch counter in the Montgomery County Courthouse on another day.
- Although Dr. King's home had in fact been bombed twice when his wife and child were there as stated in the ad, both of these occasions antedated respondent's tenure as commissioner, and the police were not only not implicated in the bombings, but had made every effort to apprehend those who were

\_\_\_\_\_The type of ad placed is called a "political ad" which accused local police of misconduct.

\_\_\_\_\_Defamation which includes libel and slander is a matter of state law reserved to the states under the Tenth Amendment of the Constitution.

\_\_\_\_\_Sullivan, the plaintiff at trial in this case, was not required to show actual damages because the false statements in the ad were considered libel *per se*. The plaintiff was awarded \$500,000 by the Alabama Court.

\_\_\_\_\_The title of the advertisement, “Heed Their Rising Voices,” was taken from a *New York Times* editorial.

\_\_\_\_\_In the trial court, malice was inferred from the *Times*'s irresponsibility in printing the advertisement.

\_\_\_\_\_Numerous libel actions were pending in state Courts against *The New York Times* and other media outlets which, if successful, could result in huge, unprecedented monetary judgements against news outlets.



\_\_\_\_\_ *The New York Times* and other news media contend that checking the accuracy of every advertisement filed will severely limit freedom of the press.

\_\_\_\_\_ The agency submitted the advertisement with a letter from A. Philip Randolph, Chairman of the Committee, certifying that the persons whose names appeared on the advertisement had given their permission. Mr. Randolph was known to *The Times'* Advertising Acceptability Department as a responsible person and in accepting the letter as sufficient proof of authorization, it followed its established practice.

\_\_\_\_\_ The Alabama Supreme Court affirmed the judgement of the trial court saying, "(w)here the words published tend to injure a person libeled by them in his reputation, profession, trade or business, or charge him with an indictable offense, or tends to bring the individual into public contempt,' they are 'libelous *per se*'; that 'the matter complained of is, under the above doctrine, libelous *per se*, if it was published of and concerning the plaintiff'; and that it was actionable without 'proof of pecuniary injury. . . ."

\_\_\_\_\_ In *Valentine v. Chrestensen*, 316 U.S. 52 (1942) the Supreme Court held that a city ordinance forbidding street distribution of commercial and business advertising matter did not abridge First Amendment freedoms, even as applied to a handbill having a commercial message on one side but a protest against certain official action on the other.

\_\_\_\_\_ In *Valentine v. Chrestensen supra* the Supreme Court also concluded that the handbill was purely commercial speech.

\_\_\_\_\_ The ad that is the subject of this case communicated grievances with the government and sought financial support on behalf of a social justice movement.

\_\_\_\_\_ Under Alabama law where the plaintiff in a libel action 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.

\_\_\_\_\_ In *Beauharnais v. Illinois*, 343 U.S. 250 (1952) the Supreme 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.'

\_\_\_\_\_ In a previous case that presented the question of constitutional limitations upon a state's power to award damages in a tort action for the libel of a public official,

the Supreme Court was equally divided, and the question was not decided.  
*Schenectady Union Pub. Co. v. Sweeney*, 316 U.S. 642 (1942)

\_\_\_\_\_The Supreme Court has stated that the First Amendment is a constitutional safeguard that “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*, 354 U.S. 476, 484.(1957)



### **Attorney Worksheet**

Remember that you will begin by stating "My name is \_\_\_\_\_. May it please the Court I represent \_\_\_\_\_. [If you are representing the New York Times and wish to reserve five minutes for rebuttal state that now.]

List your key arguments below so you can rely on this sheet in arguing to the Court.

What will the other side argue? What are your counters to those arguments?



### **Justice Worksheet**

You are a Supreme Court Justice hearing *New York Times Company v. Sullivan*. Please answer the following questions. Be sure to reference the facts and the relevant cases on the argument sheet.

1. Pretend that you are listening to the oral arguments of the attorneys representing *The New York Times*. What two questions would you ask?
  - A.
  - B.
2. Pretend that you are listening to the oral arguments of the attorneys representing Sullivan. What two questions would you ask?
  - A.
  - B.
3. At the conclusion of hearing the case, you have to write a court opinion ruling either in favor of *The New York Times* or Sullivan. Remember that you need to weigh the needs of the criminal justice system to obtain evidence against the needs of the executive branch for confidentiality in performing its duties.

\_\_\_\_\_ *New York Times*

\_\_\_\_\_ Sullivan