STUDENT HANDOUT 21

Case Study: *New York Times v. Sullivan* (1964)

The Supreme Court ruled unanimously that, in cases where a public official is criticized for official conduct, errors of fact alone are not enough to prove libel. Instead, the official must prove that the error was made with "actual malice—that is, with knowledge that it was false or with reckless disregard of whether it was false or not."

JUSTICE BRENNAN delivered the opinion of the Court. . . .

The general proposition that freedom of expression upon public questions is secured by the First Amendment has long been settled by our decisions. . . .

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, wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials. . . . The present advertisement [in the *New York Times* about racism in Alabama], 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. . . .

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 not one that puts the burden of proving truth on the speaker. . . . The constitutional protection does not turn upon "the truth, popularity, or social utility of the ideas and beliefs which are offered." . . . As Madison said, "Some degree of abuse is inseparable from the proper use of everything; and in no instance is this more true than in that of the press."

That erroneous statement is inevitable in free debate, and that it must be protected if the freedoms of expression are to have the "breathing space" that they "need . . . to survive [is recognized by the courts]. . . .

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." . . .

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. . . .

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. . . .

1. What kind of public debate does Justice Brennan believe the First Amendment guarantees?

2. How would libel suits by public officials dampen this debate?

3. What legal standard does the Court set for libel suits by public officials?

4. What is Justice Brennan referring to when he says the ad in the *New York Times* is "an expression of grievance and protest on one of the major public issues of our time"?

5. In 1964, when *New York Times v. Sullivan* was decided, officials from southern states had filed libel suits of $300 million against the national press. What would have been the likely impact on the press as a whole if the *New York Times* had lost this case? What would the impact have been on the civil rights movement?

6. Consider the following quote, by *New York Times* reporter Anthony Lewis about Commissioner L.B. Sullivan, the Alabama official who sued for libel in this case: "Commissioner Sullivan's real target was the role of the American press as an agent of democratic change." What do you think Lewis meant? Do you agree? Explain.