Case Western Reserve Law Review

Volume 42 | Issue 4

1992

The Sullivan Case: A Direct Product of the Civil Rights Movement

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A Reaction to *Make No Law: The Sullivan Case and the First Amendment* and *New York Times v. Sullivan*

THE SULLIVAN CASE: A DIRECT PRODUCT OF THE CIVIL RIGHTS MOVEMENT

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The inside cover of Anthony Lewis' book, *Make No Law: The Sullivan Case and the First Amendment*,[1] states:

> The rights of every American were enhanced for generations by a legal struggle that began with an advertisement in *The New York Times* on March 29, 1960. The full-page ad, signed by, among others, Eleanor Roosevelt and Jackie Robinson, sought support for the campaign by Dr. Martin Luther King, Jr. to end racial segregation in the South and win blacks the right to vote. It led to a lawsuit whose stakes were nothing less than the historic, American freedom of speech and of the press.
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> The advertisement mentioned no names. However L.B. Sullivan, city commissioner of Montgomery, Alabama, claimed that he was libeled by its charges that Southern officials had brutally suppressed peaceful protests. He sued *The New York Times* and four black Alabama ministers listed as signers of the ad for $500,000, and an all-white jury awarded him the full amount. The libel claims rose to

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1. ANTHONY LEWIS, MAKE NO LAW: THE SULLIVAN CASE AND THE FIRST AMENDMENT (1991).

> $3 million when the governor of Alabama and other officials also sued the newspaper. Given the magnitude of the claims, the cases threatened to intimidate the national press and broadcasters from covering the civil rights protests. It was an epic legal battle — one that was crucial to the continuing freedom of the American press.

Make No Law tells the story of this great case, which ended in a ringing Supreme Court decision for the *New York Times* and a far-reaching victory for First Amendment freedoms. As one of the attorneys who represented the four black Alabama ministers in the trial of that case in the Circuit Court of Montgomery County, Alabama, I would like to paraphrase a portion of the inside cover to reflect a different perspective of the decision:

> The rights of every American were enhanced for generations by a legal and social struggle that began in Montgomery, Alabama, on December 1, 1955, when a black woman, Rosa Parks, refused to relinquish to a white man her seat on a city bus in the City of Montgomery. As a result of her refusal, 50,000 black men and women in the City of Montgomery refused to ride segregated buses and organized a boycott, selecting Dr. Martin Luther King, Jr. their spokesperson. Thus began the modern civil rights movement which led to the end of racial segregation in the South, and won blacks the right to vote. As a direct result of that struggle, the United States Supreme Court ultimately announced many new legal principles regarding the First Amendment in a series of cases, the most noted of which is *New York Times v. Sullivan.* This case is the subject matter of the book *Make No Law: The Sullivan Case and the First Amendment.*

Anthony Lewis brilliantly analyzes the legal principles involved in *Sullivan* while simultaneously relating those principles to the historic times in which the action occurred in order to convey the full impact of the decision both in terms of the law and its social significance. As a product of this examination, the book provides a definitive history of the First Amendment. Mr. Lewis concludes by expressing his personal opinions regarding many of the issues raised by the impact of the case on First Amendment jurisprudence.

Although it was the advertisement that precipitated the lawsuit,

the case must be understood as a culmination of events beginning with the origin of the civil rights movement on December 1, 1955. It is generally understood that the civil rights movement was responsible for ending racial segregation in numerous aspects of American life — public transportation, parks, libraries, education and other public accommodations, as well as the right to vote. The legal principles propounded by the Supreme Court made possible many of the accomplishments of the civil rights movement. These principles would also serve as a substantial part of the foundation of First Amendment law for the next three decades. Early leaders of the civil rights movement did not, indeed could not, have contemplated these dimensions of their efforts.

Make No Law can be divided into three major parts, an analysis of the *Sullivan* case itself, a history of the First Amendment, and finally Mr. Lewis' personal views on the First Amendment and the impact of the *Sullivan* decision. Perhaps the most interesting section of the book is the first, which details the origin and development of *L.B. Sullivan v. The New York Times* beginning in the Circuit Court of Appeals in Montgomery, Alabama. Mr. Lewis commences his history by writing "It began in the most ordinary way. Late in the afternoon of March 23, 1960, John Murray went to The New York Times building on West Forty-Third Street in New York to make arrangement for an advertisement in the paper."[2]

In actuality, the case began on February 12, 1960 when the Circuit Solicitor for Montgomery County obtained two perjury indictments against Rev. Martin Luther King, Jr. The indictments arose out of the filing of Dr. King's 1956 and 1958 Alabama tax returns. Mr. Murray was part of The Committee to Defend Dr. Martin Luther King and the Struggle for Freedom in the South, which was primarily organized to raise funds to defend Mr. King. The advertisement was placed in the paper simply to solicit contributions.

In discussing these early stages of the case, Mr. Lewis carefully and accurately describes, from the evidence presented at the trial, the racial and social conditions that existed during the 1960s in Montgomery. He draws on lunch counter demonstrations conducted by the students at Alabama State College, the sit-in at the Montgomery County Courthouse, freedoms rides, and numerous

2. *Id.* at 5.

other demonstrations occurring as a result of the summary expulsion of students at Alabama State College. All of this detail provides the reader with an important perspective on the repercussions inherent in the case for the law and the social order in America.

In addition to the substantive questions of law presented, the case posed several interesting jurisdictional questions. For example, whether the Circuit Court of Montgomery County had in personam jurisdiction over the *New York Times* to support a monetary judgment. Also, whether the black ministers were fraudulently joined as defendants to avoid diversity since no evidence was presented demonstrating they were responsible for publishing the advertisement?

Mr. Sullivan had deliberately joined the four black ministers as a means of destroying diversity in case.[3] Although these people were associated with Dr. King in the Southern Christian Leadership Conference, the sixteen other people whose names appear endorsing the advertisement, none of whom were from Alabama, were not named as defendants. By joining only the Alabama ministers, Mr. Sullivan blocked the *New York Times* from removing the case to federal court. In addition to preventing removal, Mr. Sullivan employed this strategy to keep the black Alabama ministers in a defensive position in an effort to reduce their participation in other civil rights activities then in progress in Alabama.

Mr. Sullivan also hoped to eliminate the *New York Times* and other national press from reporting the civil rights events. The manner in which *The New York Times* and other outside news organizations covered the racial events in Montgomery and in the State of Alabama displeased Mr. Sullivan and the Montgomery County power structure. By obtaining a large monetary judgment, Mr. Sullivan and the others expected that the media would be intimidated and would shy away from covering the civil rights struggle in Alabama. As part of this broader plan, two other commissioners and the Governor of Alabama filed similar libel lawsuits. Collectively, these suits were part of a concerted strategy to rid Alabama of outside news coverage.

As a member of the legal team for the ministers, I knew we would eventually have to argue this case before the Supreme

3. The Reverends Ralph Abernathy and S.S. Seay were from Montgomery, the Reverend J.E. Lowery was from Mobile, and the Reverend Fred L. Shuttlenorth was a resident of Birmingham.

Court. There was not a scintilla of evidence against our clients. They had no knowledge of the advertisement. They had not written it. They had never seen it. They did not know their names would be in it. They were not aware of it until they received the letter from Commissioner Sullivan requesting a retraction.

In my closing argument to the jury, I explained why they did not respond to the Commissioner's letter requesting a retraction. I argued: "How could these individual defendants retract something — if you'll pardon the expression — they didn't tract?" While we had hoped to win, we were prepared for the possibility of losing. The jury returned a verdict against all defendants for $500,000.

Appeals were perfected for all defendants. Lawyers from Washington handled the appellate proceedings for the black ministers. Unfortunately, however, the black ministers were unable to file a supersedeas bond to prevent the plaintiff from levying upon their property. As a result their automobiles were taken, and Rev. Abernathy's interest in family property in Marengo County was sold.

Ultimately, in a precedent setting decision, rendered by the United States Supreme Court on March 9, 1964, Mr. Justice Brennan, reversed the jury's decision. He stated for the Court:

> We hold that the rule of law applied by the Alabama courts is constitutionally deficient for failure to provide the safeguards for freedom of speech and of the press that are required by the First and Fourteenth Amendments in a libel action brought by a public official against critics of his official conduct. We further hold that under the proper safeguards the evidence presented in this case is constitutionally insufficient to support the judgment for respondent.[4]

The Court continued:

> 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

4. *Id.* at 264-65 (citations omitted).

"presumed." Such a presumption is inconsistent with the federal rule.[5]

The Court then decided to examine the evidence presented to determine whether or not Alabama followed these standards.

> 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. The case of the individual petitioners requires little discussion. Even assuming that they could constitutionally be found to have authorized the use of their names on the advertisement, there was no evidence whatever that they were aware of any erroneous statements or were in any way reckless in that regard. The judgment against them is thus without constitutional support.[6]

Sullivan's case was never retried after being remanded to the Circuit Court of Montgomery County. Eventually, I was able to recover for the ministers the money from the sale of their automobiles and property.

The civil rights movement and the cases which arose out of it have not only resulted in securing the rights of African-Americans, but the principles developed secure rights for all Americans including other minorities, caucasians, women, and labor. Had there been no civil rights movement and no indictment by the State of Alabama against Dr. King in his tax perjury case, there would have been no *New York Times v. Sullivan.* But for the movement, libel law in Alabama and in the nation would probably be very different today. The civil rights movement set the stage for *Sullivan* and served as the catalyst for the Supreme Court's historic decision protecting our First Amendment right to freedom of press. The civil rights movement gave the Supreme Court the opportunity to announce the law that exists today regarding libel. History should note the role of the civil rights movement in enhancing the rights of every American for generations to come by the legal precepts announced in *New York Times v. Sullivan.*

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5. *Id.* at 283-84 (citations omitted).

6. *Id.* at 285-86.