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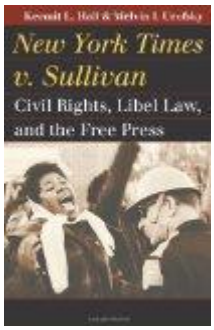

Kermit Hall, Melvin I. Urofsky. *New York Times v. Sullivan: Civil Rights, Libel Law, and the Free Press.* Lawrence: University Press of Kansas, 2011. x + 222 pp. $17.95, paper, ISBN 978-0-7006-1803-3.

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Contextualizing U.S. Libel Law

The American South was embroiled in civil rights protests in 1964 when the U.S. Supreme Court handed journalists and other citizens near immunity for criticizing government officials. *New York Times v. Sullivan* was this nation's most important libel decision since the framing of the Constitution, and the late Kermit L. Hall and Melvin I. Urofsky, law professors both, contend the victory would not have happened had the case not been about civil rights. Indeed, they persuasively argue, had it not been for the civil rights dimension, the Supreme Court would not have taken the case.

In 1960, when city commissioner L. B. Sullivan of Montgomery, Alabama, filed his lawsuit against the *New York Times* and four civil rights activists, libel law in Alabama was not much different from libel law in other states: harm to reputation was presumed when critical articles containing factual errors were published. Hall and Urofsky argue credibly that when the lawsuit reached the U.S. Supreme Court, the justices were not so much interested in changing libel law as they were intent on continuing the Court's expansion of speech rights. Hall and Urofsky point out that case law used to support the *Times v. Sullivan* decision evolved from the Speech Clause of the First Amendment, not its Press Clause. This interpretation differs markedly from previous interpretations that the case was the Court's effort to help crusading journalists deflect lawsuits by public officials.[1]

Sullivan's lawsuit resulted from a full-page advertisement published in the *New York Times* on page 25 on March 29, 1960, titled "Heed Their Rising Voices," a phrase borrowed from a *Times* editorial urging Congress to enact civil rights legislation. Northern civil rights activists placed the advertisement to raise funds to pay legal expenses incurred by the Rev. Martin Luther King Jr. and other activists who were being arrested in Alabama and other southern states as part of a concerted effort by white racist government offi-

cials to suppress the burgeoning rights movement. To stir the emotions of potential donors, the advertisement detailed events in which "Southern violators of the Constitution" sought to squelch civil rights efforts. The advertisement said that 800 students from the black Alabama State College in Montgomery had marched to the state capitol steps to sing "My Country, 'Tis of Thee," leading to the students being expelled from the college. The advertisement also reported that "truckloads of police armed with shot-guns and tear-gas ringed the Alabama State College campus." Protests, according to the advertisement's copy, led officials to padlock the college's dining hall in an attempt to starve the students "into submission." The advertisement also reported that King's home had been firebombed (suggesting that public officials may have been complicit) and state and local officials arrested King "seven times--for 'speeding,' 'loitering,' and similar 'offenses.'" The bottom of the advertisement contained endorsements by celebrities and civil rights activists, including four from Alabama. A coupon appeared so donors could clip it out and send in a donation. The advertisement ran only one day. Nowhere did it mention Sullivan by name, likeness, or description.

Unfortunately, some of the facts in the advertisement were wrong. The students had sung "The Star Spangled Banner," not "My Country, 'Tis of Thee." College officials did not expel students for singing and marching, but for participating in a sit-in at a café at the county courthouse that would not serve blacks. The college's dining hall doors had never been padlocked, and police did not "ring" the campus. King had been arrested four times, not seven.

As one of three city commissioners, Sullivan supervised the police department and had a reputation as a crusader against corruption. He was insulted by "Heed Their Rising Voices." He believed the advertisement directly and falsely criticized his leadership of the city's police force and, because of the errors, damaged his reputation. Though only thirty-five copies of the *New York Times* were distributed in Montgomery, Sullivan filed his libel suit in Montgomery County Court. After a trial, a jury of his peers awarded him a $500,000 judgment ($3.6 million in 2011 dollars) against the newspaper and the four local civil rights activists. The four activist-ministers--Solomon S. Seay Sr., Ralph Abernathy, Fred Shuttlesworth, and J. E. Lowery--lost the case even though it was shown that they did not know about the advertisement and did not know their names were on it endorsing what it said, until Sullivan sent them letters demanding that they publish corrections. Both judgments were upheld on appeals that wound their way through the Alabama court system. After losing before the Alabama Supreme Court in 1962, lawyers for the *New York Times* and the ministers appealed the decision to the U.S. Supreme Court, where justices agreed to consider the case.

Times lawyer Herb Wechsler's argument to the Supreme Court was that Alabama's application of its libel law unconstitutionally restricted the public's First Amendment right to criticize public officials. What had occurred in Alabama, Wechsler argued, was similar to what occurred when the historically discredited 1798 Sedition Act jailed and fined government critics in the eighteenth century. It was the winning argument, a salient point picked up by Justice William Brennan, the author of the court's decision. To ensure that public debate is "uninhibited, robust, and wide-open," Brennan wrote, public officials must accept the fact that comments may "include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials" (p. 175). Moreover, Brennan stressed, erroneous statements are inevitable when men and women debate controversial topics. The press, he said, must be protected from most libel suits to prevent public officials from stifling vigorous debate about important public matters, such as civil rights. Brennan's decision requires public officials to prove "actual malice" in order to win a libel suit--a

standard that makes it extremely difficult for a plaintiff to win a libel case.

The details of the case and the decision have been documented by other scholars and writers, most notably Anthony Lewis.[2] What Hall and Urofsky contribute to the scholarship on this case is their interpretation that the case is fundamentally a civil rights case that involves the First Amendment, not a First Amendment case that involves civil rights. This approach, though, leads the authors to draw conclusions that are less than convincing. Most troublesome is their misguided attempt to revise history's understanding of the motives of Sullivan and others involved in bringing this case and others against northern newspapers and civil rights activists. For example, it leads them to treat the questionable statements of Sullivan's supporters as honest and sincere testimony during the trial, such as when they testified that it was clear to them that the advertisement, which makes no mention of Sullivan, identified Sullivan by implication. Indeed, Hall and Urofsky adopt thinly reasoned cultural theory to justify Sullivan's attack on the newspaper and the ministers. They do not deny that racism was a motive. Nevertheless, they argue that Sullivan and other southern officials were of course insulted when civil rights activists brazenly attacked their authority. Southern white officials, Hall and Urofsky write, came from a genteel tradition where public discussions were handled with grace, not with screaming protests in the street. The authors unconvincingly argue that "the South's most enduring contribution to the body of law [is] the notion that habits and manners of civility should govern civic discourse" (p. 206). Such a position ignores the evidence Hall and Urofsky documented earlier in the book that showed white southern officials and their supporters being uncivil in the public debate over civil rights by attacking nonviolent protesters with water cannons and baseball bats. Granted, Hall and Urofsky are accurate that upper-class whites lost political power to blue-collar whites who were more likely to use violence to maintain racist policies. But the genteel descendants of plantation owners, timber owners, and shipping magnates contributed the cultural nutrition for the vile racist attacks on the streets of Montgomery, Birmingham, and Selma. Hall and Urofsky bring to life the events and people of ***Times v. Sullivan***, but they overreach when they try to blame the landmark case for today's uncivil public discourse, and they are wrong to picture white southern officials as latter-day knights fighting to maintain civility in public life.

Notes

[1]. Anthony Lewis, ***Make No Law: The Sullivan Case and the First Amendment*** (New York: Vintage Books, 1991); Lee. C. Bollinger, ***Images of a Free Press*** (Chicago: University of Chicago Press, 1991).

[2]. Lewis, ***Make No Law***.

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