

383 U.S. 75

ALFRED D. ROSENBLATT, Petitioner, v. FRANK P. BAER

Argued: October 20, 1965.

Decided: February 21, 1966.

FACTS: In January of 1960, the Laconia Evening Citizen of Laconia, New Hampshire published a column written by an unpaid contributor, Alfred D. Rosenblatt. In his column, Rosenblatt discussed the new leadership and performance of the Belknap County Recreation Area, a facility that is owned and run by Belknap County. The recreation area was primarily used for skiing, among other activities. Its supervisor, Frank P. Baer, and the elected Belknap County Commissioners oversaw the operation of this recreation area. During the decade prior to the publication of the column in question, controversy had been building over the way Baer and the Commissioners were conducting operations of the Area. Many in the community of Belknap County felt that the Recreation Area was not being utilized to its full monetary potential toward the financial betterment of their county. This contention came to a climax in 1959 when state legislature ultimately transferred authority and control of the Area over to a designated five-man commission. As a result, Frank P. Baer was discharged from his position as supervisor. Published nearly six months after the respondent's termination, the column written by Rosenblatt discussed the Recreation Area's "fantastic" success during the first ski season under new management and questioned the Area's previous poor performance. Baer, the respondent, in this case, alleged that this column defamed his performance as Supervisor of the Belknap Recreation Area. A jury in the New Hampshire Superior court awarded damages of \$31,500 to Baer, finding this civil libel accusation to be valid. During the interim between this trial and the Supreme Court of New Hampshire's decision to affirm the ruling of the lower court, the New York Times Co. v Sullivan decision was made. This holding of the Court had no effect on the Supreme Court of New Hampshire's ruling, and the decision to award damages to the defendant was upheld. The Supreme Court then reversed and remanded this case back to the Supreme Court of New Hampshire for further proceedings in congruence with the opinion of the Court.

LIBEL FACTS: The specific statements in Rosenblatt's column that Baer found to be libelous were as follows: "Been doing a little listening and checking at Belknap Recreation Area and am thunderstruck by what am learning. This year, a year without snow till very late, a year with actually few very major changes in procedure; the difference in cash income simply fantastic, almost unbelievable. On any sort of comparative basis, the Area this year is doing literally hundreds of per cent BETTER than last year. When consider that last year was excellent snow year, that season started because of more snow, months earlier last year, one can only ponder following question: What happened to all the money last year? And every other year? What magic has Dana Beane (Chairman of the new commission) and rest of commission, and Mr. Warner (respondent's replacement as Supervisor) wrought to make such tremendous difference in net cash results?" The respondent claimed that these selected statements in Rosenblatt's column were libelous

because they "greatly exaggerated" any improvements accomplished under the new leadership of the Area, and that a large portion of the community did not attribute the alleged improvements to the new commission. On the contrary, Baer's witnesses testified that the column cast a shadow of peculation upon the respondent's tenure as Supervisor and called into question his managerial abilities. The column did not mention the respondent by name, but he asserted that under New Hampshire law (17 U. Miami L. Rev. 519, 523-525), the jury could award Baer damages if they found that the shadow cast by column in question was done so haphazardly upon all members of the small group that previously managed the Recreation Area, regardless of whether the specific assertions were made "of and concerning him". The respondent further supported his libel claim with additional witness testimony stating that the article did in fact point to Baer specifically as the "man in charge" of the Area and its financial affairs.

ISSUE: Are government employee's considered "public officials", and in order for a public official to recover damages on an account of libel against him or herself, must the statement(s) in question be proven to have been made 'of and concerning' the public official with actual malice?

POINT OF LAW: The Court found that government employees are in fact public officials, and according to the New York Times Co. v Sullivan decision, such an official cannot recover damages for defamatory statements about their official conduct unless he or she proves actual malice.

ANALYSIS OF THE LOWER COURT DECISION: The jury of the New Hampshire Superior Court was greatly influenced by Baer's purposed notion that the court could award him damages if they found that the shadow cast by column in question was done so "indiscriminately" upon all members of the small group that previously managed the Recreation Area, regardless of whether the specific assertions were made "of and concerning him". This theory of recovery was made available to him through existing New Hampshire law (17 U. Miami L. Rev. 519, 523-525). Therefore, the trial judge instructed the jury "an imputation of impropriety or a crime to one or some of a small group that cast suspicion upon all is actionable." Under these instructions, the trial jury found that "negligent misstatement of fact would defeat the petitioner's privilege" and proceeded to award damages to the respondent. The Supreme Court of New Hampshire affirmed this ruling, despite the poignant and applicable decision of the New York Times Co. v Sullivan case that was made after the initial trial and before the decision of the Supreme Court of New Hampshire.

CONCLUSION: The jury of the New Hampshire Superior Court awarded damages to defendant Frank P. Baer, and the State Supreme Court affirmed the ruling.

ANALYSIS OF THE SUPREME COURT DECISION: Mr. Justice Brennan delivered the decision of the Court. The New York Times Co. v Sullivan decision created a new precedent that acted as a guide during the Court's determination of its finding of this case. The Courts rejected Baer's claim that the "indiscriminate suspicion" cast upon

him by the article justified a recovery of damages, and found this notion to be unconstitutional. Criticism of government, despite its effects on public official reputation, is constitutionally protected and enshrined in the first and fourteenth amendments. The evidence provided to prove that the column addressed the defendant specifically was found to be insufficient and constitutionally void. Although the column did discuss operations of which the defendant was the "man in charge", the Court points out that the matters discussed were ones of public interest, causing any interpretation of personal address to be irrelevant. Rosenblatt's critique was one of government operations, and such speech is vigorously supported by the first and fourteenth amendments as well as the New York Times decision. The instructions that were administered to the jury from the trial judge enabled them to find that "negligent misstatement of fact would defeat the petitioner's privilege". These instructions were rejected by the Court and found to be unconstitutional and incongruent with the finding in *Garrison*, 379 U.S. The Court also rejected the state's ability determine of who falls under the category of a "public figure" in matters of constitutional protection. A matter of such national interest to every American citizen cannot fluctuate across state lines. At the core of this case was found to be a tension between the necessary free speech and criticism of the press, and the national interest of bridling unjust attacks upon reputation. In light of this tension, the reality remains that the ability to criticize the government is crucial to democracy and worth potential bruises upon the reputation of public figures regarding their official conduct. Because the initial trial was conducted before the New York Times, they did permit the respondent to attempt a retrial of his action if he so wishes, declaring that it will "be for the trial judge in the first instance to determine whether the proofs show respondent to be a public official". Standing upon this body of finding, the case was reversed and remanded back to the New Hampshire Supreme Court.

CONCLUSION: Yes. The Court unanimously reversed and remanded the ruling back to the Supreme Court of New Hampshire. According to the New York Times decision, the Court found that sufficient proof must be provided in order to prove that any alleged libelous statements are made "of and concerning" the respondent personally with actual malice and that mere membership in a government run group or committee was not sufficient to prove such a notion. The instructions given to the jury that permitted enabled them to award libel damages to the respondent were deemed fallacious and overruled. The tension between protecting free speech and the societal interest of preventing defamation was recognized, but the Court proceeded to reverse and remand the ruling of the New Hampshire courts that would potentially endanger an American citizens right to freely address their grievances through criticism of the government.

ANALYSIS OF THE CLARK CONCURRENCE: Justice Clark joined in concurrence with the Court, finding that the New York Times decision set a precedent that is applicable to the outcome of this case. He also found that the instructions given to the jury gave them a much a too general and sweeping ability to award libel damages to a public figure who belongs to a government group that has endured

criticism. He points out that the Court has not linked the rule set forth by the New York Times finding to that of official privilege. Justice Clark found that the interest protected by the New York Times rule were those of public discussion and not retaliation. Applying precedent, any injury inflicted upon the respondent's reputation is irrelevant to an assertion libel because he thrust himself into the sphere of public life that invited such injury. Justice Clark aims the decision of this Court toward the effort of preventing general instructions being administered to a jury that would enable the punishment and quenching of free public discussion and potentially unpopular opinions of government.

CONCLUSION: In concurrence with the Court, Justice Clark supported the reversal of the New Hampshire Court's finding. He offered additional criticism of the instructions that were given to the jury and found that they were given too much room to assert libel and award damages.

ANALYSIS OF THE DOUGLASS CONCURRENCE: In his concurrence, Justice Douglass questions how far down the hierarchy of public officials do the principals deduced from the New York Times case extend. He finds that if free speech and discussion is your guide, anyone on the public payroll must be held to the same standards as any top public official. Douglass also considers the extent to which the Due Process Clause of the fourteenth amendment has been displaced by state libel legislature. He questions, claiming freedom of speech as his guideline, whether state libel laws have any place in a democratic government. In his view, the First Amendment should justly prevent Congress from passing any libel law that could potentially dampen or silence the free debate of public issues. If Justice Douglass is correct in his assertion, the question is no longer regarding public officials, but public issues. In light of this notion, the case was found to be in an entirely different posture. Although Douglass would have preferred to dismiss the writ as improvidently granted, he decided to join in concurring Part II of the Court's opinion as well as Justice Black's separate opinion in the interest of the proper function of the Court.

CONCLUSION: Justice Douglass concurred with the judgment of the Court. He determined that anyone on a government salary should be held to the standard of libel set forth by New York Times and that this case is more about public issues than public officials. With free speech and expression as his plum line, he questioned the validity of the very existence of state libel law in a democratic government.

ANALYSIS OF THE STEWART CONCURRENCE: In his concurrence, Justice Stewart declared that the Constitution does not afford any libel action on behalf of the government. He also found that the First Amendment was not the only guide in the area of defamation law, but also important social values. The ability to protect one's reputation against wrongful and malicious attack is one that should be exercised according to the dignity of every human being. Justice Stewart found the language used to discuss of the necessity for unbridled and free debate and criticism of the government in the New York Times potentially distracting from the heart of the

issue. That ruling protected defamatory falsehood, depriving any public official of legal redress without proof that such falsehood was made with malicious intent or reckless disregard of any attempt to determine its veracity. However, this rule should only be applied in the circumstance that a state libel law is converted to one of seditious libel. The First and Fourteenth Amendments have not stripped the citizen of the ability to collect damages for injuries that are "inflicted upon them by careless liars". Justice Stewart stated that the "preventative effect of liability for defamation serves an important public purpose", and concludes his concurrence with a warning of the denigrating effect that lies have on communities.

CONCLUSION: Justice Stewart concurred in the judgment of the Court. Although he supported the decision of the New York Times case and the protection of free speech delineated in the First and Fourteenth Amendments, he determined that these are not the only guides in the area of defamation law. Important social values and the ability to protect one's reputation from damaging lies should influence legislation as well. He expresses that the New York Times rule should be narrowly applied in circumstances of seditious libel. In the attempt to secure free expression, debate, and criticism, Justice Stewart stressed the travesty it would be to strip the citizen of their ability to defend themselves against "careless liars".

ANALYSIS OF THE BLACK/DOUGLASS CONCURRENCE AND DISSENT: Justice Black concurs with the Court in its decision to reverse the ruling of the New Hampshire Supreme Court, but dissents from the decision of the Court granting the respondent a new trial. He is joined by Justice Douglass. According to his own conviction, the reasons put forth by Justice Douglass, the decisions of both the New York Times and Garrison cases, Justice Black found this trial to be unconstitutionally granted. The Court indicated that in a retrial, it would be the burden of the trial judge to determine whether or not the respondent is a public official. Black cites Andrew Hamilton from the John Peter Zenger trial in 1792 to point out that it should be the jury, not the judge, who has the right to make this determination. In regards to the publication itself, Justice Black concluded that a column of this very kind is what the First and Fourteenth Amendments were crafted to protect. Black also determined that the ability to criticize the conduct of a government agent cannot justly hinge upon the ability to prove the agent in question's status as a "public official", or how high of a position that official may hold. In Black's opinion, the rule established in the New York Times case requiring the determination of public status as well as that of malice was inadequate. He found these protections to be far too scant in an attempt to justly protect the expression, debate, and criticism of government that is required within a truly democratic society. Black declared that the only way to protect free speech and the voice of the press would be to acknowledge the abridging nature of libel laws. According to Black, they are unconstitutional according to the First and Fourteenth Amendments and should be barred from both federal and state courts.

CONCLUSION: Justice Black, joined by Justice Douglass, concurred with the reversal of the Court but dissented in its action to grant the respondent a retrial. In this

retrial, the Judge of the New Hampshire Supreme Court would determine the status of the respondent as a public official. Black found the rule delineated in the New York Times case requiring the respondent to be a public official and specifically spoken of, as well as proof of actual malice, grossly insufficient and unnecessary in protecting free speech and the press. He believed that it would be unconstitutional to punish criticism of government agent whose status could potentially not be found to be public by a court. Citing the John Peter Zenger trial, Black pointed out that in any case, it should be the jury, not the judge, who should make such a determination. Regarding the publication, Black declared it to be just the kind of publication that the First and Fourteenth Amendments exist to protect. Black also found federal or state libel laws to be unconstitutional in their ability to hinder unfettered public discussion and the rights of the press.

ANALYSIS OF THE HARLAN PARTIAL CONCURRENCE AND PARTIAL DISSENT:

Justice Harlan agreed with the Court's opinion, except in Section II where the trial court's charge was dependent upon a theory of "impersonal libel". This was notion was constitutionally banned by the ruling of the New York Times Co. v Sullivan. In the New York Times case, law enshrined the value of protecting governmental criticism. No longer could a general critique of a body of government be transformed into a personal libel case against the specific leader of that body. However, Justice Harlan found these principles to be inaccurately applied to this case. Harlan specifically addressed the rhetorical question asked in the defendant's article, "What happened to all the money last year? And every other year?" Every court that considered this case found an interpretation of a negative connotation regarding respondent's tenure as Supervisor of the Recreation Area to be valid. In this case, Justice Harlan felt that the charge administered by the trial court judge to the jury prevented them from converting an impersonal libel into a personal one. According to conventional tort law, the jury could award the plaintiff libel damages if they found him to have been libeled alone or as a part of a small group of people who were libeled. The trial court's logic in this instant followed traditional tort law, and according to the opinion of Justice Harlan, cannot be so easily dismissed. He felt that this case was entirely different from the New York Times Co. v Sullivan and demanded a different point of view. Without dissenting from the decision of the New York Times Co. v Sullivan case, Justice Harlan dissented from the notion that this case fell under the same category as The New York Times and was thus subject to its precedential ruling.

CONCLUSION: Justice Harlan concurred with the Court's opinion except in their discussion of the theory of "impersonal libel". Harlan determined that the trial court was following traditional tort procedure, that a singular statement can libel more than one person. He found this case to be very different from the New York Times Co. v Sullivan, where the alleged libel was directed toward the police in general and not a small group responsible for the running of a specific public facility. While agreeing that impersonal criticism of a branch of government cannot be the foundation for a case of libel against that branch's leader, Harlan denies that this case falls under that category.

ANALYSIS OF THE FORTAS DISSENSION: Justice dissented from the opinion of the court, and found the writ in this case to be improvidently granted. Because the New York Times Co. v Sullivan decision was not concluded at the time of the trial court's decision, the facts of the case were not properly calibrated according to the ruling of the New York Times case. The factual record is the backbone of the Court and its most prominent guide. He concluded that a more relevant factual record was required for a proper determination of this case. Fortas felt that a retrial may be of value to the respondent, but would not prove to be particularly advantageous for the Court.

CONCLUSION: Justice Fortas dissented from the opinion of the court. He felt that the factual record was no longer relevant to the Court's decision in light of the New York Times Co. v Sullivan case, and did not justify a correct or thorough determination.