The case that revolutionized libel law

Samantha Barbas's history of *New York Times v. Sullivan* shows how easy it was to weaponize the law against southern civil rights leaders.

by Chris Hammer in the February 2024 issue
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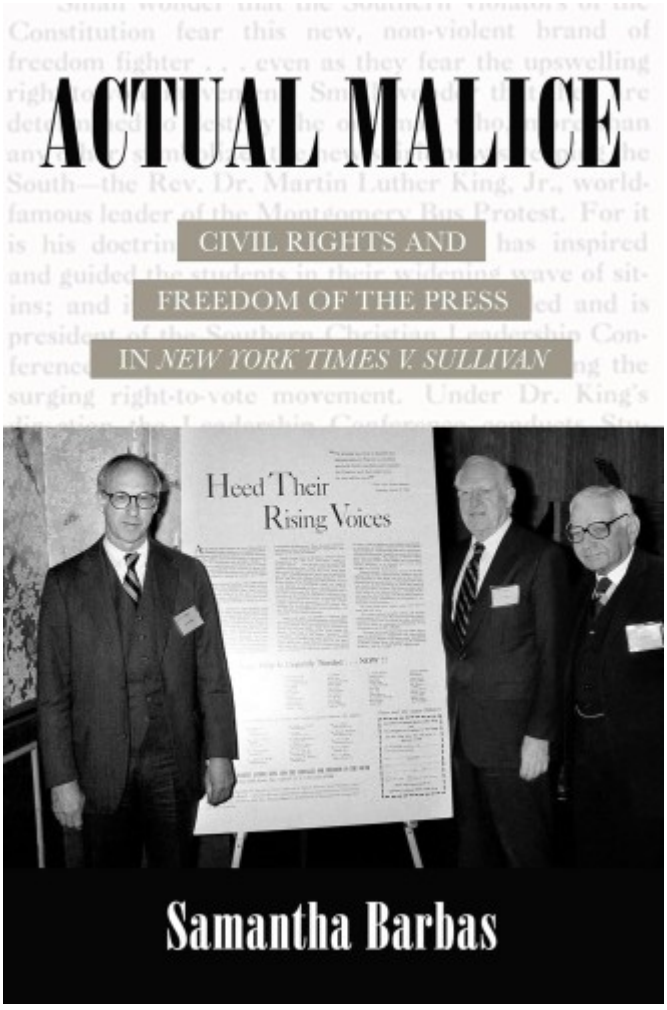

Actual Malice

Civil Rights and Freedom of the Press in New York Times v. Sullivan

By Samantha Barbas
University of California Press
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“Heed Their Rising Voices,” proclaimed the full-page ad that appeared in the Tuesday, March 29, 1960, edition of the *New York Times*. The ad requested donations to support the legal defense of Martin Luther King Jr., who had recently been arrested in Alabama on a trumped-up tax evasion charge. It dramatically recounted recent nonviolent student civil rights protests, including the “unprecedented wave of terror by those who would deny and negate” the students’ rights, but the ad did not single out for criticism any specific person in authority.

The ad was hastily put together and contained several errors, including a claim that officials responded to student protest by padlocking the dining hall at Alabama State College in Montgomery in an attempt “to ‘starve’ the students ‘into submission.’” Impressed by its high-profile signatories—including Eleanor Roosevelt, Jackie Robinson, and Harry Belafonte—the *Times* advertising acceptability department declined to undertake its usual fact-checking process for submitted ads. At the last minute, Bayard Rustin, who organized the ad, added as endorsers the names of 20 southern Black ministers associated with King—without getting their permission. These included four Alabama ministers: Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay Sr., and J. E. Lowery.

Incensed that the ad accused them of starving college students, Montgomery officials, including commissioner of public affairs L. B. Sullivan, prepared to initiate a libel suit against the *Times*—and the four Alabama ministers. Along with threatening civil rights leaders with financial ruin for challenging segregation, adding the ministers to the suit ensured that the case would be heard in the more sympathetic forum of an Alabama state court. When no retraction was forthcoming—the ministers didn’t respond to the request because they didn’t believe they could retract something they hadn’t said in the first place—the Montgomery officials sued.

Thus began the winding journey of *New York Times v. Sullivan* from the pages of the newspaper of record to the United States Supreme Court. In *Actual Malice*, Samantha Barbas, a First Amendment scholar at the University at Buffalo School of Law, tells one of the most complete stories to date of *Sullivan*. Though the *Times*’s involvement in the case has been eloquently told by its former Supreme Court correspondent Anthony Lewis in *Make No Law* (1991), Barbas adds to the narrative

by examining the records of the Southern Christian Leadership Conference and placing the case in the context of the ministers' involvement as codefendants.

Barbas's account is particularly strong in underscoring King's belief that "the greatest weapon against civil rights was not a fire hose but a lawyer on the wrong side of history." At the time, libel law was entirely a matter of state law. A majority of states, including Alabama, required the defendant in a libel suit to prove the veracity of their statement "in all its particulars," meaning that if just one assertion, however minor, were false, the defendant was liable to pay damages to the plaintiff—who did not need to prove that the statement actually harmed their reputation, only that it had the potential to do so.

Alabama officials, including trial judge Walter Burgwyn Jones, weaponized not just libel law but legal processes more broadly against southern civil rights leaders. Both major White newspapers in Montgomery published the pictures, names, and addresses of the jury, implicitly condoning intimidation to advance the cause of White supremacy. Making that intimidation explicit, Judge Jones ordered the courtroom's viewing gallery to be segregated after Black supporters of the four ministers filled the entire gallery, stating that his courtroom would be ruled by "White man's justice."

What is worse, immediately after the all-White jury awarded Sullivan and his colleagues $500,000 from the four ministers, the Montgomery sheriff began seizing and auctioning off the assets of the ministers, including Abernathy's five-year-old Buick Century and his one-twelfth interest (shared with his 11 siblings) in farmland inherited from his sharecropper parents. Far from intimidating civil rights activists, these actions emboldened the SCLC and united civil rights advocates from the North to support the ministers' defense.

When the case made it to the Supreme Court, the ministers' lawyers described Montgomery officials' actions as part of a "concerted, calculated program to carry out a policy of punishing, intimidating, and silencing all who criticize and seek to change Alabama's notorious political system of enforced segregation." The Supreme Court unanimously agreed, reversing the judgments against the four ministers and the *Times* and holding that libel law is subject to the First Amendment's guarantees of freedom of speech and freedom of the press. This meant that a public official bringing a libel claim on criticism of their official conduct had to prove that the defendant had "actual malice," that is, knowledge that the statement was false or a

reckless disregard of whether it was false.

It is not an understatement to say that *Sullivan* revolutionized libel law. In guaranteeing, as Justice William Brennan's opinion for the court put it, "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open," the court reoriented the relationship between public servants and the public they serve. No longer would public servants have, in Justice Brennan's words, "an unjustified preference over the public they serve." University of Chicago Law School professor Harry Kalven Jr. lauded *Sullivan*, writing in *A Worthy Tradition* (1988) that "political freedom ends when government can use its powers and its courts to silence its critics." Philosopher and First Amendment theorist Alexander Meiklejohn called for "dancing in the streets," either a reference to or a happy coincidence with the chart-topping Martha and the Vandellas song that hit the airwaves that summer.

Barbas wraps up her account by examining *Sullivan*'s legacy from 1964 to our own era of fake news and alternative facts. *Sullivan*, as Barbas highlights, proved to be an easy case due to its civil rights context: "L. B. Sullivan's reputation hadn't been harmed, the public interest in the ad was extremely compelling, and the libel suit was brought for obviously vindictive motives." Barbas glances at but does not fully tease out some of the more difficult tensions in libel law: what "reckless disregard" for the truth means, who is a public figure, and what impact the internet has on freedom of speech. Nevertheless, her contribution is essential to understanding and piecing together not only the legacy of libel law but also that of the ongoing civil rights movement.