

## **Title of Lesson: *New York Times Co. v Sullivan: The Alabama Case that Changed Libel Law***

*(Suggested grade levels: 7, 10, 11, 12)*

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### **Background Information:**

Background information for teacher:

- Download a [copy of the transcription](#) of the ad which appeared in the *New York Times* on March 29, 1960. Duplicate the transcription as needed for groups.
- An [article summarizing \*New York Times v Sullivan\*](#) can be found at the Encyclopedia of Alabama.
- Oral arguments at the Supreme Court may be listened to at [http://www.oyez.org/cases/1960-1969/1963/1963\\_39](http://www.oyez.org/cases/1960-1969/1963/1963_39).
- *Thinkwell's American Government* has a video summary of the case at <http://www.youtube.com/watch?v=FtqQWt7aoZ0>. The first minute of the video can be used as part of the engagement for this lesson.

**Overview of lesson:** Students will examine *New York Times v Sullivan* and determine how this Alabama court case changed the interpretation of the First Amendment. Students will analyze primary sources related to the case and recognize how the case changed libel law. Students will evaluate the importance of the case to the Civil Rights Movement.

### **Content Standards**

***Alabama Course of Study: Social Studies*** (Bulletin 2004, No. 18)

Seventh Grade: Standard 11, p. 52

Tenth Grade: Standard 4, p. 71

Eleventh Grade: Standard 12, p.79

Twelfth Grade: Standard 2, p.88

Twelfth Grade: Standard 11, p.92

***Social Studies Item Specifications for the Alabama High School Graduation Exam***

(Bulletin 2000, No. 49)

Standard II: The student will understand the formation and development of the United States.

### **National Standards for History, 1996**

**Standards in History for Grades 5-12** (p. 73)

Era 3: Revolution and the New Nation

Standard 3B – The student understands the guarantees of the Bill of Rights and its continuing significance.

Era 9: Postwar United States

Standard 4A – The student understands the “Second Reconstruction” and its advancement of civil rights.

### ***National Standards for Civics and Government, 1994***

- Grades 5-8, Standard III: How does the government established by the Constitution embody the purposes, values, and principle of American democracy? (p. 67)
  - E. What is the place of law in the American constitutional system?
    - 3. Students should be able to evaluate, take, and defend positions on current issues regarding judicial protection of individual rights.
- Grades 9-12, Standard III: How does the government established by the Constitution embody the purposes, values, and principle of American democracy? (p. 117)
  - E. What is the place of law in the American constitutional system?
    - 2. Students should be able to evaluate, take, and defend positions on current issues regarding the judicial protection of individual rights.

### ***National Curriculum Standards for Social Studies, (Bulletin 111, 2010)***

#### **Standard V – Individuals, Groups, and Institutions, High School**

Social studies programs should include experiences that provide for the study of interactions among individuals, groups, and institutions, so that the learner can:

h. explain and apply ideas and modes of inquiry drawn from behavioral science and social theory in the examination of persistent issues and social problems.

### **Primary Learning Objective(s):**

The /student will be able to:

- Define the terms *libel*, *slander*, *malice*, and *certiorari*.
- Analyze the ad which appeared in the *New York Times* in March, 1960, and draw conclusions about conditions for African Americans in the South during that time period.
- Interpret the First Amendment to the Constitution of the United States as it applied to Sullivan’s belief that he had been libeled.
- Explain the decision of the United States Supreme Court in *New York Times Co. v Sullivan* and the reasoning of the justices of the court in reaching this decision.
- Analyze the impact of the case on the Civil Rights Movement.

**Time allotted:** 90 minutes

### **Materials and Equipment:**

- Copies of the:
  - *New York Times v Sullivan* handout (attached)
  - United States Constitution
  - “Heed Their Rising Voices” ad transcription for group work
  - “Heed Their Rising Voices” Analysis Worksheet (attached)
  - Letter to the editor rubric (attached)
  - Excerpts from Justice Brennan’s majority opinion

### **Technological Resources:**

- Computer with internet access
- LCD projector

### **Background/Preparation:**

- The students should be familiar with the First and Fourteenth Amendments to the United States Constitution.
- The students should have studied the Alien and Sedition Acts.
- Students should understand the impact of the Fourteenth Amendment on federalism.

**Procedures/Activities:**

**Engagement/Motivation Activity:**

Ask a student volunteer to read that portion of the First Amendment to the United States Constitution which guarantees freedom of expression.

Ask students the following questions:

- “Are there limits placed on freedom of speech and press?”
- “What would be some of those limits? Give examples.”
- “What do the terms *libel* and *slander* mean?” Note: Explain these terms if students cannot define them.
- “What would be your reaction if the newspaper printed something about you that was not true?”
- “Would it make a difference if you were a public official and the newspaper reported false information about you? Why or why or why not?”

Tell students, “Now we are going to examine a First Amendment case from Alabama and the outcome of that case.”

<b>Step 1</b>	Display a <a href="#">copy of the original ad</a> which appeared in the <i>New York Times</i> on March 29, 1960. Divide students into groups. Give each group a copy of the transcription of the ad and a document analysis worksheet. Give students time to read the ad and complete the worksheet. Discuss their findings in a whole group discussion.
<b>Step 2</b>	Tell students that L. B. Sullivan, the Montgomery, Alabama city commissioner who was in charge of the police department, sued the <i>New York Times</i> and four African American ministers: Ralph D. Abernathy, Fred L. Shuttlesworth, S. S. Seay, Sr., and J. E. Lowery. Explain to students, “These ministers, whose names were on the ad, were selected as they were all from Alabama even though they had no prior knowledge of the ad. If the <i>New York Times</i> had been the only defendant in the case, the trial would have been held in federal court as the suit would have been against a company outside of the state of Alabama. In such cases the federal courts would have jurisdiction.” Ask, “Why do you suppose the plaintiff and his lawyer wanted the case to be heard in an Alabama court rather than in a federal court?”
<b>Step 3</b>	Display <a href="#">the memorandum written by Roland Nachman</a> , lawyer for L. B. Sullivan, outlining the justification for the lawsuit. Give each student or each group a copy of the <i>New York Times v Sullivan</i> handout. Ask the following questions: <ul style="list-style-type: none"> <li>• “Does the ad mention Sullivan by name?”</li> <li>• “What was the basis for the lawsuit brought by Sullivan?”</li> <li>• “Why did Sullivan believe that the ad went beyond the guarantee of freedom of the press found in the First Amendment?”</li> </ul>

	<ul style="list-style-type: none"> <li>• “What factual errors were in the ad?”</li> <li>• “Do you believe that ‘truth’ must be the standard for what a newspaper prints in an ad? Why or why not?”</li> <li>• “Do you believe that the <i>New York Times</i> was guilty of libeling Sullivan by printing an ad containing false and exaggerated statements about the Montgomery Alabama Police Department? Why or why not?”</li> </ul>
<b>Step 4</b>	<p>Display the <a href="#">Certificate of Judgment</a> issued by the Circuit Court in Montgomery against the defendants in the case. Explain that under Alabama law, a public official could be libeled by words directed at the agency that he headed even if the official was not named in the document.</p> <p>Ask the following questions:</p> <ul style="list-style-type: none"> <li>• “Do you agree with the decision of the Circuit Court? Why or why not?”</li> <li>• “What would have been your reaction to the judgment as a defendant in this case?”</li> <li>• “What would have been your reaction to the judgment as the plaintiff in this case?”</li> <li>• “What action do you think the <i>New York Times</i> took following this verdict?”</li> </ul> <p>Explain to the students that the case was appealed to the Alabama Supreme Court which upheld the verdict of the circuit court. The <i>New York Times</i> appealed to the United States Supreme Court and certiorari was granted by the court. The Court heard arguments in the case in January 1964, and handed down its opinion in March 1964. Note: Explain the term <i>certiorari</i> if students are unfamiliar with the term.</p>
<b>Step 5</b>	<p>Display or read the Question of Law on which the justices of the Supreme Court would deliberate:</p> <p>Did Alabama's libel law, by not requiring Sullivan to prove that an advertisement personally harmed him and dismissing the same as untruthful due to factual errors, unconstitutionally infringe on the First Amendment's freedom of speech and freedom of press protections?</p> <p>Have students discuss what they believe the Supreme Court ruled in the case. Ask,</p> <ul style="list-style-type: none"> <li>• “Why is the Fourteenth Amendment also important to this case?”</li> <li>• “How did the Fourteenth Amendment change the relationship between the federal and the state governments?”</li> <li>• “Justice Hugo Black, a native of Alabama, was a member of the 1964 Supreme Court that heard this case. How do you think he ruled in the case?” Note the following quote by Justice Hugo Black in his concurring opinion: I base my vote to reverse on the belief that the First and Fourteenth Amendments not merely "delimit" a State's power to award damages to "public officials against critics of their official conduct," but completely prohibit a State from exercising such a power.</li> </ul>
<b>Step 6</b>	<p>Display or read the Point of Law as decided by the Supreme Court in an unanimous decision:</p> <p>The Court held that the First Amendment protects the publication of all statements, even false ones, about the conduct of public officials except when statements are made with actual malice (with knowledge that they are false or in reckless disregard of their truth or falsity). Under this new standard, Sullivan's case collapsed.</p>

	Share with students excerpts from the court’s opinion, written by Justice Brennan (attached). Allow time for discussion of the decision rendered by the Supreme Court.
<b>Step 7</b>	<p>Ask the following questions related to the importance of this decision to the Civil Rights Movement:</p> <ul style="list-style-type: none"> <li>• “Without the media’s coverage of the events unfolding in the South during the Civil Rights Movement, how effective would the movement have been?”</li> <li>• “What burden was lifted from the <i>New York Times</i> as well as other media outlets in reporting about the Civil Rights Movement?”</li> <li>• “If the <i>New York Times</i> had failed in its appeal, how would that failure have affected the reporting of instances when blacks were being denied their basic civil rights by public officials in the South?”</li> <li>• “Do you believe that the libel law in Alabama was being used as a political weapon against the national media? Defend your answer.”</li> <li>• “If juries in the South consistently awarded large monetary judgments to public officials in the South, how would these awards have affected the financial status of media outlets?”</li> <li>• “What would have been the consequence to the guarantee of freedom of the press given in the First Amendment if national media outlets were bankrupted by judgments awarded in libel suits brought by public officials?”</li> </ul>

**Assessment Strategies:**

Suggested essay questions for unit test:

- Summarize the events leading to the case of *New York Times v Sullivan*.
- Explain how libel law in the United States was changed by *New York Times v Sullivan*.
- What was the court’s reasoning justifying its decision?
- How did *New York Times v Sullivan* affect the Civil Rights Movement?

Have each student write a letter to the editor of the local newspaper expressing his/her opinion of the ruling in *New York Times v Sullivan* and the consequences of that decision. Evaluate the letter using the attached rubric.

**Extension:**

- Have students research the Peter Zenger case.
- Have students research other freedom of expression cases involving the national media.
- Using the [Measuring Worth](#) Web site, have students determine the value of the \$500,000 judgment against the *New York Times* in today’s value.

**Remediation:**

- Have student watch the entire video found at <http://www.youtube.com/watch?v=FtqQWt7aoZ0>.

**Accommodation:**

- Have student only answer the following essay question:
  - Summarize the events leading to the case of *New York Times v Sullivan*, and summarize the decision of the Supreme Court in the case.

**Modification:**

- Review Individualized Education Plans, 504 Plans, and Gifted or ELL Plans for instructional and assessment accommodations or modifications.
- Provide multiple opportunities for students to demonstrate comprehension and mastery of appropriate learning objectives.

## Document Analysis Worksheet

Analyze the advertisement published in the *New York Times* in March of 1960 by answering the following questions:

What kind of document is this?

When was it written?

What is the origin of the title of the ad? What is the meaning of "Heed Their Rising Voices?"

Who placed the ad in the *New York Times*? For what purpose?

What is the purpose of the coupon on the ad?

Do you recognize any of the names of the endorsers of the ad? List the names you recognize and briefly tell what you know about them.

What does this document tell you about the United States at the time it was written?

Who do you think might sue the *New York Times* as a result of this ad?

## *New York Times v Sullivan Handout*

Portions of the *New York Times* ad which Sullivan argued defamed his character and concerned his duties as Montgomery commissioner in charge of the police department:

...truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus.

Again and again Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have arrested him seven times – for “speeding,” “loitering” and similar “offences.” And now they have charged him with “perjury” – a *felony* under which they could imprison him for *ten years*.

Portions of the *New York Times* ad which were false or exaggerated:

In Montgomery, Alabama, after students sang “My Country, ‘Tis of Thee” on the State Capitol steps...

False – They sang “The Star-Spangled Banner.”

...their leaders were expelled from school...

False – They were expelled after a lunch counter sit-in at Montgomery County Courthouse.

...and truckloads of police armed with shotguns and tear-gas ringed the Alabama State College Campus.

Exaggeration – Police did not “ring” the campus.

When the entire student body protested to state authorities by refusing to re-register, their dining hall was padlocked in an attempt to starve them into submission.

False – The dining hall was not padlocked.

## **Excerpts from Majority Opinion Written by Justice Brennan**

The question before us is whether this rule of liability, as applied to an action brought by a public official against critics of his official conduct, abridges the freedom of speech and of the press that is guaranteed by the First and Fourteenth Amendments.

Respondent relies heavily, as did the Alabama courts, on statements of this Court to the effect that the Constitution does not protect libelous publications. Those statements do not foreclose our inquiry here. None of the cases sustained the use of libel laws to impose sanctions upon expression critical of the official conduct of public officials.... In deciding the question now, we are compelled by neither precedent nor policy to give any more weight to the epithet "libel" than we have to other "mere labels" of state law.... Like insurrection, contempt, advocacy of unlawful acts, breach of the peace, obscenity, solicitation of legal business, and the various other formulae for the repression...

If the government official should be immune from libel actions, so that his ardor to serve the public will not be dampened and "fearless, vigorous, and effective administration of policies of government" not be inhibited...then the citizen and the press should likewise be immune from libel actions for their criticism of official conduct. Their ardor as citizens will thus not be dampened, and they will be free "to applaud or to criticize the way public employees do their jobs, from the least to the most important." If liability can attach to political criticism because it damages the reputation of a public official as a public official, then no critical citizen can safely utter anything but faint praise about the government or its officials. The vigorous criticism by press and citizen of the conduct of the government of the day by the officials of the day will soon yield to silence if officials in control of government agencies, instead of answering criticisms, can resort to friendly juries to forestall criticism of their official conduct.

***New York Times v Sullivan***  
**Letter to the Editor Rubric**

Student Name \_\_\_\_\_ Date \_\_\_\_\_

**Directions:** Write a letter to the editor of your local newspaper expressing your opinion of the decision by the United States Supreme Court in *New York Times v Sullivan*. Include in your letter what you believe will be the consequences of the decision.

Category	4	3	2	1	Score
<b>Introduction</b>	This letter is written with an interesting lead to bring the reader into the story.	This letter is written with a lead to bring the reader into the story.	This letter is written with a boring lead which does not encourage the reader to continue.	The letter does not contain a lead or lead is unsatisfactory.	
<b>Background Information</b>	This letter contains an abundant amount of background information about the issue.	This letter contains some background information about the issue.	This letter contains very little background information about the issue at hand.	This letter contains no background information about the issue being discussed.	
<b>Opinion</b>	This letter has a clearly stated opinion toward the beginning of the piece.	This letter has an opinion that could be stated more clearly using better wording.	This letter has an opinion which is somewhat confusing.	The writer is very confusing about his/her opinion on the issue.	
<b>Support</b>	This letter contains at least 3 different, but logical reasons of support for the stated opinion.	This letter contains at least 2 logical reasons of support for the stated opinion.	This article contains only one opinion.	This article does not contain any valid reasons for the given opinion.	
<b>Organization</b>	The letter is well organized. One idea follows another in a logical sequence with clear transitions.	The letter is organized, but one idea may seem out of place. Clear transitions are used.	The letter is hard to follow. The transitions are sometimes not clear.	Ideas and scenes seem to be randomly arranged.	

**Total** \_\_\_\_\_

**Comments:**