Keep

Supreme Court Reduces Risk of Libel, Boosts Press Freedom by Three Rulings

2/25/71

By a WALL STREET JOURNAL Staff Reporter

WASHINGTON — The Supreme Court gave the press still more constitutional elbow room to write about political candidates and public officials without much fear of libel suits.

The high court specifically reversed decisions in which lower courts had ruled against publications that had been sued for libel. One that the Supreme Court threw out was a $350,000 libel suit against Time Inc. filed by a former Chicago police captain who objected to a 1961 Time magazine article.

Perhaps the major significance of the Supreme Court's three decisions, however, was their suggestion that, while the court is turning more conservative on several issues, it isn't abandoning the old Warren court's liberalism on press freedom.

The conservative turn has become apparent, particularly in cases involving the rights of those accused of criminal offenses, as President Nixon's two appointees have teamed up with three or four of the incumbent conservatives, or moderates, who frequenty were in the minority when Earl Warren was Chief Justice. The Nixon appointees are Chief Justice Warren Burger and Justice Harry A. Blackmun.

But yesterday, the court was almost unanimous in broadening press freedom from libel risks. The only significant dissents were those of Justices William O. Douglas and Hugo Black, who, even in the Warren court days, argued that under the First Amendment the press should be totally free of libel threats. Yesterday, their partial dissents were raised because two of the cases the court dismissed can be tried again in lower courts.

The Warren court's leading decisions, reached in the so-called New York Times Case in 1964, held that when a publication prints a report concerning a "public official" in his official role, damages can't be collected even for a "defamatory falsehood" unless the official proves the report was written with "actual malice." This would mean proving it was written with knowledge that it was false, or with reckless disregard of whether it was false or true.

In later decisions, the court extended the rule to minor public officials and to private persons who willingly become prominent figures.

Two of yesterday's decisions extended the rule to candidates, even for minor office, and said the rule protects publications when they dig far into a public person's private past.

The third, involving Time Inc., held that a publication's omission of the word "alleged," and its presentation of allegation as fact, isn't in and of itself malice. But the court also cautioned the press against use of the word "alleged" as a "superfluity" in reporting damaging information.

The 1961 Time magazine article in question was a story about a report of the U.S. Commission on Civil Rights. The commission's report discussed 11 examples of police brutality against Negroes, noting that some were based on allegations in court suits and the commission, itself, hadn't verified their factual bases.

One of the examples was taken from a suit filed by a Negro against then Capt. Frank Pape of the Chicago Police Department. But Time's account omitted the word "alleged" in describing the Negro's case and Capt. Pape sued for libel.

A federal district court rejected the suit, but an appeals court sent it back for a jury to decide whether the omission constituted actual malice. The Supreme Court reversed the appeals court.

Justice Potter Stewart, writing the court's opinion, said the commission's report, itself, "bristled with ambiguities" and Time's omission was one of a number of possible interpretations of the report. Under the circumstances, Justice Stewart said, sending the case to a jury would amount to a relaxation of the circumstances under which publications can be sued.

The second libel case was brought against the Concord Monitor, a daily paper in Concord, N.H., for a syndicated Washington Column it published. The suit was filed by Alphonse Roy, a candidate for the U.S. Senate in the state's 1960 Democratic primary election. The column said Mr. Roy was a "former smalltime bootlegger." A jury held the newspaper and the syndicate that distributed the column guilty of libel. New Hampshire Supreme Court affirmed the finding.

Justice Stewart's opinion, reversing the lower courts, held that the standard fixed by the high court in the 1964 case applies to candidates as well as to office holders. It also held that the newspaper couldn't be held guilty of libel for digging deeply into Mr. Roy's past to make the "bootlegger" charge.

"Given the realities of our political life," Justice Stewart said, "it is by no means easy to see what statements about a candidate might be altogether without relevance to his fitness for the office he seeks."

The third suit was brought against The Star-Banner, a small daily paper in Ocala, Fla. It published a false story saying Leonard Damron, then mayor in a nearby town and candidate for county office, had been charged with perjury in a federal court. The fact was that James Damron, Leonard's brother, had been so charged. The error resulted when a local reporter, telephoning the story, gave the correct first name as James but an editor inadvertently changed the name to Leonard. A jury awarded Leonard Damron damages and Florida's highest court affirmed the judgment.

The Supreme Court reversed the decisions, rejecting Leonard Damron's argument that the court's 1964 standard didn't apply to his case. He asserted that a perjury action in a federal court doesn't relate to "official conduct" and, therefore, the newspaper's story wasn't protected by the standard. Justice Stewart's opinion said, as in the case against the New Hampshire paper, that any such criminal charge is relevant to a political candidacy.

Under the court's opinions, the cases against the Florida and New Hampshire papers can be tried again in the lower courts, provided the jury instructions are consistent with the high court's opinions. It was this aspect of the decisions to which Justice Douglas and Justice Black objected.