Libel Case Ruling Extends Press Protection in Suits

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By ROBERT H. PHELPS
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WASHINGTON, June 12—The Supreme Court extended today the constitutional protection of freedom of the press to libelous falsehoods about private individuals who willingly take part in public affairs.

The extension came as the Court threw out, by a 9-to-0 vote, a $500,000 libel judgment won by former Maj. Gen. Edwin A. Walker against The Associated Press and upheld, 5 to 4, a $460,000 award granted Wallace Butts, former athletic director of the University of Georgia, against the Curtis Publishing Company.

Chief Justice Earl Warren—who cast the key vote in the Butts case—explained why the Court felt that public figures who hold no public office should be subject to derogatory criticism, even when based on false statements:

"Our citizenry has a legitimate and substantial interest in the conduct of such persons.... Freedom of the press to engage in uninhibited debate about their involvement in public issues and events is as crucial as it is in the case of public officials."

Walker Won in Texas Court

A Texas court had awarded Mr. Walker the judgment because of Associated Press reports that he "assumed command" of rioters at the University of Mississippi on Sept. 30, 1962, and that he "led a charge of students against Federal Marshals" protesting the admission of James H. Meredith, a Negro, to the University.

The Texas case was one of 15 brought by Mr. Walker arising from the Associated Press dispatch. The former general, who has been active in right-wing causes, asked damages totaling $33,250,000.

Mr. Butts was originally awarded $3,060,000 — reduced later to $460,000 — because of an article in the May 23, 1963, issue of The Saturday Evening Post accusing him of giving his football team's strategy secrets to Paul Bryant, the coach of the University of Alabama, prior to the 1962 game between the two schools.

William H. Schroder of Atlanta, attorney for Mr. Butts, estimated that $112,000 in interest had accumulated since the $460,000 judgment was awarded in January, 1964. That would bring the final figure to $572,000.

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Immunity Extended

Despite their action in upholding the award to Mr. Butts, the Justices extended an immunity from libel damages that, when laid down by the Court in 1964, covered only defamatory remarks about public officials.

In the 1964 decision the Court invalidated a $500,000 judgment won by L. B. Sullivan, Commissioner of Public Affairs of Montgomery, Ala., for an advertisement in The New York Times that said that the Rev. Dr. Martin Luther King Jr. had been falsely arrested and that students had been denied entrance to the dining hall at Alabama State College.

The 1964 ruling held that a public official could collect damages for a libelous remark about his public life only if he proved it was made with actual malice, which the Court defined as "with knowledge that it was false or with reckless disregard of whether it was false or not."

Since then the lower courts have been struggling to determine whether the same immunity from libel damages should extend to statements about prominent persons who, while not holding public office, do participate in discussions of public issues.

The courts have also been striving to define what evidence is necessary to show when libelous remarks stem from outright lies of reckless disregard of truth and thus enable plaintiffs to prove malice and collect damages.

The Supreme Court's action today clarified to some extent the law on both issues.

Agreement on Extension

All none Justices agreed that the constitutional safeguards against libel suits extended beyond public officials to public figures—both those who, like Mr. Walker, thrust themselves into the vortex of public disputes and those who, like Mr. Butts, have a status in life that commands wide attention.

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From this point, however, the Court divided sharply.

In three opinions, five of the Justices—Mr. Warren, William J. Brennan Jr., Byron R. White, Hugo L. Black and William O. Douglas—held that the same standards as in The New York Times case should apply. In his opinion Mr. Warren said:

"To me, differentiation between public figures and public officials and adoption of separate standards of proof for each has no basis in law, logic or First Amendment policy."

In an opinion written by John M. Harlan and concurred in by Tom T. Clark, Potter Stewart and Abe Fortas, the four Justices proposed a different standard for public figures than for public officials.

Their opinion would allow damages "on a showing of highly unreasonable conduct constituting an extreme departure from the standards of investigation and reporting ordinarily adhered to by responsible publishers."

Such a standard would make it easier for plaintiffs to collect damages than the requirement in the New York Times case for a proof of lying or "reckless disregard of truth."

The four who joined in the Harlan opinion said that the Associated Press dispatch, an eyewitness account of Mr. Walker's appearance on campus during the rioting, was "hot news" that had to be written quickly and that even though there might have been errors there was not "the slightest hint of a severe departure from accepted publishing standards."

Magazine Criticized

But the "Butts story was in no sense hot news," the four said, and The Saturday Evening Post ignored "elementary precautions" in handling the article.

As evidence, the opinion cited the fact that The Post had depended on George Burnett, an insurance salesman who had been convicted of writing two bad checks totaling $45, as the source of its article.

Mr. Burnett based his story on notes he took of a telephone call between Mr. Butts and Mr. Bryant, the Alabama Coach. Mr. Burnett was accidentally connected into the telephone conversation while making a call of his own on Sept. 14, 1962, eight days before the Georgia-Alabama game. Alabama, a 14-0 favorite, won 35 to 0.

In addition, the opinion said, Mr. Burnett's notes had not been viewed by anyone on the magazine, that John Carmichael, who reportedly was with Mr. Burnett during the phone conversation, was not interviewed, that films of the game were not checked, and that the author of the article, Frank Graham Jr., was not a football expert.

Moreover, the opinion said, The Post was "anxious to change its image by instituting a policy of sophisticated muckraking and the pressure to produce a successful expose might have induced a stretching of standards."