

At 50, landmark libel case relevant in digital age

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WASHINGTON — Singer Courtney Love hadn't been born and tweeting was reserved for birds when The New York Times won a landmark libel case at the Supreme Court in 1964.

But when a California jury decided recently that Love shouldn't have to pay \$8 million over a troublesome tweet about her former lawyer, she became just the latest person to lean on New York Times v. Sullivan, a case decided 50 years ago Sunday, and the cases that followed and expanded it.

The Sullivan case, as it is known among lawyers, stemmed from Alabama officials' efforts to hamper the newspaper's coverage of civil rights protests in the South. The decision made it hard for public officials to win lawsuits and hefty money awards over published false statements that damaged their reputations.

In the decades since, the justices have extended the decision, making it tough for celebrities, politicians and other public figures to win libel suits.

Newspapers, magazines, radio and television stations were the primary means of publishing when the Sullivan case was decided. Today, the case applies equally to new media such as Twitter, Facebook and blogs. Because of the ease of publishing online, more people may claim the protections granted by the decision and others that followed.

"It seems reasonably clear that the protections afforded by Sullivan and the cases that came after it apply to both media and non-media speakers," said Lee Levine, a First Amendment lawyer who co-wrote a recent book on the case.

"Technology has afforded everyone -- and not just people who can afford to buy a printing press or own a broadcast station -- the ability to disseminate information to the world. That has increased the opportunities for those people to publish defamatory statements to a very broad audience," Levine said.

Levine said it's unclear whether that opportunity will lead to more libel suits, cases brought over the publication of false information that injures someone's reputation. More ways to communicate could mean more suits, or there could be fewer because people may discount what they read online, and it may not be worth suing individuals who don't have corporations' wealth.

Or there may be other explanations.

"Today one of the reasons I think we don't have as many libel cases is not just because the Sullivan rule is so widely accepted by everyone, but in a digital world there's so much greater opportunity for response," said Bruce W. Sanford, a Washington-based First Amendment lawyer.

If one person says something untrue online, the person being spoken about has many more avenues to reply, agreed David Ardia, a University of North Carolina law professor and the co-director of the school's Center for Media Law and Policy. In the 1960s, the only way to respond to libel and "reach an audience was to get into the same newspaper, and that's no longer the case," he said, adding that the "megaphone" of the Internet is available to everyone.

The Internet was a long way off when the Sullivan case began in 1960. It started when the Times published a civil rights group's full-page ad, with the title "Heed Their Rising Voices," that described the brutal treatment of civil rights demonstrators in the South.

Egged on by a local newspaper editorial urging all Alabamians to sue, a Montgomery, Ala., city official named L.B. Sullivan claimed his reputation had been sullied by the ad's errors, though neither he nor any other official was named in it. Under state law preceding the Supreme Court decision, Sullivan won a judgment of \$500,000, and the Times faced millions more in other suits.

The legal peril prompted the Times to pull all its reporters out of Alabama at a time of keen news interest in the civil rights movement.

Sullivan ultimately lost at the Supreme Court. Justice William Brennan, writing for a unanimous court, acknowledged that published errors can harm a person's reputation. But Brennan, himself ambivalent about reporters even as he emerged as a defender of press freedoms, and his colleagues also decided that it should be tough for public officials to win libel suits.

False statements are an inevitable part of the free debate that is fundamental to the American system of government and must be protected, Brennan wrote. The only way to win: Show that the false statement was made knowingly or with "reckless disregard for the truth." The decision freed news organizations to write about the civil rights movement without fearing lawsuits.

The Sullivan decision and others that followed haven't been without criticism, however, including some from three justices now on the Supreme Court.

At her high court confirmation hearing in 2010, Elena Kagan said the principle laid out in the case is vital to free speech, but she noted that it allows for serious harm to a person's reputation without any compensation or remedy.

Chief Justice John Roberts wrote in a 1985 memo as a White House lawyer that he favored making it easier for public figures to win in libel cases, while limiting the financial threat to the losing side.

Justice Antonin Scalia has been quoted as saying he would probably vote to reverse the decision if given the chance.

Still, scholars including Robert Sack, a federal judge who specialized in media law while in private practice, say the Sullivan decision has become so much part of the law that it's hard to see it being overturned.

That means anyone finding themselves in singer Love's situation may turn to the decision. In Love's case, the singer tweeted about a former lawyer, writing that the woman had been "bought off" in a suit involving the estate of Love's late husband, musician Kurt Cobain. The lawyer, Rhonda Holmes, sued for \$8 million, claiming the tweet was false and had hurt her reputation.

But Holmes ran up against the Sullivan rule. A jury found in January that though Love published a false statement, she didn't know it was false.

Holmes' lawyer, Mitchell Langberg, said he knew it would be a difficult case. Still, he advised Twitter users: "Careful what you tweet."

Associated Press reporter Mark Sherman contributed to this report.

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