AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 9: Liberalism Divided—Democratic Rights/Free Speech/Libel

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***New York Times v. Sullivan*/Libel Scorecard** (1969–1980)

Greenbelt Co-op. Pub. Ass'n v. Bresler (1970)

Public figures cannot win libel suits against persons who use hyperbole, and cannot prove actual malice by demonstrating personal hostility.

> It is simply impossible to believe that a reader who reached the word 'blackmail' in either article would not have understood exactly what was meant: it was Bresler's public and wholly legal negotiating proposals that were being criticized. No reader could have thought that either the speakers at the meetings or the newspaper articles reporting their words were charging Bresler with the commission of a criminal offense. On the contrary, even the most careless reader must have perceived that the word was no more than rhetorical hyperbole, a vigorous epithet used by those who considered Bresler's negotiating position extremely unreasonable. Indeed, the record is completely devoid of evidence that anyone in the city of Greenbelt or anywhere else thought Bresler had been charged with a crime.

Time, Inc. v. Pape (1971)

Newspaper cannot be found guilty of libel when the reporter adopts a plausible interpretation of a government document.

> Time's omission of the word 'alleged' amounted to the adoption of one of a number of possible rational interpretations of a document that bristled with ambiguities. The deliberate choice of such an interpretation, though arguably reflecting a misconception, was not enough to create a jury issue of 'malice' under *New York Times v. Sullivan* (1964). To permit the malice issue to go to the jury because of the omission of a word like 'alleged,' despite the context of that word in the Commission Report and the external evidence of the Report's overall meaning, would be to impose a much stricter standard of liability on errors of interpretation or judgment than on errors of historic fact.

Ocala Star-Banner Co. v. Damron (1971)

New York Times v. Sullivan (1964) applies to comments made about the private activities of public officials, at least to allegations that they have committed crimes.

> [A] charge of criminal conduct against an official or a candidate, no matter how remote in time or place, is always 'relevant to his fitness for office' for purposes of applying the *New York Times v. Sullivan* (1964) rule of knowing falsehood or reckless disregard of the truth. Public discussion about the qualifications of a candidate for elective office presents

> what is probably the strongest possible case for application of the *New York Times* rule. And under any test we can conceive, the charge that a local mayor and candidate for a county elective post has been indicted for perjury in a civil rights suit is relevant to his fitness for office.

Monitor Patriot Co. v. Roy (1971)

New York Times v. Sullivan (1964) applies to any facet of a candidate for office that might be relevant to predicting official performance.

> The considerations that led us thus to reformulate the 'official conduct' rule of *New York Times* in terms of 'anything which might touch on an official's fitness for office' apply with special force to the case of the candidate. Indeed, whatever vitality the 'official conduct' concept may retain with regard to occupants of public office, it is clearly of little applicability in the context of an election campaign. The principal activity of a candidate in our political system, his 'office,' so to speak, consists in putting before the voters every conceivable aspect of his public and private life that he thinks may lead the electorate to gain a good impression of him. A candidate who, for example, seeks to further his cause through the prominent display of his wife and children can hardly argue that his qualities as a husband or father remain of 'purely private' concern. And the candidate who vaunts his spotless record and sterling integrity cannot convincingly cry 'Foul!' when an opponent or an industrious reporter attempts to demonstrate the contrary. Any test adequate to safeguard First Amendment guarantees in this area must go far beyond the customary meaning of the phrase 'official conduct.'

Rosenbloom v. Metromedia, Inc. (1971)

Plurality opinion maintains that *New York Times v. Sullivan* (1964) applies to comments on matters of public interest.

> If a matter is a subject of public or general interest, it cannot suddenly become less so merely because a private individual is involved, or because in some sense the individual did not 'voluntarily' choose to become involved. The public's primary interest is in the event; the public focus is on the conduct of the participant and the content, effect, and significance of the conduct, not the participant's prior anonymity or notoriety.