10 Most Important U.S. Supreme Court Cases for Journalists

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The offices of The New York Times, on New York City's Eighth Avenue.
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To suppress free speech is a double wrong. It violates the rights of the hearer as well as those of the speaker." Frederick Douglass, 1860.

Douglass' words echo the beliefs of the founding fathers, who considered freedom of the press so important that they established its rights in the First Amendment to the U.S. Constitution. The press played an important role in the events leading up to and during the American Revolution, when newspapers helped spread information about the struggle for

independence from Great Britain across the colonies. The founders fought to preserve the very freedoms that helped the young nation to gain support for its ideals.

Once freedoms of the press were established in the Constitution, the press continued to be an important force as the country grew. Freedom of the press in the U.S. covers invasion of privacy, free expression, access to government information, prior restraint (preventing publication of information), commercial speech, libel (written attacks on an individual's reputation) and slander (spoken attacks on one's reputation).

Throughout our country's history, cases heard before the Supreme Court have tested the First Amendment and helped continue to shape the rights of journalists. Let's take a look at 10 important Supreme Court cases that have had an impact on the media.

10 Near v. Minnesota (1931)

This case helped the Supreme Court define freedom of the press and the concept of prior restraint. When Minneapolis newspaper editor Jay Near attacked local officials by claiming in print that they were associated with gangsters, Minnesota officials obtained an injunction to keep Near from publishing his paper under state law. The law said that anyone who published a "malicious, scandalous and defamatory" newspaper article was a nuisance and could be stopped from publishing such information.

The Supreme Court had to determine if the Minnesota law restricted freedom of the press. The Court ruled that the law kept certain information from being published - a concept called **prior restraint** -- and violated the First Amendment. This case helped establish the principle that the government can't censor or prohibit a publication in advance, with a few exceptions, even though the communication might be actionable in a future proceeding [source: Oyez (http://www.oyez.org/cases/1901-1939/1929/1929_91)].

9 Nebraska Press Association v. Stuart (1976)

While presiding over a widely publicized murder trial, a Nebraska state trial judge kept reporters from publishing or broadcasting accounts of confessions made by the accused to the police. The judge felt that prior restraint (an order not to print information before it's actually printed) was necessary in order to give the accused a fair trial.

The Supreme Court, however, found that the judge's order violated the First and Fourteenth amendments. The court felt that implementing prior restraint wouldn't affect the trial's outcome. Chief Justice Warren Burger reasoned that the "whole community should not be restrained from discussing a subject intimately affecting life within," thus protecting the press' responsibility to provide information of public interest [source: Oyez (http://www.oyez.org/cases/1970-1979/1975/1975_75_817)].

Is the truth a defense?

One of the first cases concerning freedom of the press tested the viability of the truth as a defense against libel. In this case, the colony of New York tried publisher John Peter Zenger for seditious libel against the governor. At that time, truth wasn't considered to be a defense in libel cases. This case tested a citizen's right to question the government versus public safety. Zenger's attorney argued that the jury had the power and duty to judge the law as well as the facts; the jury acquitted Zenger.

This decision represented a landmark victory for the freedom of the press - although the case never came before the Supreme Court. The decision supported the press' right to make factual statements about public officials, even if they aren't favorable

8 Hazelwood School District v. Kuhlmeier (1988)

Are high school students protected by freedom of speech? When Hazelwood East High School principal Robert E. Reynolds thumbed through the proofs of the Spectrum, the school paper, and found two articles to be inappropriate, he barred them from publication. Cathy Kuhlmeier and two other students on the newspaper staff brought the case to

court, saying the principal's actions violated their First Amendment rights.

In a 5-3 decision, the Court held that schools must be able to set high standards for speech disseminated under their supervision, and that schools had the right to refuse to support speech that was "inconsistent with the shared valued of civilized social order." The Court said the educators didn't offend the students' First Amendment rights, as long as their actions were "reasonably related to legitimate pedagogical concerns."

A New Precedent for Student Journalists?

Good news for high school journalists came in 2004's Dean v. Utica, a case that helped to mitigate some of the controversial aspects of the Kuhlmeier decision. An article written for Utica High School's student newspaper about the harmful effects of bus diesel fumes was barred from publication. A student journalist pursued the issue legally, and the Michigan district court called the censorship incomprehensible: "f the role of the press in a democratic society is to have any value, all journalists -- including student journalists -- must be allowed to publish viewpoints contrary to those of state authorities without intervention or censorship by the authorities themselves." Although a lower court made the ruling, this case sets a promising precedent for applying First Amendment protections to high school journalists.

7 Branzburg v. Hayes (1971)

Should reporters be forced to share confidential information?

Reporter Paul Branzburg interviewed several drug users in a two-county area in Kentucky, and wrote an article that appeared in the Louisville Courier-Journal. He was called in twice to testify about his sources before state grand juries investing drug crimes -- and refused. The question posed to the Supreme Court: Does forcing a reporter to testify before a grand jury violate his or her freedoms of speech and press?

The Supreme Court found that this so-called **reporter's privilege** doesn't apply if a reporter's confidential information was of a "compelling" and "paramount" state interest, couldn't be obtained any other way, and contained specific information about specific crimes. Simply put, forcing a reporter to testify before a grand jury won't violate that reporter's first amendment rights. The fact that reporters receive information in confidence doesn't give them the right to withhold that information in a government investigation. Private citizens are often required to share information learned in confidence if called upon to testify in court, and thus, so are reporters.

6 Cohen v. Cowles Media Co. (1982)

Dan Cohen, a Republican campaign associate for 1982 Minnesota gubernatorial candidate Wheelock Whitney, gave court records about the Democratic candidate for lieutenant governor to various newspapers in St. Paul and Minneapolis. The newspapers had promised him confidentiality, but identified him anyway. He was fired, and Cohen sued the Cowles Media Company in state court for breach of contract. He won compensatory damages and the state appellate court upheld the award. However, the state supreme court in Minnesota reversed the lower court's decision, saying that Cohen's claim relied on the state's **promissory estoppel** law, a statute that prevents someone from breaking a promise. The court ruled that the First Amendment's freedom of the press guarantee prevented promissory estoppel from applying to the newspapers.

The Supreme Court tackled the question of whether the First Amendment bars a source from recovering damages if a newspaper doesn't it fulfill its promise of confidentiality.

It decided that the First Amendment doesn't prevent a promissory estoppel suit against the press, ruling that Minnesota's promissory estoppel law applied to individuals or institutions. In this case, the First Amendment didn't protect the press from breaking a promise to its sources.

5 Chandler v. Florida (1981)

Who would've thought that a relatively routine burglary case would lead to the media circus surrounding trials like O.J. Simpson's? Apparently, two crooked Miami Beach cops did.
LEE CELANO/GETTY IMAGES

Ever wonder why judges allow cameras in courtrooms?

A Miami Beach jury convicted two men of conspiracy to commit burglary, grand larceny and possession of burglary tools after breaking into a popular local restaurant. Normally, a case like this wouldn't attract much public attention and media scrutiny, but the men in this case just happened to be Miami Beach police officers. The officers objected to the media presence, claiming the attention would make a fair trial impossible. However, the trial court had already agreed to allow cameras in the courtroom on an experimental basis, and the officers were convicted; after debating whether the cameras denied the defendants a fair trial under the 6th and 14th Amendments, the U.S. Supreme Court upheld the trial court's position.

Since that time, most federal and state courts allow cameras in the courtroom. This case helped clear the way for live courtroom TV shows, as well as the famous live coverage of the O.J Simpson and Rodney King trials. The question of cameras in the courtroom continues to a be a complicated one, as some people believe it an invasion of privacy of those involved in the case, and that excessive media coverage may distort judicial proceedings.

4

New York Times Co. v. Sullivan (1964)

During the turbulent days of the early 1960s, a full-page ad appeared in the New York Times that claimed the arrest of Rev. Martin Luther King, Jr. for perjury in Montgomery, Ala., was part of a campaign to destroy King's efforts to integrate public facilities and encourage blacks to vote. In response, Montgomery city commissioner L.B. Sullivan filed a libel action against the newspaper and four black ministers listed as endorsers of the ad, claiming that the allegations against the Montgomery police defamed him personally. Under Alabama law, Sullivan didn't have to prove the harm to his reputation; the ad contained factual errors that precluded a truth defense. The challenge before the Court: Did Alabama's libel law infringe on the First Amendment's freedom of speech and press protection?

The Court held that the First Amendment protects the publication of all statements -- even those later proven false -- about the conduct of public officials unless they're made with **actual malice**, or knowledge that they're false or reckless. The Court dismissed Sullivan's case and established that publicly elected officials must prove an actual intent to harm in cases of libel or defamation.

A pre-Sullivan Libel Precedent

In 1803, a New York court convicted Henry Crosswell, editor of the Hudson, N.Y. publication *Wasp*, of libeling then-President Thomas Jefferson in print. In an appeal to the New York Supreme Court, attorney Alexander Hamilton argued that freedom of the press depended on the right to print the truth -- even about "the government, magistracy or individuals" -- as long as it was done with the intent to inform.

The court sustained the conviction, but the legislature of New York incorporated Hamilton's position into law in 1805. This decision, detailed in *People v. Crosswell*, defined libel law until 1964, when New York Times Company v. Sullivan expanded the protection of the press.

3

Curtis Publishing v. Butts (1966)

Legendary University of Alabama football coach Paul "Bear" Bryant.
RONALD C. MODRA/GETTY IMAGES

Shortly after *New York Times Co. v. Sullivan*, two cases originating on Southern college campuses in the early 1960s came before the Supreme Court, raising questions about the application of the actual malice standard to public figures.

In one case, the Saturday Evening Post, published by Curtis Publishing Company, ran an article accusing Wally Butts, then-athletic director for the University of Georgia, of conspiring to fix a 1962 football game between Georgia and its rival, the University of Alabama. The article claimed that Butts gave Georgia's plays to Alabama coach Paul "Bear" Bryant. Butts sued for defamation, and a trial court ruled in his favor. Soon after the court's ruling in *Times vs. Sullivan*, Curtis moved for a new trial because the actual malice standard from that case wasn't applied. But Curtis wasn't an elected public official - did the standard apply?

In its 5-4 ruling, the Supreme Court agreed to extend the reach of the Sullivan verdict to include **public figures** like national politicians, business tycoons and celebrities. Chief Justice Earl Warren reasoned there was "no basis in law, logic, or First Amendment policy" to differentiate between public officials and public figures [source: Freedom Forum (http://www.freedomforum.org/packages/first/defamationandfirstamendment/casesummaries.htm#Curtis)].

2 Gertz vs. Robert Welch, Inc. (1974)

Robert Welch, Inc., publisher of *American Opinion*, a magazine that spread the views of the ultraconservative John Birch Society, warned that Communist sympathizers were trying to frame police officers -- and sparked a case that defined libel for private individuals. When Chicago police officer Robert Nuccio was convicted of a young man's murder, local attorney Elmer Gertz represented the victim's family in a civil suit. An article in the magazine contained several factual misstatements about Gertz, who didn't frame Nuccio in any way.

Gertz sued for defamation; a trial court ruled that Gertz had to prove that the magazine acted with actual malice since the article discussed important public issues. Gertz argued that because he was a private person, not a public figure, he only needed to show negligence or fault.

The Court ruled 5-4 that a private person doesn't have to show actual malice in order to prove libel -- even if the defamatory comments concern public issues. The Supreme Court distinguished between public and private individuals for the purposes of defamation law: "Private persons are more vulnerable to injury, and the state interest in protecting them is correspondingly greater." The Court reasoned that public officials and public figures have greater access to the media, and thus can better counteract false statements than private individuals.

In this case, the Court set up a different standard for private individuals, saying that states themselves could define the appropriate standard of liability for a journalist who makes defamatory, false statements about a private individual [source: Freedom Forum (http://www.freedomforum.org/packages/first/defamationandfirstamendment/casesummaries.htm)].

1 New York Times Co. vs. United States (1971)

Daniel Ellsberg, the man who leaked the infamous “Pentagon Papers,” addresses the press.
PICTORIAL PARADE/GETTY IMAGES

In 1971, as the nation heatedly debated its involvement in the Vietnam War, the New York Times obtained a copy of an internal Defense Department report that detailed government discussions about the war. These confidential documents would become famously known as the **Pentagon Papers**.

At the U.S. government's request, the district court issued a temporary injunction ordering the New York Times not to publish the documents, claiming that the publication of the documents would endanger national security. The Times appealed, arguing that prior restraint (preventing publication) violated the First Amendment.

The Supreme Court ruled 6-3 in favor of the Times. In dissent, Chief Justice Warren Burger noted that the "imperative of a free and unfettered press comes into collision with another imperative, the effective functioning of a complex, modern government." He challenged the wisdom of publishing the highly confidential intelligence, but respected the freedom offered by the First Amendment: "Only those who view the First Amendment as an absolute in all circumstances -- a view I respect, but reject -- can find such cases as these to be simple or easy."

This case is extremely important to journalists, as the court recognized the need to find a balance between the right to a free press and the need for the government to protect national security. The ruling in favor of the press places even more responsibility on the Fourth Estate, challenging journalists to use their freedoms wisely in their role as gatekeepers for disseminating information to the public.

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Sources

- Barnett, Lincoln. “The Case of John Peter Zenger.” American Heritage. December 1971. (Oct. 4, 2010)http://www.americanheritage.com/articles/magazine/ah/1971/1/1971_1_33.shtml.
- Hudson, David. “Defamation and the First Amendment.” Freedom Forum. (Oct. 7, 2010)http://www.freedomforum.org/packages/first/defamationandfirstamendment/index.htm

- Dias, Monica. “Branzburg revisited?” The News Media & the Law. Winter 2002. (October 4, 2010)http://www.rcfp.org/news/mag/26-1/cov-branzbur.html.
- Hiestand, Mike. “Dean v. Utica FAQ.” Trends in High School Media. 2005: National Scholastic Press Association. Oct. 12, 2004.http://www.studentpress.org/nspa/trends/~law0205hs.html
- Infoplease.com. “New York Times Co. vs. United States (1971).”. Pearson Education, 2005. www.infoplease.com/us/supreme-court/cases/ar25.html.
- The Oyez Project, Nebraska Press Assoc. v. Stuart, 427 U.S. 539 (1976) http://oyez.org/cases/1970-1979/1975/1975_75_817 (Oct. 3, 2010)
- The Oyez Project, New York Times v. Sullivan , 376 U.S. 254 (1964) http://oyez.org/cases/1960-1969/1963/1963_39 (Oct. 4, 2010)
- Willcox, Laird. The Writer’s Rights: 1229 Selected Quotations. 2002. (Oct. 4, 2010)http://www.illinoisfirstamendmentcenter.com/docs/Writers_Rights.pdf