Should a "public figure" be able to pursue damages if he has been the subject of defamatory written material (libel) or oral commentary (slander)? And, if so, what should he have to prove? I'm OK with the outcome of this case on these facts; however, I have very mixed feelings about the precedent this case sets. As long as commentary is related to the public job, two of the Justices would give any speech an absolute privilege. I have problems with going that far. Should anyone have the constitutionally protected right (with impunity) to **falsely** state that a decorated war hero running for office committed treason by giving secrets to the enemy? Should the constitution provide safe haven for a false charge that a presidential candidate has a felony conviction for rape? Who is damaged by such false and outrageous statements? Is it just the targeted victim? Or, is our entire democracy in jeopardy if we allow outrageous defamatory lies to effect even a small percentage of the electorate? As we know, it doesn't take many votes these days to decide an election. This case is what I call a "tone setter." It dramatically effects how we "do business." You will see. Ponder what you would like to see as our law.

NEW YORK TIMES v. SULLIVAN
SUPREME COURT OF THE UNITED STATES
376 U.S. 254
March 9, 1964

OPINION: Mr. Justice BRENNAN…We are required in this case to determine for the first time the extent to which the constitutional protections for speech and press limit a State's power to award damages in a libel action brought by a public official against critics of his official conduct.

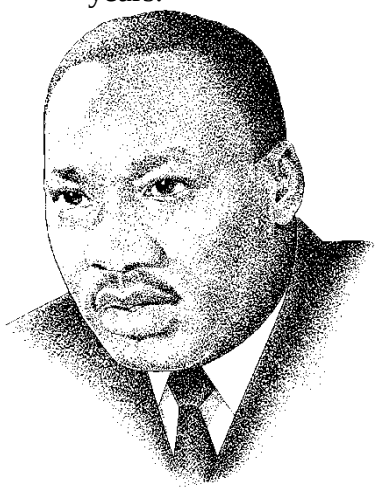
…L. B. Sullivan is one of the three elected Commissioners of the City of Montgomery, Alabama. He testified that he was 'Commissioner of Public Affairs and the duties are supervision of the Police Department, Fire Department, Department of Cemetery and Department of Scales.' He brought this civil libel action against the four individual petitioners, who are Negroes and Alabama clergymen, and against petitioner the New York Times Company, a New York corporation which publishes the New York Times, a daily newspaper. A jury in the Circuit Court of Montgomery County awarded him damages of **$500,000**, the full amount claimed, against all the petitioners, and the Supreme Court of Alabama affirmed.

[Sullivan's] complaint alleged that he had been libeled by statements in a full-page advertisement that was carried in the New York Times on March 29, 1960. Entitled 'Heed Their Rising Voices,' the advertisement began by stating that 'As the whole world knows by now, thousands of Southern Negro students are engaged in widespread non-violent demonstrations in positive affirmation of the right to live in human dignity as guaranteed by the U.S. Constitution and the Bill of Rights.' It went on to charge that 'in their efforts to uphold these guarantees, they are being met by an unprecedented wave of terror by those who would deny and negate that document which the whole world looks upon as setting the pattern for modern freedom.'

Succeeding paragraphs purported to illustrate the 'wave of terror' by describing certain alleged events [and] concluded with an appeal for funds for three purposes: support of the student movement, 'the struggle for the right-to-vote,' and the legal defense of Dr. Martin Luther King, Jr….against a perjury indictment then pending in Montgomery. The text appeared over the names of 64 persons, many widely known for their activities in public affairs, religion, trade unions, and the performing arts. Below these names, and under a line reading 'We in the south who are struggling daily for dignity and freedom warmly endorse this appeal,' appeared the names of the four individual petitioners and of 16 other persons, all but two of whom were identified as clergymen in various Southern cities. The advertisement was signed at the bottom of the page by the 'Committee to Defend Martin Luther King and the Struggle for Freedom in the South,' and the officers of the Committee were listed.

Of the 10 paragraphs of text in the advertisement, the third and a portion of the sixth were the basis of [Sullivan's] claim of libel. They read as follows:

> Third paragraph:
>
> "In Montgomery, Alabama, after students sang 'My Country, 'Tis of Thee' on the State Capitol steps, their leaders were expelled from school, and truckloads of **police** armed with shotguns and tear-gas **ringed** the Alabama State College Campus. When the entire student body protested to state authorities by refusing to re-register, their **dining hall was pad-locked** in an attempt to starve them into submission."
>
> Sixth paragraph:
>
> "Again and again the Southern violators have answered Dr. King's peaceful protests with intimidation and violence. They have bombed his home almost killing his wife and child. They have assaulted his person. They have arrested him **seven** times—for 'speeding,' 'loitering' and similar 'offenses.' And now they have charged him with 'perjury'—a felony under which they could imprison him for ten years."



Although neither of these statements mentions respondent by name, he contended that the word **'police'** in the third paragraph referred to him as the Montgomery Commissioner who supervised the Police Department, so that he was being accused of 'ringing' the campus with police. He further claimed that the paragraph would be read as imputing to the police, and hence to him, the padlocking of the dining hall in order to starve the students into submission. As to the sixth paragraph, he contended that since arrests are ordinarily made by the police, the statement 'They have arrested Dr. King seven times' would be read as referring to him; he further contended that the 'They' who did the arresting would be equated with the 'They' who committed the

other described acts and with the 'Southern violators.' Thus, he argued, the paragraph would be read as accusing the Montgomery police, and hence him, of answering Dr. King's protests with 'intimidation and violence,' bombing his home, assaulting his person, and charging him with perjury. Respondent and six other Montgomery residents testified that they read some or all of the statements as referring to him in his capacity as Commissioner.

…[In truth,] although Negro students staged a demonstration on the State Capital steps, they sang the National Anthem and not 'My Country, 'Tis of Thee.' Although nine students were expelled by the State Board of Education, this was not for leading the demonstration at the Capitol, but for demanding service at a lunch counter in the Montgomery County Courthouse on another day. Not the entire student body, but most of it, had protested the expulsion, not by refusing to register, but by boycotting classes on a single day; virtually all the students did register for the ensuing semester. The campus dining hall was not padlocked on any occasion, and the only students who may have been barred from eating there were the few who had neither signed a pre-registration application nor requested temporary meal tickets. Although the police were deployed near the campus in large numbers on three occasions, they did not at any time 'ring' the campus, and they were not called to the campus in connection with the demonstration on the State Capitol steps, as the third paragraph implied. Dr. King had not been arrested seven times, but only four; and although he claimed to have been assaulted some years earlier in connection with his arrest for loitering outside a courtroom, one of the officers who made the arrest denied that there was such an assault.

On the premise that the charges in the sixth paragraph could be read as referring to him, respondent was allowed to prove that he had not participated in the events described. Although Dr. King's home had in fact been bombed twice when his wife and child were there, both of these occasions antedated respondent's tenure as Commissioner, and the police were not only not implicated in the bombings, but had made every effort to apprehend those who were. Three of Dr. King's four arrests took place before respondent became Commissioner. Although Dr. King had in fact been indicted (he was subsequently acquitted) on two counts of perjury, each of which carried a possible five-year sentence, respondent had nothing to do with procuring the indictment.

Respondent made no effort to prove that he suffered actual pecuniary loss as a result of the alleged libel. One of his witnesses, a former employer, testified that if he had believed the statements, he doubted whether he 'would want to be associated with anybody who would be a party to such things that are stated in that ad,' and that he would not re-employ respondent if he believed 'that he allowed the Police Department to do the things that the paper says he did.' But neither this witness nor any of the others testified that he had actually believed the statements in their supposed reference to respondent.

The cost of the advertisement was approximately $4800, and it was published by the Times upon an order from a New York advertising agency acting for the signatory Committee. The agency submitted the advertisement with a letter from…the Committee, certifying that the persons whose names appeared on the advertisement had given their permission…Each of the individual petitioners testified that he had not authorized the use of his name, and that he had been unaware of its use until receipt of respondent's demand for a retraction. The manager of the Advertising

Acceptability Department testified that he had approved the advertisement for publication because he knew nothing to cause him to believe that anything in it was false, and because it bore the endorsement of 'a number of people who are well known and whose reputation' he 'had no reason to question.' Neither he nor anyone else at the Times made an effort to confirm the accuracy of the advertisement, either by checking it against recent Times news stories relating to some of the described events or by any other means.

Alabama law denies a **public officer** recovery of punitive damages in a libel action brought on account of a publication concerning his official conduct unless he first makes a written demand for a public retraction and the defendant fails or refuses to comply. Respondent served such a demand upon each of the petitioners. None of the individual petitioners responded to the demand, primarily because each took the position that he had not authorized the use of his name on the advertisement and therefore had not published the statements that respondent alleged had libeled him. The Times did not publish a retraction in response to the demand, but wrote respondent a letter stating…that 'we…are somewhat puzzled as to how you think the statements in any way reflect on you,' and 'you might, if you desire, let us know in what respect you claim that the statements in the advertisement reflect on you.' Respondent filed this suit a few days later without answering the letter. The Times did, however, subsequently publish a retraction of the advertisement upon the demand of Governor John Patterson of Alabama, who asserted that the publication charged him with 'grave misconduct and…improper actions and omissions as Governor of Alabama and Ex-Officio Chairman of the State Board of Education of Alabama.' When asked to explain why there had been a retraction for the Governor but not for respondent, the Secretary of the Times testified: 'We did that because we didn't want anything that was published by The Times to be a reflection on the State of Alabama and the Governor was, as far as we could see, the embodiment of the State of Alabama and the proper representative of the State and, furthermore, we had by that time learned more of the actual facts which the ad purported to recite and, finally, the ad did refer to the action of the State authorities and the Board of Education presumably of which the Governor is the ex-officio chairman…' On the other hand, he testified that he did not think that 'any of the language in there referred to Mr. Sullivan.'

The trial judge submitted the case to the jury under instructions that the statements in the advertisement were **'libelous per se'** and were not privileged, so that petitioners might be held liable if the jury found that they had published the advertisement and that the statements were made **'of and concerning'** respondent. The jury was instructed that, because the statements were libelous per se, 'the law…implies legal injury from the bare fact of publication itself,' 'falsity and malice are presumed,' 'general damages need not be alleged or proved but are presumed,' and 'punitive damages may be awarded by the jury even though the amount of actual damages is neither found nor shown.' An award of punitive damages—as distinguished from 'general' damages, which are compensatory in nature—**apparently requires proof of actual malice** under Alabama law, and the judge charged that '**mere negligence or carelessness is not evidence of actual malice or malice in fact**, and does not justify an award of exemplary or punitive damages.' He refused to charge, however, that the jury must be 'convinced' of malice, in the sense of 'actual intent' to harm or 'gross negligence and recklessness,' to make such an award, and he also refused to require that a verdict for respondent differentiate between compensatory and punitive damages. The judge rejected petitioners' contention that his rulings abridged the

freedoms of speech and of the press that are guaranteed by the First and Fourteenth Amendments.

In affirming the judgment, the Supreme Court of Alabama…said that malice could be inferred from the Times' 'irresponsibility' in printing the advertisement while 'the Times in its own files had articles already published which would have demonstrated the falsity of the allegations in the advertisement'; from the Times' failure to retract for respondent while retracting for the Governor, whereas the falsity of some of the allegations was then known to the Times and 'the matter contained in the advertisement was equally false as to both parties'; and from the testimony of the Times' Secretary that, apart from the statement that the dining hall was padlocked, he thought the two paragraphs were 'substantially correct.' The court reaffirmed a statement in an earlier opinion that 'There is no legal measure of damages in cases of this character.'…

[W]e…**reverse…**[and] hold that the rule of law applied by the Alabama courts is constitutionally deficient for failure to provide the safeguards for freedom of speech and of the press that are required by the First and Fourteenth Amendments in a libel action **brought by a public official against critics of his official conduct**. We further hold that …the evidence presented in this case is constitutionally insufficient to support the judgment for respondent…

Under Alabama law as applied in this case, a publication is 'libelous per se' if the words 'tend to injure a person…in his reputation' or to 'bring him into public contempt'; the trial court stated that the standard was met if the words are such as to 'injure him in his public office, or impute misconduct to him in his office, or want of official integrity, or want of fidelity to a public trust…' The jury must find that the words were published 'of and concerning' the plaintiff, but where the plaintiff is a public official his place in the governmental hierarchy is sufficient evidence to support a finding that his reputation has been affected by statements that reflect upon the agency of which he is in charge. Once 'libel per se' has been established, the defendant has no defense as to stated facts **unless he can persuade the jury that they were true in all their particulars**. His privilege of 'fair comment' for expressions of opinion depends on the truth of the facts upon which the comment is based. Unless he can discharge the burden of proving truth, general damages are presumed, and may be awarded without proof of pecuniary injury. A showing of actual malice is apparently a prerequisite to recovery of punitive damages, and the defendant may in any event forestall a punitive award by a retraction meeting the statutory requirements. Good motives and belief in truth do not negate an inference of malice, but are relevant only in mitigation of punitive damages if the jury chooses to accord them weight.

The question before us is whether this rule of liability, as applied to an action brought by a public official against critics of his official conduct, abridges the freedom of speech and of the press that is guaranteed by the First and Fourteenth Amendments.

Respondent relies heavily, as did the Alabama courts, on statements of this Court to the effect that the Constitution does not protect libelous publications…, but none of the cases sustained the use of libel laws to impose sanctions upon expression critical of the **official conduct of public officials**…'It is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions.' *Bridges v. California*…

Mr. Justice Brandeis, in his concurring opinion in *Whitney v. California*, gave the principle its classic formulation:

> 'Those who won our independence believed…that public discussion is a political duty; and that this should be a fundamental principle of the American government. They recognized the risks to which all human institutions are subject. But they knew that order cannot be secured merely through fear of punishment for its infraction; that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; **that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies**; and that the fitting remedy for evil counsels is good ones. Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law—the argument of force in its worst form. Recognizing the occasional tyrannies of governing majorities, they amended the Constitution so that free speech and assembly should be guaranteed.'

Thus we consider this case against the background of a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials. The present advertisement, as an expression of grievance and protest on one of the major public issues of our time, would seem clearly to qualify for the constitutional protection. The question is whether it forfeits that protection by the **falsity** of some of its factual statements and by its alleged **defamation** of respondent…

In *Cantwell v. Connecticut*, the Court declared:

> 'In the realm of religious faith, and in that of political belief, sharp differences arise. In both fields the tenets of one man may seem the rankest error to his neighbor. To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy.'

That erroneous statement is inevitable in free debate, and that it must be protected if the freedoms of expression are to have the 'breathing space' that they 'need…to survive' was also recognized by the Court of Appeals…In *Sweeney v. Patterson,* Judge Edgerton spoke for a unanimous court which affirmed the dismissal of a Congressman's libel suit based upon a newspaper article charging him with anti-Semitism in opposing a judicial appointment. He said:

> 'Cases which impose liability for erroneous reports of the political conduct of officials reflect the obsolete doctrine that the governed must not **criticize** their governors…The interest of the public here outweighs the interest of appellant or

any other individual. The protection of the public requires not merely discussion, but information. Political conduct and views which some respectable people approve, and others condemn, are constantly imputed to Congressmen. Errors of fact, particularly in regard to a man's mental states and processes, are inevitable… Whatever is added to the field of libel is taken from the field of free debate.'

I am afraid Judge Edgerton's salad is neither simply apples nor oranges, but both, along with blueberries, kiwi fruit and, perhaps, a few grapes.

Seriously, I think we need to explore this quote a bit before moving on. I certainly do not believe one should be liable for mere "erroneous reports of political conduct." Nor do I have any problem with anyone who wishes to "criticize their governors." That is the essence of free speech. Surely, however, we should not put "intentionally lying" in the same category as legitimate criticism, right? I can even agree that it is the "interest of the public" that carries the most weight in this area of the law. However, I must ask Judge Edgerton (and the majority) what interest of the public is served by permitting political commentary that is outrageous, defamatory, false and of a "factual nature" to go unpunished? Keep in mind, I am **not** speaking to "opinion"; i.e., "that candidate Joe Brown is a lying no good so and so." I am **not** speaking to "views"; i.e., "you know, John Doe goes to the XYZ Church. They believe in so and so. We can't have a president of that philosophy." Even if the commentator's allegations of the beliefs of the XYZ Church are false, that is not the kind of speech of which I have concern.

I am speaking about blatant lies concerning facts, not opinions; i.e., "I saw candidate Bill Doe come out of the local brothel last night." If that is proven to be false, why should the Constitution provide immunity to the speaker? Why should the Constitution permit the speaker to attempt to swing an election with a known lie of such magnitude? Let's be honest. No one is suggesting that we curb any "errors of fact about a man's mental state and mental process." You could never prove such a thing, anyway. Let's continue, shall we?

…Where judicial officers are involved, this Court has held that concern for the dignity and reputation of the courts does not justify the punishment as criminal contempt of criticism of the judge or his decision. *Bridges v. California.* This is true even though the utterance contains **'half-truths'** and **'misinformation.'** *Pennekamp v. Florida*. Such repression can be justified, if at all, only by a clear and present danger of the obstruction of justice. If judges are to be treated as 'men of fortitude, able to thrive in a hardy climate,' *Craig v. Harney*, surely the same must be true of other government officials, such as elected city commissioners. **Criticism of their official conduct does not lose its constitutional protection merely because it is effective criticism and hence diminishes their official reputations.**

If neither factual error nor defamatory content suffices to remove the constitutional shield from criticism of official conduct, the combination of the two elements is no less inadequate. This is the lesson to be drawn from the great controversy over the Sedition Act of 1798 which first crystallized a national awareness of the central meaning of the First Amendment. That statute made it a crime, punishable by a $5,000 fine and five years in prison, 'if any person shall write, print, utter or publish…any false, scandalous and malicious writing or writings against the

government of the United States, or either house of the Congress…, or the President…, with intent to defame…or to bring them, or either of them, into contempt or disrepute; or to excite against them, or either or any of them, the hatred of the good people of the United States.' The Act allowed the defendant the defense of truth, and provided that the jury were to be judges both of the law and the facts. Despite these qualifications, the Act was vigorously condemned as unconstitutional in an attack joined in by Jefferson and Madison. In the famous Virginia Resolutions of 1798, the General Assembly of Virginia resolved [that]…[t]he Sedition Act exercises…a power not delegated by the Constitution, but, on the contrary, expressly and positively forbidden by one of the amendments thereto—a power which, more than any other, ought to produce universal alarm, because it is leveled against the right of freely examining public characters and measures, and of free communication among the people thereon, which has ever been justly deemed the only effectual guardian of every other right.'

…**The state rule of law is not saved by its allowance of the defense of truth**…A rule compelling the critic of official conduct to guarantee the truth of all his factual assertions—and to do so on pain of libel judgments virtually unlimited in amount—leads to a comparable 'self-censorship.' Allowance of the defense of truth, with the burden of proving it on the defendant, does not mean that only false speech will be deterred. Even courts accepting this defense as an adequate safeguard have recognized the difficulties of adducing legal proofs that the alleged libel was true in all its factual particulars. Under such a rule, would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is in fact true, because of doubt whether it can be proved in court or fear of the expense of having to do so. They tend to make only statements which 'steer far wider of the unlawful zone.' The rule thus dampens the vigor and limits the variety of public debate. It is inconsistent with the First and Fourteenth Amendments.

> The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a **defamatory falsehood** relating to his official conduct unless he proves that the statement was made with **'actual malice'**—that is, **with knowledge that it was false or with reckless disregard of whether it was false or not**…

Such a privilege for **criticism** of official conduct is appropriately analogous to the protection accorded a public official when he is sued for libel by a private citizen. In *Barr v. Matteo,* this Court held the utterance of a federal official to be absolutely privileged if made 'within the outer perimeter' of his duties. The States accord the same immunity to statements of their highest officers, although some differentiate their lesser officials and qualify the privilege they enjoy. But all hold that all officials are protected unless actual malice can be proved. The reason for the official privilege is said to be that the threat of damage suits would otherwise 'inhibit the fearless, vigorous, and effective administration of policies of government' and 'dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties.' Analogous considerations support the privilege for the citizen-**critic** of government. It is as much his duty to **criticize** as it is the official's duty to administer…It would give public servants an unjustified preference over the public they serve, if critics of official conduct did not have a fair equivalent of the immunity granted to the officials themselves.

We conclude that such a privilege is required by the First and Fourteenth Amendments.

We hold today that the Constitution delimits a State's power to award damages for libel in actions brought by public officials against critics of their official conduct. Since this is such an action, the rule requiring proof of **actual malice** is applicable. While Alabama law apparently requires proof of actual malice for an award of punitive damages, where general damages are concerned malice is 'presumed.' Such a presumption is inconsistent with the federal rule…'[T]he showing of malice required for the forfeiture of the privilege is not presumed but is a matter for proof by the plaintiff…' *Bailey v. Alabama.* Since the trial judge did not instruct the jury to differentiate between general and punitive damages, it may be that the verdict was wholly an award of one or the other. But it is impossible to know, in view of the general verdict returned. Because of this uncertainty, the judgment must be reversed…

Applying these standards, we consider that the proof presented to show actual malice lacks the **convincing clarity** which the constitutional standard demands, and hence that it would not constitutionally sustain the judgment for respondent under the proper rule of law…[T]here was no evidence whatever that [the individual petitioners] were aware of any erroneous statements or were in any way reckless in that regard. The judgment against them is thus without constitutional support.

As to the Times, we similarly conclude that the facts do not support a finding of actual malice. The statement by the Times' Secretary that, apart from the padlocking allegation, he thought the advertisement was 'substantially correct,' affords no constitutional warrant for the Alabama Supreme Court's conclusion that it was a 'cavalier ignoring of the falsity of the advertisement from which the jury could not have but been impressed with the bad faith of The Times and its maliciousness inferable therefrom.' The statement does not indicate malice at the time of the publication; even if the advertisement was not 'substantially correct'—although respondent's own proofs tend to show that it was—that opinion was at least a reasonable one, and there was no evidence to impeach the witness' good faith in holding it. The Times' failure to retract upon respondent's demand, although it later retracted upon the demand of Governor Patterson, is likewise not adequate evidence of malice for constitutional purposes. Whether or not a failure to retract may ever constitute such evidence, there are two reasons why it does not here. First, the letter written by the Times reflected a reasonable doubt on its part as to whether the advertisement could reasonably be taken to refer to respondent at all. Second, it was not a final refusal, since it asked for an explanation on this point—a request that respondent chose to ignore. Nor does the retraction upon the demand of the Governor supply the necessary proof. It may be doubted that a failure to retract which is not itself evidence of malice can retroactively become such by virtue of a retraction subsequently made to another party. But in any event that did not happen here, since the explanation given by the Times' Secretary for the distinction drawn between respondent and the Governor was a reasonable one, the good faith of which was not impeached.

This safe haven so conveniently provided by the Court just does not rest easy with me. It would appear that a newspaper could rid itself of liability merely by writing a post publication letter stating how surprised they are that the claimant thought they were talking about him? I'm not buying such fiction.

Finally, there is evidence that the Times published the advertisement without checking its accuracy against the news stories in the Times' own files. The mere presence of the stories in the files does not, of course, establish that the Times 'knew' the advertisement was false, since the state of mind required for actual malice would have to be brought home to the persons in the Times' organization having responsibility for the publication of the advertisement. With respect to the failure of those persons to make the check, the record shows that they relied upon their knowledge of the good reputation of many of those whose names were listed as sponsors of the advertisement…There was testimony that the persons handling the advertisement saw nothing in it that would render it unacceptable under the Times' policy of rejecting advertisements containing 'attacks of a personal character'; their failure to reject it on this ground was not unreasonable. We think the evidence against the Times supports at most a finding of negligence in failing to discover the misstatements, and is constitutionally insufficient to show the recklessness that is required for a finding of actual malice.

We also think the evidence was constitutionally defective in another respect: it was incapable of supporting the jury's finding that the allegedly libelous statements were made 'of and concerning' respondent. Respondent relies on the words of the advertisement and the testimony of six witnesses to establish a connection between it and himself. Thus, in his brief to this Court, he states:

> 'The reference to respondent as police commissioner is clear from the ad. In addition, the jury heard the testimony of a newspaper editor…; a real estate and insurance man…; the sales manager of a men's clothing store…; a food equipment man…; a service station operator…; and the operator of a truck line for whom respondent had formerly worked…Each of these witnesses stated that he associated the statements with respondent…'

There was no reference to respondent in the advertisement, either by name or official position. A number of the allegedly libelous statements—the charges that the dining hall was padlocked and that Dr. King's home was bombed, his person assaulted, and a perjury prosecution instituted against him—did not even concern the police; **despite the ingenuity of the arguments** which would attach this significance to the word 'They,' it is plain that these statements could not reasonably be read as accusing respondent of personal involvement in the acts in question.

It would seem that the true ingenuity lies with the Times. Lawyer to newspaper: You can provide yourself a complete defense to a defamation suit if you use your ingenuity and word your article in such a manner that lets your readers know who you are talking about without mentioning their name.

The statements upon which respondent principally relies as referring to him are the two allegations that did concern the police or police functions: that 'truckloads of police… ringed the Alabama State College Campus' after the demonstration on the State Capitol steps, and that Dr. King had been 'arrested…seven times.' These statements were false only in that the police had been 'deployed near' the campus but had not actually 'ringed' it and had not gone there in connection with the State Capitol demonstration, and in that Dr. King had been arrested only

four times. The ruling that these discrepancies between what was true and what was asserted were sufficient to injure respondent's reputation may itself raise constitutional problems, but we need not consider them here. Although the statements may be taken as referring to the police, they did not on their face make even an oblique reference to respondent as an individual. Support for the asserted reference must, therefore, be sought in the testimony of respondent's witnesses. But none of them suggested any basis for the belief that respondent himself was attacked in the advertisement beyond the bare fact that he was in overall charge of the Police Department and thus bore official responsibility for police conduct; to the extent that some of the witnesses thought respondent to have been charged with ordering or approving the conduct or otherwise being personally involved in it, they based this notion not on any statements in the advertisement, and not on any evidence that he had in fact been so involved, but solely on the unsupported assumption that, because of his official position, he must have been. This reliance on the bare fact of respondent's official position was made explicit by the Supreme Court of Alabama. That court…based its ruling on the proposition that:

> 'We think it common knowledge that the average person knows that municipal agents, such as police and firemen, and others, are under the control and direction of the city governing body, and more particularly under the direction and control of a single commissioner. In measuring the performance or deficiencies of such groups, praise or criticism is usually attached to the official in complete control of the body.'

This proposition has disquieting implications for criticism of governmental conduct. For good reason, 'no court of last resort in this country has ever held, or even suggested, that prosecutions for libel on government have any place in the American system of jurisprudence.' The present proposition would sidestep this obstacle by transmuting criticism of government, however impersonal it may seem on its face, into personal criticism, and hence potential libel, of the officials of whom the government is composed. There is no legal alchemy by which a State may thus create the cause of action that would otherwise be denied for a publication which, as respondent himself said of the advertisement, 'reflects not only on me but on the other Commissioners and the community.' Raising as it does the possibility that a good-faith critic of government will be penalized for his criticism, the proposition relied on by the Alabama courts strikes at the very center of the constitutionally protected area of free expression. We hold that such a proposition may not constitutionally be utilized to establish that an otherwise impersonal attack on governmental operations was a libel of an official responsible for those operations. Since it was relied on exclusively here, and there was no other evidence to connect the statements with respondent, the evidence was constitutionally insufficient to support a finding that the statements referred to respondent. The judgment of the Supreme Court of Alabama is reversed…

CONCURRENCE: Mr. Justice BLACK/DOUGLAS…Unlike the Court,…I vote to reverse exclusively on the ground that the Times and the individual defendants had an **absolute**… constitutional right to publish in the Times advertisement their **criticisms** of the Montgomery agencies and officials…

The half-million-dollar verdict does give dramatic proof…that state libel laws threaten the very existence of an American press virile enough to publish unpopular views on public affairs and bold enough to criticize the conduct of public officials. The factual background of this case emphasizes the imminence and enormity of that threat. One of the acute and highly emotional issues in this country arises out of efforts of many people, even including some public officials, to continue state-commanded segregation of races in the public schools and other public places, despite our several holdings that such a state practice is forbidden by the Fourteenth Amendment. Montgomery is one of the localities in which widespread hostility to desegregation has been manifested. This hostility has sometimes extended itself to persons who favor desegregation, particularly to so-called 'outside agitators,' a term which can be made to fit papers like the Times, which is published in New York. The scarcity of testimony to show that Commissioner Sullivan suffered any actual damages at all suggests that these feelings of hostility had at least as much to do with rendition of this half-million-dollar verdict as did an appraisal of damages. Viewed realistically, this record lends support to an inference that instead of being damaged Commissioner Sullivan's political, social, and financial prestige has likely been enhanced by the Times' publication. Moreover, a second half-million-dollar libel verdict against the Times based on the same advertisement has already been awarded to another Commissioner. There a jury again gave the full amount claimed. There is no reason to believe that there are not more such huge verdicts lurking just around the corner for the Times or any other newspaper or broadcaster which might **dare to criticize** public officials…

I'm sorry, but this case has nothing to do with a newspaper having enough chutzpah to criticize a public official. It has everything to do with a newspaper who knowingly or recklessly prints false statements of outrageous fact. I ask a simple question: Why shouldn't the "free press" be held accountable if it is proven that they knowingly attempt to influence voters with outrageous lies? It is not an easy question, but it comes down to this: Is the American public harmed more by effectively providing absolute immunity to the press or by holding the press accountable in our civil courts for malice in printing outrageous lies even when public figures are the target?

In my opinion the Federal Constitution has dealt with this deadly danger to the press in the only way possible without leaving the free press open to destruction—by granting the press an absolute immunity for **criticism** of the way public officials do their public duty. Stopgap measures like those the Court adopts are in my judgment not enough. This record certainly does not indicate that any different verdict would have been rendered here whatever the Court had charged the jury about 'malice,' 'truth,' 'good motives,' 'justifiable ends,' or any other legal formulas which in theory would protect the press. Nor does the record indicate that any of these legalistic words would have caused the courts below to set aside or to reduce the half-million-dollar verdict in any amount…

We would, I think, more faithfully interpret the First Amendment by holding that at the very least it leaves the people and the press free to **criticize** officials and discuss public affairs with impunity. This Nation of our[s] elects many of its important officials; so do the States, the municipalities, the counties, and even many precincts. These officials are responsible to the people for the way they perform their duties. While our Court has held that some kinds of speech and writings, such as 'obscenity,' *Roth v. United States*, and 'fighting words,' *Chaplinsky v. New*

Hampshire, are not expression within the protection of the First Amendment, freedom to discus public affairs and public officials is unquestionably, as the Court today holds, the kind of speech the First Amendment was primarily designed to keep within the area of free discussion. To punish the exercise of this right to discuss public affairs or to penalize it through libel judgments is to abridge or shut off discussion of the very kind most needed. This Nation, I suspect, can live in peace without libel suits based on public discussions of public affairs and public officials. But I doubt that a country can live in freedom where its people can be made to suffer physically or financially for **criticizing** their government, its actions, or its officials…**An unconditional right to say what one pleases about public affairs is what I consider to be the minimum guarantee of the First Amendment…**

Please, let's keep our eye on the ball, here. We are not talking about mere "criticism of government." For heaven's sake, Justice Douglas, absolutely no one would disagree with the validity of your misstated issue.

CONCURRENCE: Mr. Justice GOLDBERG/DOUGLAS…The Court today announces a constitutional standard which prohibits 'a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not.' The Court thus rules that the Constitution gives citizens and newspapers a 'conditional privilege' immunizing non-malicious misstatements of fact regarding the official conduct of a government officer. The impressive array of history and precedent marshaled by the Court, however, confirms my belief that the Constitution affords greater protection than that provided by the Court's standard to citizen and press in exercising the right of public **criticism**.

In my view, the First and Fourteenth Amendments to the Constitution afford to the citizen and to the press an **absolute**, **unconditional privilege** to criticize official conduct despite the harm which may flow from excesses and abuses…The theory of our Constitution is that every citizen may speak his mind and every newspaper express its view on matters of public concern and may not be barred from speaking or publishing because those in control of government think that what is said or written is unwise, unfair, false, or malicious. In a democratic society, one who assumes to act for the citizens in an executive, legislative, or judicial capacity must expect that his official acts will be commented upon and criticized. Such criticism cannot, in my opinion, be muzzled or deterred by the courts at the instance of public officials under the label of libel…

This is not to say that the Constitution protects defamatory statements directed against the private conduct of a public official or private citizen. Freedom of press and of speech insures that government will respond to the will of the people and that changes may be obtained by peaceful means…The imposition of liability for private defamation does not abridge the freedom of public speech or any other freedom protected by the First Amendment. This, of course, cannot be said 'where public officials are concerned or where public matters are involved…Where public matters are involved, the doubts should be resolved in favor of freedom of expression rather than against it.'

In many jurisdictions, legislators, judges and executive officers are clothed with absolute immunity against liability for defamatory words uttered in the discharge of their public duties. Judge Learned Hand ably summarized the policies underlying the rule:

> 'It does indeed go without saying that an official, who is in fact guilty of using his powers to vent his spleen upon others, or for any other personal motive not connected with the public good, should not escape liability for the injuries he may so cause; and, if it were possible in practice to confine such complaints to the guilty, it would be monstrous to deny recovery. The justification for doing so is that it is impossible to know whether the claim is well founded until the case has been tried, and that to submit all officials, the innocent as well as the guilty, to the burden of a trial and to the inevitable danger of its outcome, would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties. Again and again the public interest calls for action which may turn out to be founded on a mistake, in the face of which an official may later find himself hard put to it to satisfy a jury of his good faith. There must indeed be means of punishing public officers who have been truant to their duties; but that is quite another matter from exposing such as have been honestly mistaken to suit by anyone who has suffered from their errors. As is so often the case, the answer must be found in a **balance** between the evils inevitable in either alternative. In this instance it has been thought in the end better to leave unredressed the wrongs done by dishonest officers than to subject those who try to do their duty to the constant dread of retaliation.
>
> 'The decisions have, indeed, always imposed as a limitation upon the immunity that the official's act must have been within the scope of his powers; and it can be argued that official powers, since they exist only for the public good, never cover occasions where the public good is not their aim, and hence that to exercise a power dishonestly is necessarily to overstep its bounds. A moment's reflection shows, however, that that cannot be the meaning of the limitation without defeating the whole doctrine. What is meant by saying that the officer must be acting within his power cannot be more than that the occasion must be such as would have justified the act, if he had been using his power for any of the purposes on whose account it was vested in him…' *Gregoire v. Biddle*.

If the government official should be immune from libel actions so that his ardor to serve the public will not be dampened and 'fearless, vigorous, and effective administration of policies of government' not be inhibited, *Barr v. Matteo*, then the citizen and the press should likewise be immune from libel actions for their criticism of official conduct.

The problem with that argument is that it leaves out the most important player – the American people. To me, that is the key to the outcome of the issue. Immunity provided to a government official is not the same animal as immunity to a liar who would try to swing an election via defamation. At least consider the concept!

Their ardor as citizens will thus not be dampened and they will be free 'to applaud or to **criticize** the way public employees do their jobs, from the least to the most important.' If liability can attach to political criticism because it damages the reputation of a public official as a public official, then no…citizen can safely utter anything but faint praise about the government or its officials. The vigorous criticism by press and citizen of the conduct of the government of the day by the officials of the day will soon yield to silence if officials in control of government agencies, instead of answering criticisms, can resort to friendly juries to forestall criticism of their official conduct.

This is just ludicrous. Absolutely no one is suggesting that "liability should attach to 'political criticism' that damages a public official's reputation." Again, I am talking about outrageous intentional lies.

The conclusion that the Constitution affords the citizen and the press an absolute privilege for criticism of official conduct does not leave the public official without defenses against unsubstantiated opinions or deliberate misstatements. 'Under our system of government, **counterargument and education** are the weapons available to expose these matters, not abridgment…of free speech…' *Wood v. Georgia.*

The public official certainly has equal if not greater access than most private citizens to media of communication. In any event, despite the possibility that some excesses and abuses may go unremedied, we must recognize that 'the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, certain liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy.' *Cantwell v. Connecticut*. As Mr. Justice Brandeis correctly observed, 'sunlight is the most powerful of all disinfectants.'

For these reasons, I strongly believe that the Constitution accords citizens and press an unconditional freedom to **criticize** official conduct…