A Pulitzer from the North, a Libel Suit from the South: Reaction to Four Southern Editors' Civil Rights Coverage, 1954-1967

Aimee Edmondson

Follow this and additional works at: http://scholarship.law.unc.edu/falr

Part of the First Amendment Commons

Recommended Citation
Available at: http://scholarship.law.unc.edu/falr/vol12/iss2/6

This Article is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in First Amendment Law Review by an authorized editor of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.
I. INTRODUCTION

When the Supreme Court famously overturned L.B. Sullivan’s libel suit in New York Times v. Sullivan in 1964, the decision widened the doors for the national press to cover civil rights demonstrations in the South. Legal historians agree that Southern public officials were using libel law in a seditious attempt to stop the Northern press from criticizing the officials’ attempts to squelch demonstrations in cities like Birmingham and Montgomery, Alabama. Shattering precedent, the Supreme Court constitutionalized libel law with the Sullivan decision, creating a new standard that bolstered citizens’ First Amendment right to criticize the government by making public officials prove “actual malice” in a libel suit. Sullivan is considered the most significant libel
opinion ever written and one of the most important cases in all of American constitutional law.5

It is well established that had the Supreme Court failed to overturn Sullivan, it would have stifled the civil rights movement.6 Members of the Northern media had begun focusing on the South with their coverage of the movement, and the New York Times faced libel actions from several Southern officials.7 Scholars have kept much of their focus on the Sullivan case, which was the first to reach the Supreme Court.8 Yet, the New York Times was not the only publication getting sued over the civil rights story. Southern officials considered the Northern media as interlopers, swooping in to criticize their efforts to maintain the racial caste system.9 By 1964, the year Alabama’s libel judgment was overturned in Sullivan, Southern officials had filed at least $288 million in libel actions against newspapers, news magazines, television networks, and civil rights leaders.10 Although a massive sum for the New York Times at the time, Sullivan and its companion cases accounted for just “under $10 million.”11

But the northern media were not the only ones reporting on the civil rights movement. When studying reporters’ attempts to cover the civil rights movement and the resulting libel suits, scholarship should recognize the work of southern journalists who stuck their necks out in the name of truth. This Article focuses on four Pulitzer Prize winners in the South, three of whom have received some attention from journalism


6. The most noted study of the Sullivan case and its impact on the civil rights movement is Anthony Lewis, Make No Law: The Sullivan Case and the First Amendment (1991). Lewis, a Pulitzer Prize-winning reporter, covered the Supreme Court for the Times when this case was argued.


8. Emerging scholarship discusses other Sullivan-like libel cases within the context of coverage of the civil rights movement. Edmondson, supra note 7, at 145.


historians: Mississippi’s Hazel Brannon Smith of the Lexington Advertiser, Hodding Carter Jr. of the Greenville Delta Democrat-Times, Ralph McGill of the Atlanta Constitution, and the lesser-studied Buford Boone of the Tuscaloosa News in Alabama. While these four editors became known for their award-winning civil rights-era journalism, less is known about Southerners’ attempts to silence them using libel suits. These journalists were revered nationally but despised by many in their own communities. All four won their Pulitzer Prizes for progressive editorials on civil rights; yet, those awards merely underscored the prevailing belief in their own hometowns that they were traitors to the Southern way of life. These journalists lived, worked, and went to church in the South. Local readers subscribed (and unsubscribed) to their newspapers and read them regularly. Southern public officials arguably felt more threatened by critical coverage in their hometown newspapers as opposed to the distant national press.

The hometown folk would not read a publication like the New York Times unless somebody showed it to them. L.B. Sullivan, the Police Commissioner of Montgomery, Alabama, knew about the “Heed Their Rising Voices” ad that brought about the libel suit only because someone gave him a copy of the newspaper and because the Montgomery

Advertiser wrote stories about it.\textsuperscript{17} The ad (which was seeking to raise awareness of and raise funds for Martin Luther King Jr.’s legal defense for felony tax evasion in Alabama) did not name Sullivan; rather, it simply referred to “Southern violators of the Constitution,” who unfairly punished civil rights demonstrators for exercising their right to assemble and to petition their government for a redress of grievances.\textsuperscript{18} At trial, most of Sullivan’s witnesses testified that they first saw the ad when the police commissioner’s attorney showed it to them in his Montgomery law office.\textsuperscript{19}

During the civil rights movement, any journalist who threatened the status quo in the South could become a target of a libel action. This Article explores the libel suits filed by public officials and public figures in the South who were angry about how they were portrayed in articles and editorials advocating for a more moderate stance on race. Narratives of white supremacy had long woven their way through the Southern press, but these four editors were among a group that bucked that trend. And as a result, they were tied up in libel trials for years.

African Americans were typically covered in the mainstream Southern press only when they were accused of crimes.\textsuperscript{20} For coverage of births, deaths, marriages, graduations, and any other news about their community, they had to turn to black newspapers.\textsuperscript{21} It was also common for white journalists in the South to insinuate a feeling of racial otherness by attaching the “Negro” tag after the names of black people, instituting Jim Crowism into their news pages.\textsuperscript{22} When journalists treated blacks and the issue of civil rights more fairly and objectively, they sometimes paid for it. The analysis of these four publishers shows that what got an editor a Pulitzer Prize in New York City often got them a libel suit in the South.

\begin{itemize}
\item \textsuperscript{18} \textit{Heed Their Rising Voices}, N.Y. TIMES, Mar. 29, 1960, at 25.
\item \textsuperscript{19} \textit{LEWIS, supra} note 6, at 30.
\item \textsuperscript{20} \textit{PATRICK S. WASHBURN, THE AFRICAN AMERICAN NEWSPAPER: VOICE OF FREEDOM} 122–23 (2006).
\item \textsuperscript{21} \textit{Id.} at 123.
\item \textsuperscript{22} \textit{IRA B. HARKEY, JR., THE SMELL OF BURNING CROSSES: A WHITE INTEGRATIONIST EDITOR IN MISSISSIPPI} 47–55 (2006).
\end{itemize}
Hazel Brannon23 rolled into Holmes County, Mississippi, in 1936, fresh from the University of Alabama, having borrowed three thousand dollars to buy her own newspaper, the struggling 600-circulation Durant News.24 Brannon had been a journalist since she graduated from high school in 1930 in Gadsden, Alabama.25 In college, she worked her way up to managing editor for the student newspaper and graduated with a degree in journalism.26 She paid off her Durant News loan in four years and bought the more established Lexington Advertiser, the Holmes County seat’s 1,800-circulation weekly, in 1943.27 Brannon’s newspapers prospered with their small-town recording of births, deaths, weddings, and anniversaries.28 In her column, “Through Hazel Eyes,” she initially supported the racial status quo, imagining a Jim Crow world where whites and blacks lived happily and peacefully, each knowing their respective places.29

Yet, Brannon was a crusader from the start, taking on illegal bootlegging and gambling, calling on local law enforcement to clean up the county, and hounding them in her editorials for months. She suggested that local law officers might be on the bootleggers’ payroll and challenged Sheriff Walter L. Murtagh to crack down on the criminal elements in the county or resign.30 After the sheriff executed search warrants and began confiscating cases of liquor, Brannon continued her prodding under the headline: “What About the Slot Machines?”31 Later that spring, a grand jury returned 52 indictments for gambling and

---

25. WHALEN, supra note 12, at 24.
26. Id. at 25–26.
27. Id. at 39.
28. Id. at 33.
29. See Kaul, supra note 24, at 236.
30. See id., at 238 (citing Hazel Brannon Smith, Through Hazel Eyes, LEXINGTON ADVERTISER, Feb. 28, 1946).
31. Id. (citing Hazel Brannon Smith, Through Hazel Eyes, LEXINGTON ADVERTISER, Apr. 11, 1946).
prohibition violations. Brannon was feeling triumphant and wrote in her column that “the bootlegger is definitely on the run.”

After the Supreme Court’s unanimous *Brown v. Board of Education* ruling in 1954, Hazel Brannon defended segregation but wrote the court may have been “morally right” that separate schools are inherently unequal. Like the other editors studied here, she only knew a culture built on maintaining distinct racial identities and segregation, yet a sense of right and wrong began to form.

In Indianola, Mississippi (about 50 miles from Lexington), the first White Citizens’ Council was created in response to *Brown*, and chapters began springing up around the state. They billed themselves as law-abiding citizens who opposed desegregation, but Brannon eyed them warily, editorializing in 1954: “They appeal to prejudice and to ignorance—and their religion is the doctrine of hatred and greed implemented by the weapons of fear and distrust.” She was no longer in lockstep with her community on the issue of race, most notably on the issue of fair and equal treatment under the law. And for that she became a lightning rod, antagonizing a community bent on ruining her. Brannon later traced a run-in with the local sheriff over his treatment of blacks—and his resulting libel suit against her—as the turning point in her newspaper career. Though she was able to buy two more newspapers (the Banner County *Outlook* in Flora in 1955 and the *Northside Reporter* in Jackson in 1956), a steady barrage of harassment by white supremacists would cripple her financially for decades, make her a legend in national newspaper circles, and leave her virtually friendless in her own community.

---

32. Id. at 238 (citing Hazel Brannon Smith, *Through Hazel Eyes*, LEXINGTON ADVERTISER, Apr. 25, 1946).
35. WHITT, *supra* note 12, at 73.
The libel suit stemmed from a front page story, “Negro Man Shot in Leg Saturday in Tchula; Witness Reports He Was Told to ‘Get Goin’ by Holmes County Sheriff.” Smith reported in July 1954 that Sheriff Richard F. Byrd:

[C]ame driving up where a group of Negroes were congregated and asked one of them what he meant by ‘whooping.’ When the Negro replied that he had not whooped Sheriff Byrd was reported to have cursed and struck the Negro on the head. When the Negro raised his hand to ward off further blows Sheriff Byrd was reported to have pulled out his gun and told the Negro to ‘get goin’ whereupon the man started running. At this time, Sheriff Byrd was reported to have fired his gun several times, one of the bullets entering the left thigh of the victim from the rear and passing through the leg to the front . . . . No charges have yet been filed against Sheriff Byrd in the shooting.  

In an editorial the next week titled “The Law Should Be for All,” Brannon called for Byrd’s resignation for this and for his overall treatment of black citizens, which generated “shocking reports too numerous to ignore.” Further, Brannon wrote: “In our opinion, Mr. Byrd as Sheriff has violated every concept of justice, decency and right in his treatment of some people in Holmes County. He has shown us without question that he is not fit to occupy that high office.” Brannon was defending a black man over a white man, and this type of editorial stance was virtually unheard of at the time. It had long been established that justice was doled out differently depending on one’s race. Brannon defended the wounded black man, 27-year-old Henry Randle, writing

41. Id. at 243.
42. For the best analysis of reporters’ coverage of race, see generally ROBERTS & KLIBANOFF, supra note 7.
that "[h]e had not violated any law – the Sheriff was not trying to arrest him for any offense. He just made the one mistake of being around when the Sheriff drove up." 43

Byrd denied that the man was ever shot and sued Brannon for $57,500 in damages in Holmes County Circuit Court, to which Brannon replied in print: "This newspaper has in the past, and will continue in the future to print the truth as we know it to be . . . . No damage suit can shut us up so easily." 44 Byrd won $10,000 at trial in October 1954, and Brannon appealed to the Mississippi Supreme Court. 45 She argued in her column that the libel verdict was "punishment for daring to criticize a white man for abusing a Negro." 46 In October 1955, the state's high court reversed and rebuked Byrd in an opinion written by Justice Percy Lee: "Under the facts in this record, there was no justification whatever for hitting the Negro with the blackjack or shooting him . . . . [I]t follows that the Negro was unlawfully assaulted in both instances." 47

The Mississippi Supreme Court held that "[p]roof of the substantial truth of a publication, made with good motives and for justifiable ends, is a complete defense to an action of libel" under Mississippi law. 48 The court also praised Brannon's work, pointing out that she had tried to reach Byrd multiple times before running the story and that several witnesses said Byrd fired the shots. 49

As a newspaper woman, Brannon conceived that it was her duty, through her papers, to give the public the news, and this she did in the utmost good faith. After the news item was published and the Sheriff made no complaint about it, she assumed that it accorded with his version of the facts, and she thereafter made the editorial comment on July 15. 50

Addressing Brannon's First Amendment rights, Justice Lee wrote that "[t]he freedom of speech and of the press shall be held sacred . . . and if it shall appear to the jury that the matter charged as libelous is

43. See Editor Wins Libel Suit, supra note 36.
44. Kaul, supra note 24, at 243.
46. The Last Word, TIME, Nov. 21, 1955.
47. Smith, 83 So. 2d. at 175.
48. Id.
49. Id. at 173–74.
50. Id. at 174.
true, and was published with good motives and for justifiable ends, the party shall be acquitted." Like Brannon, Lee was ahead of his time, defending press rights in a civil rights-related case almost ten years before the Supreme Court would do so in Sullivan.

In a November 1955 editorial headlined "Freedom's Safeguard," Brannon opined essentially what Justice Brennan would say nine years later in the Sullivan ruling:

[T]he real point at issue was the right of an editor to criticize a public official in the performance of his official duties. If that right is abridged, the opportunity for people to know and to understand the actions of public officeholders will be seriously weakened, for it is the alert newspaper and the courageous editor who keep the people informed.52

Holmes County residents were unimpressed, and their retaliation came kudzu-quick.53 Brannon had long agitated the establishment with her controversial editorials, and after the libel decision, the fight moved from the courts to the pocketbook. Brannon's husband was fired as administrator of the local hospital, advertisers pulled out, and her printing business shrank.54 In a letter to her friend, Hodding Carter, Brannon wrote: "Sometimes I feel like just going on and selling out . . . but if I did I feel that I would be compromising everything I have ever stood for and believed in and I can't do it."55

51. Id. at 175.
52. Freedom's Safeguard, LEXINGTON ADVERTISER, Nov. 10, 1955, at 1 (Reprinted from THE STATE TIMES). At the end of 1955, the state Supreme Court overruled a suggestion of error filed by Sheriff Byrd's attorneys.
53. Kudzu, also called Japanese arrowroot, is a climbing vine considered an invasive species in the American South. It climbs over trees and shrubs rapidly and kills them by heavy shading, spreading by 150,000 acres annually. Controlling Kudzu With Naturally Occurring Fungus, SCIENCE DAILY (July 20, 2009), http://www.sciencedaily.com/releases/2009/07/090719185107.htm.
As Brannon's debts began piling up, Carter and several other mostly moderate Southern editors organized a committee to raise money to help keep her in business.56 "The gal is too courageous to be destroyed," Carter wrote Norman Isaacs of the *Louisville Times*.57 They appealed to virtually every editor in the country, and thousands of dollars were donated by scores of newspaper men, from media baron Roy Howard to editors from the *Chicago Tribune*, the *Boston Herald*, the *St. Petersburg Times*, and many others.58 Brannon was to use the money to pay for ad space at $164 a page, and editors could pick a non-profit organization to promote, such as the American Heart Association.59 Carter also co-signed on a loan from a Greenville bank.60 The National Council of Churches contributed over $2,500, earmarking the money for lawyers' fees related to the sheriff's libel suit.61

Failing to run her out of business, a group of community leaders started the *Holmes County Herald* in 1958 with Citizens’ Council backers that included public officials, lawyers, and prominent Lexington backers that included public officials, lawyers, and prominent Lexington leaders.56 Included in the group, called the Tri-Anniversary Committee, were Ralph McGill of *The Atlanta Journal*; J.N. Heiskell of the *Little Rock Gazette*, Mark Ethridge of the *Louisville Courier-Journal*; and Francis Harmon, former owner of the *Hattiesburg American*. See Progress Report No. 1 – Tri-Anniversary Committee, Hazel Brannon Smith Papers, (Aug. 14, 1961) (on file with Mississippi State University, Mitchell Memorial Library). The committee was named such because that was the 125th year of the *Lexington Advertiser*, the 100th year of Brannon's *Durant News*, and Brannon’s 25th year as an editor. See also Kaul, supra note 24, at 252.


59. Id.


61. Confidential Memorandum to Tri-Anniversary Committee, Hazel Brannon Smith Papers (Oct. 26, 1961) (on file with Mississippi State University, Mitchell Memorial Library)
businessmen. Brannon challenged them in an editorial: "There is not enough business in Lexington for two newspapers . . . . Somebody is going broke." While Brannon picked up state and national journalism awards, the harassment and intimidation continued at home. Undeterred, she continued to use her column to cajole advertisers to come back to her newspapers, pointing out in July 1958 that the Herald was late getting its edition on the streets for the fifth week in a row. Brannon lamented that the crusade against her was a "continuing campaign that has been waged without letup since Richard Byrd filed a libel suit against me in July of 1954—seven long years ago."

In October 1963, law enforcement officers sued Brannon again for libel. This time two Lexington policemen, W.M. McNeer and Frank Davis, sought $50,000 each in actual and punitive damages for a news story and editorial in the June 13 editions of the Advertiser and Durant News. The officers shot and killed Alfred Brown, a 38-year-old black World War II veteran who had recently been released from a veterans' hospital where he was a mental patient. The officers claimed they tried to arrest him for public intoxication, and had hit him over the head with a blackjack when Brown pulled a knife. Davis suffered a deep cut on his neck and Brown was shot twice.

Using eyewitness reports, Brannon's story "Negro Veteran Killed by Officers" ran in all of her newspapers. In an accompanying editorial, she wrote that "from all accounts of reliable eyewitnesses the killing was senseless and could have been avoided . . . . If we are to continue to have racial peace here the present situation needs a great deal of improvement from the standpoint of law enforcement—and spirit and

65. Id.
66. WHALEN, supra note 12, at 157.
67. Id.
68. Id.
69. Id.
70. Id. at 158.
attitude as well." At trial in Holmes County Circuit Court, Brannon’s attorney, Robert H. Weaver, said the officers never complained to Brannon about the story or said it contained errors. Judge Arthur Clark, Jr. ruled that Brannon should publish a statement by the officers, giving them a chance to refute the story. The police officer’s reply in her newspaper tried to debunk her story line after line. In an accompanying article, Brannon wrote that “the written statement of these officers and testimony of other witnesses to this incident are in conflict.” But surprisingly, Brannon seemed to back down. She published a retraction to any “erroneous portions” of the story, writing, “[I]t was not our intention to impugn either their character or reputation, or to imply they were guilty of unlawful acts.” Yet, the case ended as a win for Brannon, with the judge ruling against the plaintiffs for failure to establish a case. The officers reinstituted their libel suits in January 1964, but the actions languished in court on routine continuances until they were dismissed at the cost of the plaintiffs in 1967.

In 1964, for her editorials condemning the White Citizens’ Council, Brannon became the first woman to win the Pulitzer Prize for editorial writings. However, in that same year, her Northside Reporter was bombed, and her competitor, The Herald, had more than a foothold in the circulation war in Holmes County. By 1968, fourteen years after Sheriff Byrd’s libel suit, Brannon was more than $200,000 in debt, but

71. Id.
72. Id.
73. Id.
74. Id.
75. Id.
76. Id.
77. Id. at 158–59.
78. Id. at 159.
79. Id.
80. Kaul, supra note 24, at 257.
81. Id. at 257–58.
promised not to quit. In response to her troubles, she wrote, “When are they (the white people) going to find out that what I am trying to do is help ALL PEOPLE, white and black, so that we may work together and try to understand each other in order to build a better community and county?”

In 1985, the bank foreclosed on her home, Hazelwood, and its accompanying 135 acres. Suffering from dementia, the widowed Brannon closed the Durant News and the Lexington Advertiser that same year, and died in a nursing home run by her niece in Cleveland, Tennessee, in 1994.

In a column about Sheriff Byrd’s libel suit, Brannon insisted that her editorial was protected by the First Amendment. A Mississippi judge agreed with her even though Smith’s speech antagonized conventional social norms in the South. Nevertheless, journalists like Brannon still feared being hauled into court in an expensive libel case. In his Sullivan opinion, Justice Brennan would worry that this “chilling effect” might retard public dialogue on issues of public interest. And as was the case in Sullivan, Brannon was analyzing and criticizing an officer of the law in his public duties. In Sullivan, the Supreme Court left no doubt that this is the kind of speech the First Amendment was designed to secure.

III. THE NEWSMEN VERSUS THE “SEDITIOUS PSYCHOPATH”

Much has been written about former Major General Edwin A. Walker’s libel suit against the Associated Press for coverage of his role in the 1962 riots during the desegregation of the University of

82. Duard Le Grand, Hazel Smith Is All-Southern Editor, LEXINGTON ADVERTISER, June 6, 1968.
84. Kaul, supra note 24, at 260.
85. Whalen, supra note 12, at 318–19, 324.
86. See id. at 96–97.
87. Id.
88. N.Y. Times Co. v. Sullivan, 376 U.S. 254, 266 (1964); see also id. at 300–01 (Goldberg, J., concurring) (“The opinion of the Court conclusively demonstrates the chilling effect of the Alabama libel laws on First Amendment freedoms in the area of race relations.”).
Mississippi, which resulted in the Supreme Court Case *Associated Press v. Walker.* Less is known, however, about his legal battles with journalists Hodding Carter, Jr. and Ralph McGill. Carter's troubles with libel came after he gave a talk as part of the University of New Hampshire's Distinguished Lecture Series in October 1962. McGill's legal trouble came after he wrote a column based on coverage of the Ole Miss Riots in the *Atlanta Constitution* and Associated Press wire stories. This Part will address General Walker's seditious attempts to silence the editorials of Carter and McGill.

A. General Walker, His Controversy at the University of Mississippi, and the Extension of Sullivan to Public Figures

After *Sullivan,* the Supreme Court of the United States continued modifying libel law through civil rights-related cases like *Associated Press v. Walker.* In General Walker's case, the Court left no doubt that it considered news coverage of the movement—and the ensuing national conversation—to be a major public service. In 1957, Walker commanded federal troops at Little Rock's Central High School when President Eisenhower intervened during desegregation efforts there. However, five years later at Ole Miss, Walker was widely reported to have unofficially led the white supremacists' forces during the violent desegregation protest.

Walker, a Texan who had been highly decorated for commanding troops in World War II and Korea, had been disciplined for
insubordination after distributing extremist right-wing literature to his troops while serving in peacetime Europe. As a result, he resigned from the military in 1961. Walker despised the Little Rock assignment, and later said that he regretted obeying Eisenhower's orders to desegregate Central High. After leaving his Little Rock assignment, Walker ran unsuccessfully for governor of Texas. Despite his campaign loss, Walker remained active in politics, primarily as an extreme right-wing pundit.

In 1962, on a radio program in Shreveport, Louisiana, Walker issued a "call to arms" at Ole Miss to join Mississippi Governor Ross Barnett in fighting James Meredith's enrollment. During the broadcast, he called the Supreme Court "the anti-Christ" and urged "ten thousand strong" to "bring your flags, your tents and your skillets!" The next day, Walker renewed the call during a television interview in Dallas. The day after that, he rallied listeners on a New Orleans radio station. At a September 30, 1962, press conference in Oxford, he again urged whites to stand by defiant Governor Barnett. Meanwhile, President Kennedy urged peace as Meredith was escorted on campus.

When the melee commenced that night, Walker was front and center, egging on the protesters, according to reports from journalists on

96. Id.
98. Id. at 106.
101. Curtis, 388 U.S. at 159 n.22.
102. Id.
103. Id.
104. An excellent account of the Kennedy showdown with Mississippi leaders over desegregating the University of Mississippi by federal escort of James Meredith can be found in BRANCH, supra note 93, at 648–65.
the scene. Karl Fleming of *Newsweek* later said Walker hopped onto a Confederate statue to encourage the crowd. "This time I am on the right side," he shouted. "Don’t let up now . . . . You may lose this battle but you will have to be heard. You must be prepared for possible death. If you are not, go home now." Associated Press cub reporter Van Savell wrote in his dispatch that he was standing less than six feet from Walker when he rallied his impromptu battalion.

The next morning, as the riot subsided, federal marshals arrested Walker and charged him with rebellion and insurrection. He was held by federal officials on a $100,000 bond and sent to a psychiatric facility in Springfield, Missouri, for examination. Doctors pronounced him sane, but a federal grand jury in Oxford later refused to indict him. Walker sued the Associated Press and Savell for the stories, categorically denying that he had any part in charging the marshals. He said he had "counseled restraint" and "peaceful protest." He filed still more libel suits against fifteen other media outlets who ran the wire story, suing for more than $33 million in damages. The suits were virtually identical,

105. Associated Press cub reporter Van H. Savell, whose reports appeared in news reports around the country, is the most noted of those reporters. Walker sued the Associated Press and Savell, along with at least fifteen other newspapers, arising out of those reports, seeking total damages of $33,250,000. Brief for the Petitioner at 42, Associated Press v. Walker, 388 U.S. 130 (1967) (No. 150), 1967 WL 113795.

106. FLEMING, supra note 93, at 278.


109. Id.

110. *The General v. the Cub, TIME, June 26, 1964, available at EBSCO, No. 54215544; see also, Pace, supra note 95.*


112. Id. at 141.

113. Brief for the Petitioner at 42, Associated Press v. Walker, 388 U.S. 130 (1967) (No.150), 1967 WL 113795. Walker sued the Associated Press in Tarrant County, Texas, seeking $2 million; Duval County, Florida seeking $2 million; Pulaski County, Arkansas seeking $1 million; Caddo Parish, Louisiana seeking $2.25 million; Denver, Colorado seeking $1 million; Jackson, Missouri seeking $1 million; and Lafayette County, Mississippi seeking $2 million. Additionally, Walker sued the Courier-Journal and Louisville Times Company, Inc. and WHAS, Inc. in
and did not include later suits against Carter and McGill for separate coverage. According to Walker, he had been libeled with the Associated Press report that he “led a charge of students against federal marshals on the Ole Miss campus” and had “assumed command of the crowd.”

It was post-

Sullivan 1964 when Walker’s first case came to trial. Since Walker was not a public official, he did not have to prove that the Associated Press acted with actual malice, that is, in the court’s words, “knowledge that it was false” or with “reckless disregard of whether it was false or not.” A particularly generous jury in Shreveport, Louisiana, awarded Walker three million dollars in 1965 even though he had only asked for $2.25 million. He also found early success when a Texas jury awarded him $500,000 in compensatory damages and $300,000 in punitive damages. However, the Supreme Court believed that criticism of public figures was vital to public

U.S. District Court for the Western District of Kentucky for $2 million; Times Publishing Company in Pinellas County, Florida for $2 million; The Pulitzer Publishing Company in U.S. District Court for the Eastern District of Missouri for $2 million; Atlanta Newspapers, Inc. and Ralph McGill in U.S. District Court for the Eastern District of Wisconsin for $10 million; The Journal Company in U.S. District Court for the Eastern District of Wisconsin for $2 million; The Gazette Publishing Company, Inc. in Pulaski County, Arkansas for $1 million; and the Arkansas Democrat Company in Pulaski County, Arkansas for $1 million.

114. The suits that were essentially identical arose out of Savell’s dispatch with the Associated Press, which ran in newspapers across the country. Carter’s suit arose out of his New Hampshire speech and McGill’s from an original column written by the Atlanta editor himself. See infra Parts III.B–C.

115. Curtis, 388 U.S. at 141 n.4.


118. See Walker is Awarded $3 Million In a Libel Suit Against the A.P., supra note 116, at 23. However, District Judge William Woods reduced the award against the Associated Press and the New Orleans Times Picayune Publishing Corporation, holding that a jury cannot award a plaintiff more than he asked for. Id.

discourse, similar to criticism of public officials. In its 1967 reversal, the Court extended the Sullivan rule to public figures. The Court reasoned that “public men” are often in a position to exert enormous influence on the public through their words and actions. They often speak about issues of public interest, the Court said, pointing to Walker’s media blitz leading up to the riot. Like public officials, public figures can counter stories about them through ready access to the media, so they have plenty of opportunities to give their side of the story or counter any inadvertent mistakes the press might make.

Holding that the Associated Press did not publish with actual malice, the Supreme Court believed the argument sold by defense attorneys: that Walker “wilfully, aggressively and defiantly thrust himself into the vortex of the controversy” at Ole Miss, a controversy “of profound political and social importance and national public interest.” Attorneys for the Associated Press also pointed to what they saw as an obvious attempt by Southern officials to stop coverage of the civil rights movement, noting that:

These cases were for the most part filed in forums in Southern or border states where it could reasonably be anticipated that juries would share the belief, widely held in the South, that the South’s position in the segregation controversy had been grossly falsified and maliciously reported by national news media, and might therefore be influenced, in determining the issues of liability and damages, by the widespread regional feeling that ‘irresponsible outsiders’ should be taught a lesson.

120. Curtis, 388 U.S. at 155.
121. Id.
122. Id. at 164–65.
123. Id. at 159, n.22.
124. Id. at 164.
125. Brief for the Petitioner at 4, Walker, 393 S.W.2d 671 (No. 150), 1967 WL 113795.
126. Id. at 42.
In reversing the judgment, the Court said there was no evidence that the reporter had "personal prejudice" against Walker.\textsuperscript{127} Savell's attorneys argued that the reporting was accurate given that witnesses for both the plaintiff and the defendant testified that Walker assumed command of the crowd and led a charge.\textsuperscript{128} The Court also said the nature of Savell's work—rapid dissemination of wire reports as events unfolded—should allow for innocent mistakes and there was not "the slightest hint of a severe departure from accepted publishing standards."\textsuperscript{129}

\textit{B. General Walker and Hodding Carter}

After the riots in 1962, Carter attempted to explain the causes of the Mississippi mindset, both defending and criticizing his state in his lecture, "The Why of Mississippi," to approximately 1,500 students, faculty, and guests at the University of New Hampshire.\textsuperscript{130} Carter had originally planned to discuss President Andrew Johnson as "a moderate and the defier of the bigots and extremists of his own time," but the Ole Miss riots were still fresh and stinging.\textsuperscript{131} Carter told the crowd: "The University of Mississippi has suffered a cruel and undeserved blow. There were but a minority of students who took part in the rioting. The troublemakers were mostly hoodlums, crackpots, and racists from the outside." He also told the audience "we can be comforted and reassured" by certain "evident truths."\textsuperscript{132} Among them, "General Edwin Walker, who personally led the insurrectionists on the Ole Miss campus, has been exposed once and for all for what he is: A seditious psychopath."\textsuperscript{133}

Carter had long been unpopular with white supremacists in Greenville, Mississippi, well before the modern civil rights movement

\textsuperscript{127} Curtis, 388 U.S. at 141.
\textsuperscript{128} Brief for the Petitioner at 4, Walker, 393 S.W.2d 671 (No. 150), 1967 WL 113795.
\textsuperscript{129} Curtis, 388 U.S. at 159.
\textsuperscript{130} Box 69, Folder 11, Hodding Carter Papers (on file with author, Box 69, Folder 11).
\textsuperscript{131} Hodding Carter, Editor, The Delta Democrat-Times, Address at the University of New Hampshire Distinguished Lecture Series: The Why of Mississippi (Oct. 11, 1962).
\textsuperscript{132} Id. at 11.
\textsuperscript{133} Id.
took hold. In the *Delta Democrat-Times*, Carter ran photos of Jesse Owens, winner of four gold medals at the 1938 Olympics in Berlin, at a time when no Southern newspaper ran any photos of blacks, much less one who shattered Aryan claims of superiority. Since blacks were rarely covered in mainstream newspapers in the South unless they were involved in racial troubles or committed a crime, he was challenging the suppression of a parallel invisible society living and working under the white man. Carter was a moderate, but that moderation came later in life. A native of Hammond, Louisiana, a 17-year-old Carter shocked his classmates with his racism when he entered Bowdoin College in Brunswick, Maine, refusing to speak to the only black student at the school. Both his grandfathers fought for the Confederacy, one riding with General Nathan Bedford Forrest, who was later a co-founder of the Klan. But as the stamps on his passport multiplied—he traveled to Egypt and India as a public relations officer for the U.S. Army in the 1940s—he became more open-minded. The more he traveled, the less prejudiced he became.

The cultural climate of Greenville, Mississippi, a river town with a large Syrian and Chinese population, was more progressive than most Southern cities. By the 1930s, it was becoming something of a gathering spot for the state's best known writers. The cultural paragon of Greenville was William Alexander Percy, a cotton planter, lawyer, and banker who gained a national reputation after publishing four books of poetry. Percy was a magnet for visitors such as Carl Sandburg, William Faulkner, and Shelby Foote. Even when social organizations in other towns refused to admit Jews, Greenville's local country club had a Jewish president. However, blacks remained in their customary

134. See generally WALDRON, supra note 13 (Carter was considered a liberal editor by Mississippi standards.).
135. *Id.* at 79 (emphasis added).
136. *Id.* at 119.
137. See generally WALDRON, supra note 13.
138. *Id.* at 2.
139. *Id.*
140. See *id.* at 128, 230.
141. *Id.* at 65.
142. *Id.* at 65–66.
143. *Id.* at 65–67.
144. *Id.* at 70.
place: as the lowest class—poorly paid, and working mostly as maids or manual laborers.\footnote{Id.}

In his editorials, Carter regularly ridiculed the Klan and tackled issues of race and prejudice.\footnote{See, e.g., id. at 90, 224, 244.} He also earned thousands of dollars writing for national magazines such as Life, Look, and The Saturday Evening Post.\footnote{Id. at 151, 199, 243.} In 1946, he won the Pulitzer Prize for editorial writing “on the subject of racial, religious, and economic intolerance.”\footnote{Id. at 160.} As Carter’s fame expanded beyond Mississippi, he became a sought-after speaker, most often in the North.\footnote{The subtitle of Carter’s book, HODDING CARTER, WHERE MAIN STREET MEETS THE RIVER (1953), is entitled “The personal testament of man who has become the spokesman for the new South.” See also ROBERTS & KLIBANOFF, supra note 7, at 43.} Carter spoke progressively about race, but he also became a noted defender of the South and the importance of slow change in his home state.\footnote{ROBERTS & KLIBANOFF, supra note 7, at 43, 88–89.} Some city leaders tried to get merchants to stop advertising with Carter’s papers, but business owners resisted and circulation held steady.\footnote{WALDRON, supra note 13, at 253–54.} In 1950, a third of the newspaper’s 12,000 subscribers were black.\footnote{Id. at 219.} The Carter family was also bombarded with insulting letters and telephone calls.\footnote{Id. at 291, 293.} A cross was burned in their yard.\footnote{Id. at 299.} Another time, Carter huddled in the bushes in his driveway with a shotgun, waiting for a man who had threatened to kill him.\footnote{Id. at 250.}

Carter’s New Hampshire speech was covered by the Union Leader in Manchester, though that article did not include his remarks about Walker.\footnote{Paul Dietterle, Hodding Carter Blames Many for Miss. Woes, N.H. UNION LEADER, Oct. 12, 1962, at 1.} However, the university’s student newspaper, The New Hampshire, printed much of Carter’s talk verbatim, including the section
referring to Walker. Thus, Carter joined the multitude of journalists being sued by Walker for the Ole Miss reportage. Walker filed his slander suit against Carter in Washington County Circuit Court in Greenville, seeking two million dollars in damages. Carter’s attorney interviewed a wide range of audience members in New Hampshire, trying to build an argument that they were already aware of Walker’s role in the Ole Miss riots and his resulting arrest thanks to widespread news reports. Lawyers around the country who were fighting libel suits from Walker formed the “Walker Suit Club,” which included Carter’s counsel along with those for Newsweek, the Associated Press, St. Louis Post-Dispatch, Denver Post, Louisville Courier Journal, Atlanta Constitution, and the Fort Worth Star-Telegram. The idea was to share information that might help in their defenses. Carter once quipped: “It is very flattering to be sued for two million dollars when the Times Picayune has been asked for only three million.”

A Washington County circuit judge dismissed Walker’s case against Carter in December 1967, citing Sullivan, and Walker’s own suit against the Associated Press, which extended Sullivan’s actual malice standard to public figures. The judge pointed out that when Carter made his statements, Walker was under arrest for charges of sedition and had been taken to a mental hospital to determine if he was mentally capable of standing trial. The judge also noted that it had been widely reported that Walker personally led a charge of students against federal

158. Carter was not the only southern journalist experiencing Walker’s wrath. He also sued newspapers in Atlanta, New Orleans, and Little Rock, among others. See ROBERTS & KLIBANOFF, supra note 7, at 357.
159. See Declaration, Walker v. Carter (Cir. Ct., 4th Judicial Dist. of Wash. Cnty., Miss. 1963) (Case No. 6182).
161. Memorandum listing “Walker Suit Club Attorneys” (undated) (original on file with the special collections of Mitchell Memorial Library, Mississippi State University).
164. Scarbrough, supra note 108.
marshals at Ole Miss. Most notably, the judge said that Carter did not act with malice, that the statements "were made with a reasonable belief in their truth," and that there was a legitimate public interest in the issue being discussed. The First Amendment once again trumped the cult of white supremacy. Carter had become a big target in Mississippi, ostracized, threatened with death, and sued for libel. Yet, still he published.

C. General Walker and Ralph McGill

Like the other editors presented here, Ralph McGill often was vilified in his hometown of Atlanta for his moderate stance on the race issue. And like the others, he won the Pulitzer for editorial writing, his win coming in 1959. In his biography of McGill, Leonard Ray Teel does not include a mention of Walker or the libel suit; however, Teel does give a revealing behind-the-scenes look at how upset the editor was over another libel suit in 1947. Teel writes that McGill was distraught the day Rev. Frank Norris filed suit for an editorial about Norris’ sermons against traitorous newspaper editors who had urged compliance with the Supreme Court’s school desegregation orders. McGill wrote that Norris “told the crowd they’d nail the hides of newspaper editors to the fence; assured them they must defend their heritages . . . Dr. Norris denies any pro-KKK connection.” Visitors to McGill’s office on May 20, 1947, were embarrassed by McGill’s reaction to Norris’ suit. As McGill’s former student Calvin Kytle wrote: “Mr. McGill had for many years been somebody special to us, and to see him as he was this

165. Associated Press v. Walker was decided June 12, 1967. The final judgment in Carter’s case came later that year. Clearly, the court had accepted the argument that Walker was instrumental in leading rioters against federal marshals. See Curtis Pub’g Co., 388 U.S. at 140.
167. However, unlike the other three editors, McGill excluded any mention of libel from his personal papers, which are housed at Emory University. TEEL, supra note 14, at 224–25.
168. TEEL, supra note 14, at 225.
169. Id.; see also Ralph McGill, J. Frank Norris Gets Shouted Down, ATLANTA CONSTITUTION, May 2, 1947.
170. TEEL, supra note 14, at 225.
afternoon was like watching a fine old race horse agonizing over a broken leg.” McGill was “rocking in his swivel chair, running his fingers through his hair; his speech sometimes faltered . . . he looked terribly tired, almost to the point of hysteria, and his body looked to be sagging under the weight of the world.”

From the 1940s through the 1960s, McGill had been the leading voice for racial and ethnic tolerance in Georgia, challenging the demagogues who railed against equality under the law. McGill’s newspaper career began in 1920 when he was a student at Vanderbilt University in Nashville. He worked as a part-time copy boy with the Nashville Banner, climbing his way up to sports editor before leaving for the Atlanta Constitution assistant sports editor position in 1929. Ten years later he was an editorial writer and executive editor, and then editor until 1965.

When Walker sued the Constitution for the Associated Press wire story written by Savell, he also named McGill in an accompanying suit for a column about Walker’s role in the Ole Miss riots that appeared October 2, 1962. McGill told the court that he relied on newspaper, radio, and television accounts when writing the column, which was syndicated after another publishing company bought the Constitution in 1950. In his column, McGill outlined the wire reports and opined that Walker was “an alarming figure, albeit a pathetic one . . . . He appears now as an aging man, willing to inflame young college students and hoodlums against the laws of the country he once served with honor.” A year later, McGill defended himself against Walker’s libel suit: “I had

171. Id. McGill taught a one-time course “Personalities in Politics” at Emory University in 1941, and Kytle had been one of his students. Id.
172. Id. at 225–26. More research is needed on the Norris case, which is outside the scope of this study.
173. See generally TEEL, supra note 14.
174. Id. at 5.
175. Id. at 7.
176. See generally TEEL, supra note 14.
no intention of writing any untruthful statements concerning General Walker. He was, in my opinion, a man in whose public conduct society and the press had a legitimate and substantial interest.”

In his complaint filed in U.S. District Court in Atlanta, Walker took exception to McGill claiming that he was “mentally deranged” and was “an alarming figure inflaming young college students and hoodlums to riot.” Walker asked for five million dollars in general damages and five million dollars in punitive damages. The legal wrangling in the Walker-McGill suit continued until its dismissal in April 1968, four months after the U.S. Supreme Court overturned Associated Press v. Walker, establishing the actual malice rule as applicable to public figures such as the General.

IV. BUFORD BOONE AND THE IMPERIAL WIZARD

For his coverage of the Ku Klux Klan, Buford Boone of the Tuscaloosa News began a long legal battle with Robert Shelton, a local tire salesman who became infamous as the Imperial Wizard of the United Klans of America, Knights of the Ku Klux Klan. For years, Shelton sent the editor hate mail in response to his anti-Klan editorials. He blasted Boone during his speeches on the back of flatbed trucks at his Klan meetings, lashed out against the “Negro integration movement,” and bragged about his thousands of followers throughout Mississippi and around the country. And Shelton took the fight into the Alabama court

180. Id.


183. The new actual malice standard was not fully understood in the months following the Sullivan decision. Edmondson, supra note 7, at 145. After the doctrine was announced, some plaintiffs merely amended their original complaints to add the language the high court used, that the defendant “acted with knowledge of falsity or reckless disregard for the truth.” See id.


185. John Perkins, Membership Of 100,000 in Klan Claimed by Leader For State, JACKSON DAILY NEWS, May 18, 1964, at 18. At one point, Shelton called Boone a “rattlesnake” or a “rat-snake.” Letter from Jimmy Mizell to Boone at 4,
system in July 1964, filing a libel suit against Boone and the News less than four months after the Supreme Court’s decision in Sullivan. Shelton sought $500,000 for an editorial headlined “Ready for Mob Control?” in which Boone wrote that the Klan was a lawless gang that police must rein in.

Boone was an unlikely foe for one of the most infamous white supremacists of the Civil Rights era. He grew up working on his family’s comfortable 100-acre farm in middle Georgia in the 1910s and early 1920s. Like most Southern editors, he was not liberal. Nor was he an integrationist. However, he was considered an extremist for his moderate views on race and his stance that desegregation laws must be obeyed. Boone’s ancestors were Confederates on both sides of his family, and a great-grandfather had been killed at Bull Run. But his grandfather (James Courtney McKoy), who also had been injured in the war and lived well into his nineties, slowly evolved to believe black people should be treated as human beings. McKoy, the farmer and state legislator, even said so publicly later in life and planted the seeds his grandson would grow years later.

Boone earned a journalism degree from Mercer College, located in Macon, and accepted his first job as a reporter for the Macon Telegraph. When the United States entered World War II, Boone became a wartime special agent for the Federal Bureau of Investigation.


188. ROBERTS & KLIBANOFF, supra note 7, at 133.
190. ROBERTS & KLIBANOFF, supra note 7, at 133.
191. Id.
192. Id. at 135.
193. Id. at 133.
194. Id.
195. Id.
196. Id. at 134.
writing speeches for J. Edgar Hoover. 197 After the war, Boone returned to the Telegraph as managing editor before being wooed to the Tuscaloosa News as a part-time owner and publisher in 1947. 198 He won the Pulitzer Prize ten years later for editorials on Autherine Lucy’s attempt to desegregate the University of Alabama in Tuscaloosa. 199 The U.S. Supreme Court ordered Alabama to accept Lucy in 1956, but university leaders used mob violence as an excuse to expel her after three days, supposedly for her own protection. 200

Boone’s editorials condemned the protestors, who hurled bricks, eggs, and insults at the library science graduate student. 201 He shamed university leaders and took the position that the law had to be obeyed: “. . . the community of Tuscaloosa should be deeply ashamed – and more than a little afraid . . . . No intelligent expression ever has come from a crazed mob, and it never will.” 202 Boone urged calm and reasonable discussion of civil rights issues, but he did not editorialize on every civil rights story that arose. 203 He spoke up when the story was in his own backyard, introducing radical ideas like suffrage and truly equal education for blacks. 204 In Alabama, his moderation resulted in canceled subscriptions, late-night telephone threats, and bricks thrown through his windows. 205 When Boone was not at home, callers would tell his wife that he was in danger. 206

Boone had long condemned the Klan. In 1949, he wrote a four-part series exposing the local Klan’s secret start-up meetings, asking how a group labeled “subversive” by the United States attorney general was

197. Id.
198. Id.
199. BEASLEY & HARLOW, supra note 15, at 49.
201. CLARK, supra note 200, at 72–73.
203. ROBERTS & KLIBANOFF, supra note 7, at 133.
204. Id.
205. Id. at 135.
206. Id.
allowed to meet in the Tuscaloosa courthouse on Friday nights.\textsuperscript{207} Boone used an unnamed source attending the meetings to report the goings on verbatim.\textsuperscript{208} At a May 6, 1949, meeting, for example, Klansmen discussed a membership application from a “possible candidate for sheriff.”\textsuperscript{209} Boone wrote about the ceremonial elements of the meetings, referencing his interview with an anonymous member, and writing that an entire meeting was used to demonstrate and practice the Klan’s secret handshake.\textsuperscript{210} After the series ran, Boone editorialized that the local Klansmen:

\begin{quote}
\ldots are more than a little gullible. They are forking over $10 [dues] for the privilege of affiliating with an organization which in present times is becoming more and more a discredit to itself. \ldots We wouldn’t classify the members of the local Klan as hoodlums, although they could become hoodlums under the protection of their masks and robes.\textsuperscript{211}
\end{quote}

He also said he had a list of the members of the local Klan, about 40 men, but had decided not to publish them at present. “We have placed the list in safekeeping. Whether it is brought out and published, or is given to law enforcement officers called upon to investigate illegal activities by hooded men in this area, will depend entirely upon the local Klan.”\textsuperscript{212}

Tuscaloosa’s white supremacists responded with a demonstration of their own. With the help of the Birmingham Klavern, a group of 126 donned their white robes and hoods and paraded around the Tuscaloosa News building on a steamy June night in 1949.\textsuperscript{213} But the Klan remained

\begin{flushright}
\textsuperscript{207} Klan Has Been Using County Building, Tuscaloosa News, May 27, 1949, at 1.
\textsuperscript{208} Id.
\textsuperscript{210} Klan Afraid of ‘Bad Man,’ Tuscaloosa News, May 29, 1949, at 1.
\textsuperscript{212} Id.
\textsuperscript{213} Spencer R. McCulloch, Fighting Alabama Editor Stops the Klan, St. Louis Post-Dispatch, Nov. 29, 1949.
\end{flushright}
quiet in the months following their march, and other journalists praised
Boone for putting the fledgling local group on the defensive before it got
too bold. In town, there was a flurry of discussion about the series, and
some businesses selling the newspaper refused to display a Tuscaloosa
News placard advertising the series. Some parents insisted their sons
no longer work as newsboys, afraid they might be attacked. Like
Carter, Smith, and McGill, Boone became well known outside the
state. He even turned down an offer from New York publisher Alfred
A. Knopf to write a book on the Southern moderate position, telling
Knopf he was busy running a daily newspaper. He barely had time to
do a little fishing and some volunteer work in town. Of Shelton, Boone
wrote:

Supreme commander of these reckless and irresponsible white elements is a sickly-looking,
pitiable little man named Robert Shelton. He has no life savings at stake in any private business
enterprise. He has been reduced to living as a human jackel on a racket known as the Ku Klux
Klan.

Boone’s editorial ran in response to a series of violent racial
clashes in Tuscaloosa in July 1964. Among them, whites had kicked
several black men out of Tom’s Snack Bar. Whites also marched in

214. Id.
215. Id.
216. Id.
217. See, e.g., The Voice of Reason, 136 NEW REPUBLIC (Issue 3) 5, (1957)
(holding out Boone as an “Alabamian[] of light and leading”). Boone won the
Pulitzer Prize for editorial writing in 1957. ROBERTS & KLIBANOFF, supra note 7, at
304. This is journalism’s highest honor and thus brought him into the ranks of a
venerable fraternity.
218. Letter from Boone to Knopf, Buford Boone Papers (May 7, 1959) (on file
with author, Box 255, Folder 2).
219. Id.
220. Buford Boone, Ready For Mob Control? TUSCALOOSA NEWS, July 7,
1964, at 1.
221. Id.
front of the movie theater bearing signs that read: "Will you pay a buck to sit next to a coon"? Boone called those signs "asinine" in his editorial. In response, members of the Klan raided as many as 3,000 papers from the News coin machines in an attempt to deter the coverage.

Shelton’s resulting libel suit included a litany of complaints. As a result of Boone’s article, Shelton purported that he said he suffered damage to his character and reputation, that he was subject to “public contempt, ridicule and shame,” and that he suffered in his “office, profession, trade or business.” For his part, Boone used the suit to try to delve deeper into Klan activities. During discovery, Boone’s attorney Bruce McEachin sought membership rosters of the state and county Klan, any photos of Klan meetings, rallies, or cross burnings, copies of the Klan’s newspaper The Fiery Cross, copies of the group’s bylaws and other written Klan material. He also sought Shelton’s income tax returns to determine whether the Imperial Wizard had actually been damaged in his business as a result of the editorials. Boone said the editorial was a matter of public interest, and his free speech and press rights were clearly protected by the First Amendment. He argued that his words amounted to fair comment or criticism in the form of an editorial.

Shelton filed a second $500,000 libel suit against Boone in 1965 in circuit court in Tuscaloosa, also for an editorial that ran in July

223. Memo from Boone’s attorney, Bruce McEachin, Buford Boone Papers (Aug. 18, 1964) (on file with author, Box 255, Folder 9).
224. BOONE, Ready for Mob Control?, supra note 220.
227. Letter from Bruce M. McEachin to Donald P. Appell, Buford Boone Papers (Apr. 20, 1965) (on file with author); Letter from Bruce M. McEachin to Richmond M. Flowers, Buford Boone Papers (Feb. 8, 1966) (on file with author, Box 255, Folder 12).
228. Letter from Bruce M. McEachin to Larry Worrall, Litigation, Buford Boone Papers (Mar. 1, 1968) (on file with author, Box 256, Folder 2).
1964. Shelton complained that the second editorial was false and defamatory, noting that Boone called him “a threat to the welfare, well being, and safety of the general public,” and “a leader of ‘gorillas’ uncaged but waiting to bite, as one who ‘crawls’ out at night to use the cover of darkness to defy and disobey the law and to lead others to do so.”

At his October 14, 1964, deposition, Shelton refused to answer 139 of the 210 questions posed by Bruce McEachin, Boone’s attorney, mostly queries related to Klan activities and his work as Klan leader. It was as if Boone was putting Shelton on trial. For example, McEachin asked Shelton details of his whereabouts and activities relating to the 1961 Mother’s Day beatings of the Freedom Riders in Birmingham. Shelton argued he was protected by his First Amendment right of association. Circuit Court Judge Walter B. Henley ordered Shelton to answer 64 of the 139 questions that the Imperial Wizard originally refused to answer. Judge Henley did not, however, require Shelton to hand over membership lists or photos taken during Klan rallies, meetings, or cross burnings. Judge Henley said it would first have to be proven that the group was engaged in or sanctioning illegal activities before it could be compelled to reveal members’ names. Boone appealed the judge’s ruling to the Supreme Court of Alabama, arguing

231. Shelton Files New Suit Against News, TUSCALOOSA NEWS, July 15, 1965. The editorial was called “Lullaby and Goodnight.” The second suit was Case No. 20828, also filed in Circuit Court in Tuscaloosa.

232. Letter from Shelton to Boone, Buford Boone Papers (July 9, 1964) (on file with author, Box 255, Folder 9).


236. See id.


238. Id.

239. Id.

240. Memoranda of Authorities in Support of Motion of Defendants Tuscaloosa Newspapers and Buford Boone to Compel the Plaintiff to Answer
that he sought to prove Shelton’s bad reputation existed before Boone’s editorials were published. 241

Ironically, in appeal documents, Shelton’s attorney relied on *NAACP v. Alabama*, 242 where the Supreme Court ruled that Alabama officials could not require the NAACP to hand over its membership lists. 243 In that case, Shelton argued, the court recognized “the vital relationship between freedom to associate and privacy in one’s association,” and that to turn over the Klan roster would “affect adversely” the group’s efforts “to foster beliefs which they have a right to advocate.” 244 Also, Shelton argued that the Klan was not party to the suit—he was suing as an individual. 245 In Shelton’s second case, Alabama’s high court refused to hear Boone’s appeal to require the Klan leader to answer the questions posed to him in his deposition. 246 Once again, Boone wanted membership lists and answers to specific questions about Klan activities. 247

Since Shelton alleged that he had been harmed financially from Boone’s editorials, Circuit Judge Walter B. Henley agreed that he should hand over his tax returns from 1963 through 1966, along with all accounting records showing his income. 248 Those records reflect a steady increase in his paycheck as Shelton became more involved in the Klan. For example, in 1963, Shelton reported to the Internal Revenue Service

Certain Questions Propounded to Him on Oral Examination, Shelton v. Tuscaloosa Newspapers, Inc. at 7 (Tuscaloosa Cnty. Cir. Ct., Ala. Dec. 16, 1964) (No. 19462). McEachin argued that this information was needed in the discovery phase of the suit in order to “identify and locate persons having knowledge of the Plaintiff’s reputation or character.” 249

241. McEachin cited *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 68 (1928), where the court upheld a state statute compelling the Klan to submit membership rosters, based on the “character of the Klan’s activities.”


243. Id.


245. Id.


that he earned $1,875 as a salesman, and listed his wife, Betty, as a housewife on their joint return.\(^{249}\) In 1964, the year Shelton filed suit, he reported to the IRS that he earned $3,576, a third of that income from his public relations work for the United Klans of America. In 1965, his income continued to increase steadily. Shelton listed his only occupation as president of the United Klans of America, with all of his wages—$4,663.23—coming from that group.\(^{250}\) He reported an incredible income jump in 1966 in the same occupation as Klan leader—$18,061.21.\(^{251}\) Accordingly, Boone’s attorney was able to establish that Shelton’s livelihood had not suffered as a result of the editorials.

Throughout the lengthy court battle, Boone kept tabs on Shelton’s activities, receiving memos from his reporters that read like FBI reports.\(^{252}\) At an April 17, 1965, rally, according to reporter Jimmy Mizell’s memo to Boone, Shelton told members he would fight to protect Klan membership rosters just as the courts protected those of black organizations.\(^{253}\) Shelton also told the crowd that members of the media were welcome at the rally, and that he had just talked to a reporter and photographer from the News before coming on stage.\(^{254}\) Shelton got plenty of laughs and applause when he said in his microphone: “The only thing I ask is if you bring Buford with you, leave him in the middle of the highway.”\(^{255}\) Boone even staked out his reporters at a KKK meeting at Tuscaloosa’s Stafford Hotel in August 1967 on the advice of his lawyer.\(^{256}\) It would help to know who was coming and going when it came time to select a jury in the libel trial.\(^{257}\)

At trial in 1968, McEachin argued that Shelton was a public figure and must prove actual malice, citing Associated Press v. Walker,
which had been decided in 1967. He argued that Klan activity was a matter of public interest, and Boone's editorials had focused on concerns about mob violence in the streets of Tuscaloosa. McEachin also argued that Shelton had received so much publicity that it was impossible to tell which (if any) news stories actually damaged his reputation. The Tuscaloosa jury awarded Shelton a measly $500 in punitive damages, refusing to award compensatory damages. The segregationist Clarion-Ledger in Jackson, Mississippi, speculated that white Southerners were turning on the Klan, and that moderates, angry with the Klan for civil rights murders, church bombings, and other violence, used the suit to expose some of the inner workings of the secret organization. Members of the jury later said they thought Boone "overstepped his bounds" in the editorial about Shelton and agreed he should "be paddled a little." In a letter to Boone, Bob Kyle, a News employee, noted that, "[t]he fact that none appeared to want to burn Boone up with a big verdict against him was the most significant development, particularly as regards [to] future litigation." Shelton later dropped the second case.

258. Supplement to Memorandum Trial Brief, Shelton v. Tuscaloosa Newspapers, Inc. (4th Cir. 1968), Buford Boone Papers (on file with author, Box 255, Folder 12); Curtis Publ'g Co. v. Butts, 388 U.S. 130 (1967). This case also provides an interesting example of how southern courts were slow in addressing the actual malice requirement put forth in Sullivan. Boone's attorney's discussed the matter among themselves as late as 1968, four years after Sullivan was overturned. "While most judges and attorneys are now familiar with most of the material under the Sullivan line of cases, they seem to 'bog' down on the malice issue. If the malice issue is not handled properly, then of course, Sullivan doesn't mean a thing." Letter from Larry Worrall to Bruce McEachin, Buford Boone Papers (Feb. 9, 1968) (on file with author, Box 256, Folder 2).


260. Id.

261. Letter from McEachin to Worrall, Buford Boone Papers (Sept. 20, 1968) (on file with author, Box 256, Folder 1).


263. Letter to Boone from Bob Kyle, a News employee, Buford Boone Papers (Sept. 23, 1968) (on file with author, Box 256, Folder 1).

264. Id.
Throughout the legal battle and his coverage of civil rights issues, Boone managed to keep his sense of humor in the face of a steady stream of hate mail. In one of the more civil letter writers from out of town, C.A. Hull asked Boone: "Are you white or black? You may plead the Fifth Amendment if you wish." To which the editor answered: "Dear Mr. Hull, In answer to your question, the Tuscaloosa News is black and white and read all over. Yours truly, Buford Boone."

Boone, an unassuming lifelong Southerner, had stared down one of the most notorious Klansmen in the country. To the white supremacists in his community, Boone aided and abetted those who would threaten their core beliefs of white supremacy and their way of life. He had called a KKK icon "a pitiable little man" and a "jackel" and lived to talk about it. Though middle class support of the Klan was beginning to wane, clearly Boone was ahead of his time.

V. CONCLUSION

Most moderates were afraid to say what they were thinking, that separate may not really be equal, but these four editors had a newspaper and a conscience—and enough guts to use them. They could have censored themselves or failed to fight the libel suits so ardently. As Justice Brennan ruled in Sullivan, First Amendment freedoms must take into account self-censorship. Journalists should feel free to speak their minds on controversial public issues without the fear of a libel suit-induced bankruptcy. Smith, Carter, McGill, and Boone were clarions of reason to outsiders, hailed as liberal visionaries with Pulitzer Prizes. But they also paid thousands in legal bills to fight libel suits in the South, allowing libel law to be rewritten slowly through civil rights cases that would usher in a new era of First Amendment freedom.

268. See id. at 300.