

Supreme Court of the United States

The NEW YORK TIMES COMPANY, Petitioner,

v.

L. B. SULLIVAN.

Ralph D. ABERNATHY et al., Petitioners,

v.

L. B. SULLIVAN.

Nos. 39, 40.

Decided March 9, 1964.

Mr. Justice BRENNAN delivered the opinion of the Court.

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.

Respondent 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. [273 Ala. 656, 144 So.2d 25.](#)

Respondent'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. The text 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., leader of the movement, 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 respondent'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 padlocked 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.

It is uncontroverted that some of the statements contained in the two paragraphs were not accurate descriptions of events which occurred in Montgomery. Although Negro students staged a demonstration on the State Capitol 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 preregistration 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 say 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 A. Philip Randolph, Chairman of the Committee, certifying that the persons whose names appeared on the advertisement had given their permission. Mr. Randolph was known to the Times' Advertising Acceptability Department as a reasonable person, and in accepting the letter as sufficient proof of authorization it followed its established practice. There was testimony that the copy of the advertisement which accompanied the letter listed only the 64 names appearing under the text, and that the statement, 'We in the south * * * warmly endorse this appeal,' and the list of names thereunder, which included those of the individual petitioners, were subsequently added when the first proof of the advertisement was received. 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. Alabama Code, Tit. 7, s 914. 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, among other things, 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 sustained the trial judge’s rulings and instructions in all respects. [273 Ala. 656, 144 So.2d 25. . . .](#)

Because of the importance of the constitutional issues involved, we granted the separate petitions for certiorari of the individual petitioners and of the Times. We reverse the judgment. We 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 under the proper safeguards the evidence presented in this case is constitutionally insufficient to support the judgment for respondent.

I.

[The Supreme Court initially rejected an argument that because the trial involved a civil lawsuit, the First Amendment did not apply: “Although this is a civil lawsuit between private parties, the Alabama courts have applied a state rule of law which petitioners claim to impose invalid restrictions on their constitutional freedoms of speech and press.” The Court also ruled that the advertisement did not involve commercial speech, which can be more easily restricted. Rather, the ad “communicated information, expressed opinion, recited grievances, protested claimed abuses, and sought financial support on behalf of a movement whose existence and objectives are matters of the highest public interest and concern. . . . That the Times was paid for publishing the advertisement is as immaterial in this connection as is the fact that newspapers and books are sold.”]

II.

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. [Parsons v. Age-Herald Publishing Co.](#), 181 Ala. 439, 450, 61 So. 345, 350 (1913). 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. [Johnson Publishing Co. v. Davis](#), 271 Ala., at 495, 124 So.2d, at 458.

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.⁶ Those statements do not foreclose our inquiry here. None of the cases sustained the use of libel laws to impose sanctions upon expression critical of the official conduct of public officials. ... In [Beauharnais v. Illinois](#), 343 U.S. 250, 72 S.Ct. 725, 96 L.Ed. 919, the Court sustained an Illinois criminal libel statute as applied to a publication held to be both defamatory of a racial group and 'liable to cause violence and disorder.' But the Court was careful to note that it 'retains and exercises authority to nullify action which encroaches on freedom of utterance under the guise of punishing libel'; for 'public men, are, as it were, public property,' and 'discussion cannot be denied and the right, as well as the duty, of criticism must not be stifled.' ... In deciding the question now, we are compelled by neither precedent nor policy to give any more weight to the epithet 'libel' than we have to other 'mere labels' of state law. [N.A.A.C.P. v. Button](#), 371 U.S. 415, 429, 83 S.Ct. 328, 9 L.Ed.2d 405. Like insurrection, contempt, advocacy of unlawful acts, breach of the peace, obscenity, solicitation of legal business, and the various other formulae for the repression of expression that have been challenged in this Court, libel can claim no talismanic immunity from constitutional limitations. It must be measured by standards that satisfy the First Amendment.

The general proposition that freedom of expression upon public questions is secured by the First Amendment has long been settled by our decisions. The constitutional safeguard, we have said, 'was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.' [Roth v. United States](#), 354 U.S. 476, 484, 77 S.Ct. 1304, 1308, 1 L.Ed.2d 1498. 'The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system.' [Stromberg v. California](#), 283 U.S. 359, 369, 51 S.Ct. 532, 536, 75 L.Ed. 1117. '(I)t is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions,' [Bridges v. California](#), 314 U.S. 252, 270, 62 S.Ct. 190, 197, 86 L.Ed. 192, and this opportunity is to be afforded for 'vigorous advocacy' no less than 'abstract discussion.' [N.A.A.C.P. v. Button](#), 371 U.S. 415, 429, 83 S.Ct. 328, 9 L.Ed.2d 405. The First Amendment, said Judge Learned Hand, 'presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all.' [United States v. Associated Press](#), 52 F.Supp. 362, 372 (D.C.S.D.N.Y.1943). ...

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. See [Terminiello v. Chicago](#), 337 U.S. 1, 4, 69 S.Ct. 894, 93 L.Ed. 1131; [De Jonge v. Oregon](#), 299 U.S. 353, 365, 57 S.Ct. 255, 81 L.Ed. 278. 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.

Authoritative interpretations of the First Amendment guarantees have consistently refused to recognize an exception for any test of truth—whether administered by judges, juries, or administrative officials—and especially one that puts the burden of proving truth on the speaker. Cf. [Speiser v. Randall](#), 357 U.S. 513, 525—526, 78 S.Ct. 1332, 2 L.Ed.2d 1460. The

constitutional protection does not turn upon ‘the truth, popularity, or social utility of the ideas and beliefs which are offered.’ [N.A.A.C.P. v. Button](#), 371 U.S. 415, 445, 83 S.Ct. 328, 344, 9 L.Ed.2d 405. As Madison said, ‘Some degree of abuse is inseparable from the proper use of every thing; and in no instance is this more true than in that of the press.’ 4 Elliot’s Debates on the Federal Constitution (1876), p. 571. In [Cantwell v. Connecticut](#), 310 U.S. 296, 310, 60 S.Ct. 900, 906, 84 L.Ed. 1213, 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,’ [N.A.A.C.P. v. Button](#), 371 U.S. 415, 433, 83 S.Ct. 328, 338, 9 L.Ed.2d 405, was also recognized by the Court of Appeals for the District of Columbia Circuit in [Sweeney v. Patterson](#), 76 U.S.App.D.C. 23, 24, 128 F.2d 457, 458 (1942), cert. denied, 317 U.S. 678, 63 S.Ct. 160, 87 L.Ed. 544. 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.

Injury to official reputation error affords no more warrant for repressing speech that would otherwise be free than does factual error. 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](#), 314 U.S. 252, 62 S.Ct. 190, 86 L.Ed. 192. This is true even though the utterance contains ‘half-truths’ and ‘misinformation.’ [Pennekamp v. Florida](#), 328 U.S. 331, 342, 343, n. 5, 345, 66 S.Ct. 1029, 90 L.Ed. 1295. Such repression can be justified, if at all, only by a clear and present danger of the obstruction of justice. See also [Craig v. Harney](#), 331 U.S. 367, 67 S.Ct. 1249, 91 L.Ed. 1546; [Wood v. Georgia](#), 370 U.S. 375, 82 S.Ct. 1364, 8 L.Ed.2d 569. If judges are to be treated as ‘men of fortitude, able to thrive in a hardy climate,’ [Craig v. Harney](#), *supra*, 331 U.S., at 376, 67 S.Ct., at 1255, 91 L.Ed. 1546, surely the same must be true of other government officials, such as elected city commissioners.¹⁴ 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, 1 Stat. 596, which first crystallized a national awareness of the central meaning of the First Amendment. See Levy, *Legacy of Suppression* (1960), at 258 et seq.; Smith, *Freedom’s Fetters* (1956), at 426, 431 and *passim*. 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 it

doth particularly protest against the palpable and alarming infractions of the Constitution, in the two late cases of the ‘Alien and Sedition Acts,’ passed at the last session of Congress * * *. (The 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 levelled 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. 4 Elliot's Debates, supra, pp. 553—554.

Madison prepared the Report in support of the protest. His premise was that the Constitution created a form of government under which 'The people, not the government, possess the absolute sovereignty.' The structure of the government dispersed power in reflection of the people's distrust of concentrated power, and of power itself at all levels. This form of government was 'altogether different' from the British form, under which the Crown was sovereign and the people were subjects. 'Is it not natural and necessary, under such different circumstances,' he asked, 'that a different degree of freedom in the use of the press should be contemplated?' Id., pp. 569—570. Earlier, in a debate in the House of Representatives, Madison had said: 'If we advert to the nature of Republican Government, we shall find that the censorial power is in the people over the Government, and not in the Government over the people.' 4 Annals of Congress, p. 934 (1794). Of the exercise of that power by the press, his Report said: 'In every state, probably, in the Union, the press has exerted a freedom in canvassing the merits and measures of public men, of every description, which has not been confined to the strict limits of the common law. On this footing the freedom of the press has stood; on this foundation it yet stands * * *.' 4 Elliot's Debates, supra, p. 570. The right of free public discussion of the stewardship of public officials was thus, in Madison's view, a fundamental principle of the American form of government.¹⁵

Although the Sedition Act was never tested in this Court, the attack upon its validity has carried the day in the court of history. Fines levied in its prosecution were repaid by Act of Congress on the ground that it was unconstitutional. Calhoun, reporting to the Senate on February 4, 1836, assumed that its invalidity was a matter 'which no one now doubts.' Report with Senate bill No. 122, 24th Cong., 1st Sess., p. 3. Jefferson, as President, pardoned those who had been convicted and sentenced under the Act and remitted their fines, stating: 'I discharged every person under punishment or prosecution under the sedition law, because I considered, and now consider, that law to be a nullity, as absolute and as palpable as if Congress had ordered us to fall down and worship a golden image.' Letter to Mrs. Adams, July 22, 1804, 4 Jefferson's Works (Washington ed.), pp. 555, 556. The invalidity of the Act has also been assumed by Justices of this Court. See Holmes, J., dissenting and joined by Brandeis, J., in *Abrams v. United States*, 250 U.S. 616, 630, 40 S.Ct. 17, 63 L.Ed. 1173; Jackson, J., dissenting in *Beauharnais v. Illinois*, 343 U.S. 250, 288—289, 72 S.Ct. 725, 96 L.Ed. 919; Douglas, *The Right of the People* (1958), p. 47. These views reflect a broad consensus that the Act, because of the restraint it imposed upon criticism of government and public officials, was inconsistent with the First Amendment. ...

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.' *Speiser v. Randall*, supra, 357 U.S., at 526, 78 S.Ct. at 1342, 2 L.Ed.2d 1460. 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. ...

III.

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. 'The power to create presumptions is not a means of escape from constitutional restrictions,' *Bailey v. Alabama*, 219 U.S. 219, 239, 31 S.Ct. 145, 151, 55 L.Ed. 191; '(t)he showing of malice required for the forfeiture of the privilege is not presumed but is a matter for proof by the plaintiff * * *.' *Lawrence v. Fox*, 357 Mich. 134, 146, 97 N.W.2d 719, 725 (1959). 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 and the case remanded.

Since respondent may seek a new trial, we deem that considerations of effective judicial administration require us to review the evidence in the present record to determine whether it could constitutionally support a judgment for respondent. This Court's duty is not limited to the elaboration of constitutional principles; we must also in proper cases review the evidence to make certain that those principles have been constitutionally applied. This is such a case, particularly since the question is one of alleged trespass across 'the line between speech unconditionally guaranteed and speech which may legitimately be regulated.' [Speiser v. Randall](#), 357 U.S. 513, 525, 78 S.Ct. 1332, 1342, 2 L.Ed.2d 1460. ...

[The Court then reviewed the evidence and determined that it did not support a finding of actual malice on the part of the New York Times.] ...

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. 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, in holding that the trial court 'did not err in overruling the demurrer (of the Times) in the aspect that the libelous matter was not of and concerning the (plaintiff),' 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. [273 Ala.](#), at 674—675, [144 So.2d](#), at 39.

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.' [City of Chicago v. Tribune Co.](#), 307 Ill. 595, 601, 139 N.E. 86, 88, 28 A.L.R. 1368 (1923). The present proposition would sidestep this obstacle by transmuted 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 and the case is remanded to that court for further proceedings not inconsistent with this opinion.

Reversed and remanded.

[Other justices concurring opinions have been omitted.]