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No. 150

In the
Supreme Court of the United States
OCTOBER TERM, 1966

THE ASSOCIATED PRESS,
Petitioner,

VERSUS

EDWIN A. WALKER,
Respondent.

ANSWER TO AMICUS CURIAE BRIEF OF THE TRIBUNE COMPANY

By Amicus Curiae Brief herein, on behalf of the news media generally, the Chicago Tribune seeks, as an extension of its present First Amendment Freedom, the awesome power to DEFAME (even to accuse falsely) without LIABILITY—to MAKE (rather than report) the news without RESPONSIBILITY.

With issues that involve the life and death of our Constitutional System, the *Walker* case presents to this Honorable Court the responsibility for shaping the course of the Freedom, not only of the Press, but of the American Citizen for decades to come.

By Affidavit, W. D. Maxwell, Editor of the Chicago Tribune, represents to the Court an example of the difficulty which confronts AP in obtaining accuracy of "on the scene

spot news" reports during the confusion of riots and disorder. In fairness, we must recognize their problem, and the vital interest of the public, which actually includes the Press, as well.

The *Walker* case is an example of oppressive impact of false news reporting that deserves most careful consideration by the highest Tribunal in our land, in developing constitutional guide lines that will protect *both* the Press and the citizen.

For simplicity of illustration, and as a tragic example of hasty and irresponsible news reporting, we respectfully present, by counter Affidavit, the reports and actions by which Walker was falsely accused of a felony, charged, arrested and committed for an indefinite term to a Federal Prison Hospital for criminal insane, as a direct and proximate result of a news report, which Affidavit contains orders and proceedings of the court responsible for his trial, and custody pending trial, as follows:

1) Associated Press falsely reported upon worldwide news wires that Walker had assumed command of the mob and led a charge against United States Marshals (R. 1224-1294).

2) A Federal Complaint was filed against Walker charging Insurrection, Assaulting U. S. Officers, Sedition and Seditious Conspiracy, which stated that it was filed "on the basis of information obtained from Van H. Savell," the cub reporter of Associated Press, who was solely responsible for the above false news report.

3) Walker was committed to custody of United States Marshal in Mississippi, for confinement in Mississippi.

4) Upon telegraph Order from United States Bureau of Prisons, and without Court Order, Walker was flown to the United States Prison Hospital at Springfield, Missouri, without being given an opportunity to make bail, fixed at $100,000.00.

5) The next day, without Notice, counsel or hearing, an Order was entered by the Mississippi Federal Court that Walker be transferred and committed to the Springfield Prison Hospital, where he had actually been taken on the previous day, which Order was entered upon Affidavit of Chief Psychiatrist of United States Bureau of Prisons, who had never seen him, but had "carefully examined news reports."

6) Walker was unable to get a hearing for Habeas Corpus before the Federal Court in Springfield in less than 11 days.

7) Associated Press consistently slanted the news to emphasize that Walker had commanded the mob and was probably crazy, thus fabricating of him a false public image as a lunatic and criminal.

It is the end of Justice that no one shall suffer wrong—a concept which guides the judgment of every Court in our land.

There can be no reasonable question that Respondent has suffered wrong, as a direct and proximate result of news report that he commanded a mob and led charges against United States Marshals. The facts above set forth, and with more detail in the attached Affidavit, provide a living specimen for the necessary judicial research and development to fix the final perimeter of the First Amendment Freedom of the Press along a fair and workable boundary between the public's Right to Know and the

citizen's Right to Live in Freedom from possible tyranny of an overly powerful Press.

It has also been stated by an unknown legal scholar that, "From the crucible of adversary conflict before Courts of Justice and Law, will come the final Freedom contemplated by our Constitution."

Thus, in the instant case, the proper objective is to construe "Freedom of the Press" to permit reasonably accurate and timely reports of news vital to public knowledge, without subjecting citizens who may have become "public figures" to undue defamation and accusation.

The established rule under *Sullivan,* which would be both sound and just, if it excluded false accusation of crime, is that the Press is free from liability for defamation of a Public Official, without malice, which is defined as "knowingly false" or "in reckless disregard" for the truth.

The question arises in the *Walker* case as to whether this rule should be extended to "public figures"; and, so long as the "figure" is not directly accused of a crime, it would appear that the rule could be extended with logic and justice, provided that the Court should decide to abandon the reasoning that the superior position of the official compensates for the immunity of the Press.

Where a citizen is falsely accused of crime, however, which did not exist in *Sullivan,* it should not be an imposition upon the Press (and certainly not a restriction of its freedom) to bear a responsibility of more than "reckless disregard for the Truth."

In this very dangerous and sensitive area, any news merchant who gambles, even negligently, in the sale of news, with the liberty of a citizen should properly be required to prove, in Court, the Truth of the charge. If such a rule should slightly delay to the public immediate "on the spot" accusation of crime, as it is actually committed; the loss would be more in theory than in fact, since the Press could report, with immunity as soon as a criminal charge was filed against the suspect. In fact, if the newsman should report what he sees to proper authority a Complaint could be filed in a matter of hours, or less; but this short interval is critical to the party charged, to avoid the news report being the source of the charge, as in the *Walker* case.

If the attention of prosecuting authorities may be directed by false report to alleged facts constituting a crime, by a newsman, who seeks Constitutional immunity from responsibility, then the proponents of unpopular causes would be at the mercy of a hostile Press; and the "public debate," robust, uninhibited and "wide open" would be stifled before it was born.

During discovery proceedings in the *Walker* case, it was developed that Associated Press holds a daily conference of top management at its Headquarters in New York (R. 824). Simply as an illustration of the potential hazard of extending to the Press the power to defame and accuse with immunity, the capability would then exist to assign newsmen to a scheduled public demonstration, with orders to trail an individual, and tie him in with any violence that may erupt. Thereafter, his mere presence in the area would

make him vulnerable to a news report that he was organizing and participating in the violence, and a report by the Press immune from liability could quickly trigger his arrest upon charge of inciting a riot.

Once the Constitutional Rule may be established, the capability of false accusation would exist at all echelons of the Press.

If, either upon a local or a national level, the newsman and the prosecutor should jointly select a victim, he would be helpless to avoid arrest and prosecution. He would be helpless to avoid disgrace if he were falsely accused of being a Communist.[1]

On the other hand, so long as the Press is financially responsible for damages sustained by one arrested as the result of a false news report, the danger of such invasion of individual freedom will be remote.

The requirement to prove knowing falsity or reckless disregard for the truth can be an overwhelming burden, where a powerful element of the news media is the adversary.

In effect, amicus curiae requests that this Honorable Court write "ground rules," under which its reporters may cover tumultous events, to provide reasonable and timely information to the public, with minimum liability upon the Press. By presenting both sides of the question, it is the sincere hope of counsel for Respondent to assist in formu-

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[1] *Faulk* v. *Aware, Inc.* (N.Y. 1964), 200 N.E.2d 778, 202 N.E.2d 372 (*cert. den.* 380 U.S. 916).

lation of a final rule that will be workable and fair to both the Press and public. We respectfully suggest the following:

1) Should not the final rule extend wider latitude in reporting collateral facts, but require even more care to avoid reporting of alleged facts that accuse even a public official of the commission of a crime . . . especially facts which would give the civil authority, state or federal, the duty of making criminal charges and arrest?

2) Should not newsmen, on the scene and in rewrite rooms, be ordered to withhold reports of commission of a crime until the facts have been evaluated by a prosecuting authority, or, in any event, until the facts have been verified by more than one newsman (preferably experienced)?

3) Should not newsmen be advised that their employer faces civil liability for reporting facts that result in criminal charges, unless the report is supported by evidence that would establish a defense of "TRUTH" in a civil proceeding?

4) Should not working newsmen be subject to more, rather than less, discipline in their investigation and reporting, especially where the liberty of individual citizens may be at stake?

5) With news representing a highly salable commodity, could the Courts accept a lesser warranty of quality than for other merchandise, such as drugs?[2]

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[2] *Associated Press* v. *United States,* 326 U.S. 1: "No language in the Sherman Act or the summary judgment statute lends support to the suggestion. There is no single element in our traditional insistence upon an equally fair trial for every person from which any such discriminatory trial practice could stem. For equal—not unequal—justice under law is the goal of our society. Our legal system has not established different measures of proof for the trial of cases in which

(With words being the most lethal weapons known to modern man, when launched by a fantastic network of electronic communications, is not false news reporting more dangerous than adulterated *food or drugs*?)

6) Does the individual citizen have any real capability to "debate" with the news media, especially the Associated Press, or other national wire service?

7) Would not the news media, itself, suffer in terms of lost public confidence, if its financial responsibility is withdrawn as a guarantee for accuracy where its reports result in defamation or accusation of a private citizen?[3]

8) In comparison with its vast income from the sale of news, and advertising, has the news media really been restricted in reporting actual news to the extent that justice would require a revision of the law of defamation, which has reasonably protected the individual citizen from time of the invention of the printing

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[2] (Continued)
equally intelligent and responsible defendants are charged with violating the same statutes. Member publishers of AP are engaged in business for profit exactly as are other business men who sell food, steel, aluminum, or anything else people need or want.." Citing *International News Service* v. *Associated Press, supra.* "All are alike covered by the Sherman Act. *The fact that the publisher handles news while others handle food does not, as we shall later point out, afford the publisher a peculiar constitutional sanctuary in which he can with impunity violate laws regulating his business practices.*"

[3] *Time, Inc.* v. *Hill* (Jan. 10, 1967), 35 L.W. 4108 at 4119 (concurring opinion, MR. JUSTICE BLACK):

"A constitutional doctrine which relieves the press of even this minimal responsibility in cases of this sort seems to me unnecessary and ultimately harmful to the permanent good health of the press itself. If the *New York Times* case has ushered in such a trend it will prove in its long-range impact to have done a disservice to the true values encompassed in the freedoms of speech and press."

press down through the present era of huge newspapers, wire services, magazines, radio and TV?

Against the above background of conflicting interests and aspirations between the Press and the individual citizen, we present the case of the Respondent, fervently hoping that collateral issues may not unduly influence or prejudice the final outcome.

ISSUES

I

SHOULD THE SULLIVAN RULE OF FREEDOM OF THE PRESS FROM LIABILITY FOR DEFAMATION BY ERRONEOUS REPORTS OF FACTS, MADE WITHOUT MALICE, BE RESTRICTED TO CASES WHERE SUCH REPORTS DO NOT FALSELY ACCUSE AN INDIVIDUAL CITIZEN OF THE COMMISSION OF A CRIME?

II

SHOULD THE SULLIVAN RULE BE EXTENDED TO ENCOMPASS NOT ONLY THE "PUBLIC FIGURE," BUT ALSO THE "PUBLIC EVENT"?

ARGUMENT

PROPOSITION ONE

FREEDOM OF THE PRESS UNDER THE FIRST AMENDMENT SHOULD NOT BE EXTENDED TO PROVIDE IMMUNITY FROM LIABILITY FOR FALSE ACCUSATION OF A CRIME.

Relying upon *New York Times Co.* v. *Sullivan,* 376 U.S. 254, and subsequent decisions of this Honorable Court, Amicus Curiae outlines a purported emergency in the reporting of riots, strife, violence and lawless demonstration, supported by Affidavit of its editor, and argues that the First Amendment should be construed, consonant with the *rights of all concerned,* to hold that "on-the-spot news reports of such events are non-actionable . . . although later proved false . . . unless they are the product of actual malice."

The Association Press Publication involved herein is quoted in full at pages 7-11 of Petitioner's Brief. The language specifically involved in the Constitutional question here presented includes the following:

> "October 2, 1962. 'Walker, who Sunday night led a charge of students against Federal Marshals . . . was arrested on four accounts including Insurection against the United States.' "
>
> "October 3, 1962. (Editor's Note: '* * * Here is the story of Van Savell, 21, Associated Press newsman, who was on the scene and saw what happened.)' "
>
> "It also brought me into direct contact with former Army Maj. Gen. Edwin A. Walker, who is now under arrest on charges of inciting Insurrection and Seditious Conspiracy . . ."

". . . man queried Walker as he approached the group. 'General, will you lead us to the steps?' "

"I observed Walker as he loosened his tie and shirt and nodded 'Yes' without speaking."

"Walker assumed command of the crowd . . ."

"Two men took Walker by the arms and they headed for the . . . Federal Marshals. Throughout this time, I was less than six feet from Walker."

"This march toward tear gas and some 200 Marshals was more effective than the previous attempts" (R. 11-14).

The above is in conflict and contrast with the United Press report as follows:

"Students were waving the Confederate Flag during a lull in the rioting. Edwin A. Walker, former Maj. General who commanded troops at Little Rock, mounted a Confederate Statue and advised the students to cease their violence."

" 'This is not the proper route to Cuba,' Walker . . . said."

It is obvious that the above Associated Press news report accuses Walker of specific acts, for which he was subsequently charged by the United States Government with commission of crimes (18 U.S.C. 111, 2383, 2384).

In answer to questions presented by the Court under special issues, the trial jury held, by unanimous verdict, that:

1) The Associated Press statements that, "Walker . . . led a charge . . . against U. S. Marshals" and

"Walker assumed command of the crowd" were false.

2) The statements were not "fair comment."

3) The statements were *not made in good faith.*

Amicus Curiae seeks a judgment in this case that would wipe out the jury's verdict, and deprive Respondent of legal recourse for the wrong he has suffered, which argument is summarized by a statement at page 7 of its Brief, as follows:

> "We submit that if on-the-spot news reporting of current public events is to be fostered and encouraged, as contemplated by the First Amendment, publishers and news wire services must be protected from libel actions such as those instituted by the respondent."

The first question before the Court is whether *Sullivan* and subsequent decisions involving the First Amendment Freedom of the Press should change the law of Libel where the report is both false and an accusation of crime. Respondent contends that neither the facts, the rule, nor the reasoning of *Sullivan* and other cases should be construed as imposing upon the injured party the burden of proving bad faith of the publisher, when the defamation is so serious as to cause the arrest and imprisonment of the victim. The "First Amendment theory"[4] requires careful evaluation of

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[4] "Of course, only time and more decisions, many more, can reveal the significance of New York Times and Garrison in the evolution of the First Amendment Theory."

—Brennan, The Supreme Court and the Meiklejohn Interpretation of the First Amendment, 79 Harvard L. Rev. 1, 19 (1965).

the impact upon the individual citizen, as well as the advantage to the Press, before so dangerous a power should be conferred with so little responsibility following its use.

Before *Sullivan,* there can be no doubt that a false accusation of a crime was malicious *per se.*[5]

In the instant case, the facts are conclusive that the statements found by the jury to be false were also "knowingly false," since, upon the face of the publication, it was represented that the Associated Press newsman was an eyewitness ("He was there." "Throughout this time, I was less than six feet from Walker.") From a range of six feet, Savell either saw these alleged criminal acts committed, or he did not. His report was either true or "knowingly false."

Under the undisputed evidence, there seems no reasonable question that the handling of the report by Associated Press was also in reckless disregard of the truth.[6]

These facts are far different from those in *Sullivan,*[7] where New York Times had published a paid advertisement, which contained general criticism, aimed at no particular individual, and charging, at most, mal administration in office by unidentified persons. There was no statement by which any employee of New York Times, the publisher,

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[5] *Davila* v. *The Caller Times Publishing Co.* (Ct. of App., Tex. 1958), 311 S.W.2d 945; *Houston Chronicle Publ. Co.* v. *Bowen* (Ct. of App., Tex. 1915), 182 S.W. 61; *Shepherd* v. *Brewer* (Mo. 1913), 154 S.W. 116.

[6] See summary of testimony of AP newsman, Ben Thomas, Respondent's Answer Brief.

[7] *New York Times* v. *Sullivan,* 376 U.S. 254 (293).

reported that he had seen the plaintiff commit any criminal act. Liability in the state court was merely inferred from defendant's "irresponsibility" in printing the advertisement, when its own files had articles already published that would have demonstrated the falsity of the allegations in the advertisement. A review of the facts in *Sullivan* will reveal that the Court was not confronted with a case where an employee of the defendant, as a purported eye-witness, had falsely accused the plaintiff of committing a crime, as in the *Walker* case. Perhaps the most widely quoted language of the Opinion is the following:

> "Thus we consider this case against the bankground of a profound national commitment to the principle that *debate on public issues* should be uninhibited, robust, and wide-open, and * * *
>
> * * * * * *
>
> "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.' "

If the power of the Press is expanded to include false charges of *crime* against an individual citizen, the free "debate" encouraged by *Sullivan* would be so heavily weighted in favor of the Press that a private citizen, who does not own a newspaper, would be at such a disadvantage that he would abandon the unequal contest before it started. His "breathing space" would be surrounded with bars; and he would have no recourse, unless he could prove

those persons[8] in the Associated Press organization having responsibility for publication of the report actually "knew" that it was false, or were acting in reckless disregard for the truth. If, as a result of false report of criminal acts, the individual should be in a Prison during the critical time, as was Walker, considerable difficulty might arise in securing evidence that the original publication was "known" by those responsible for its publication to have been false.

Amicus Curiae has cited no authority, nor have we discovered a decision holding that the First Amendment extends to the Press a Freedom to make direct and false accusation of crime; and, without direct precedent, it appears that this Court, deep within its own conscience, will balance the public's need to know through a Free Press against the right of the individual citizen to be free from the fear of false accusation, and will fix the boundary of the First Amendment Freedom of the Press so as to accomplish, as nearly as humanly possible, a result compatible with *equal justice under the law.*

It is respectfully submitted that the doctrine of the *Sullivan* case, which involved only comment, should not be extended to provide for the Press a Freedom to make false accusation of crime against individual citizens, which eventually could be expanded into a license to destroy.

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[8] From *Sullivan*:

> "The mere presence of the stories in the files does not, of course, establish that the Times 'knew' the advertisement was false, since the state of mind required for actual malice would have to be *brought home to the persons in the Times organization having responsibility* for the publication of the advertisement."

PROPOSITION TWO

THE SULLIVAN RULE DOES NOT APPLY TO A PRIVATE CITIZEN.

Amicus Curiae "commend and urge" this Court to "ground a decision of reversal on a broader base than the doctrine of 'public official' or 'public figure,' and to extend the First Amendment Freedom to permit the reporting of 'current public events with impunity unless the report is both false and the product of actual malice.' " Based upon the affidavit of its managing editor delineating the expediency of unrestricted reporting, Amicus Curiae argues:

> "Beyond cavil, if freedom from oppressive libel suits is to be contingent upon the nature and status of the plaintiff, rather than the event, the mandate of the First Amendment has not been fulfilled * * *. In sum, the doctrine of public officials should encompass not only the public *figure* but also the public *event*. And, we cannot envisage a more appropriate cause for the Court to acknowledge such a doctrine than the Mississippi riots, for if the First Amendment is to have its intended vitality it certainly must protect on-the-scene news reporting of an event of such national magnitude."

If the rights of the individual are to be ignored, such a rule would have one advantage—simplicity. The Press would be well-protected against liability for false reporting, unless the victim were able to establish that the report was "knowingly false" or "in reckless disregard for the truth," a most formidable obstacle, unless the Press has convicted itself, as in the instant case, where the false report of their young reporter was preceded by a "sales

pitch," "Here is the story of Van Savell, 21, *Associated Press Newsman,* who was on the scene and *saw what happened.*" —thus, leaving open only the question as to whether the purported eye-witness story was true or false.

It would appear that the news media, itself, would seek to establish higher, rather than lower standards of integrity and accuracy in its reporting. If accuracy is difficult to obtain under present conditions, it would be infinitely worse if those who gather and disseminate the news for profit are relieved of financial responsibility for damages caused by their product. Private industry spends millions for quality control. The Press might improve its product at far less cost.

In other fields of the law, the Courts have consistently imposed higher standards of product liability,[9] under concepts of both warranty and negligence, even to the extent of assuming negligence, under principles of *Res Ipsa Loquitur,* from the occurrence of an accident, and shifting the burden to the manufacturer and distributor to prove *reasonable* care. In this area, there have been judgments for shattered bodies, even higher than Libel judgments for shattered reputations; but no Court has yet established a protective rule of privilege to require an injured plaintiff to prove that the manufacturer either had knowledge of the defect or acted in reckless disregard of reasonable care.

It would seem that the potential harm to the public from false news may be even greater than from defective merchandise.

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[9] See *Associated Press* v. *U. S.,* 326 U.S. 1; *Moran* v. *Pittsburgh Des Moines Steel Co.,* 1948 (C.A. 3, Pa.), 116 F.2d 908, *cert. den.* 334 U.S. 846, 92 L.Ed. 1770, 68 S.Ct. 1516; 81 A.L.R.2d 332.

Especially is this so with the monopolistic capability of the wire services,[10] and the fact that most metropolitan areas are under the sole control of a single newspaper, which is under management of a single ownership.

Over the years, basic concepts have developed, that have, so far, kept our "Ship of State" upon a fairly even course. These include:

1) *Know the Truth, and the Truth shall keep you free.*
2) *Power corrupts. Absolute power corrupts absolutely.*

Appalled by the impact of world turmoil and aggression, one of the great modern writers, the late Gill Robb Wilson, who became one of the spokesmen of the early Air Age, challenged his fellow Americans:

> *"Once again, conflicting ideologies are locked in desperate rivalry for the key to human destiny."*

Comparison of the Objectives, the Strategies and the Tactics of the two ideologies may reveal that the "KEY" is . . . INTEGRITY . . . of which the basic element is TRUTH.

Vital decisions under the one ideology are made by ruthless rulers, who use propaganda, with its components of deceit, fabrication and falsehood for human motivation. Its concepts of Justice are shaped solely for enhancement of the power of the ruling oligarchy . . . never by the rights of the individual.

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[10] *Associated Press* v. *Taft-Ingles Corp.* (6 Cir. 1965), 340 F.2d 753, 766.

The other ideology preserves both Freedom and Justice upon a broad base of individual knowledge and is devoted to a concept of Equal Justice Under the Law. The indispensable element of true knowledge is timely and accurate information, for which the American citizen is completely dependent upon a highly organized system of gathering and disseminating news.

In its final plea (p. 12, Tribune Brief) Amicus Curiae submits this case, growing out of the Mississippi riots, as the most appropriate cause for the Courts to expand the First Amendment Freedom of the Press to protect "on-the-scene" news reports of such events. To do so would place judicial approval upon a performance by Associated Press that resulted in false imprisonment (as found by a Grand Jury and two Trial Juries) of one who must bear to his grave a false public image as a lunatic and Insurrectionist, as the result of a false charge by an inexperienced 21-year-old reporter, whose report was published by Associated Press, after notice to more experienced newsmen in the New Orleans re-write room that the cub reporter's telephone reports were hopelessly mixed up as to time and detail. Later, the principal actor in the Mississippi Drama, Meredith, was falsely reported by Associated Press as having been killed from ambush.[11]

In order to expand the "First Amendment Theory" into a blank check for the Press to defame and accuse with immunity, it would first be necessary to overhaul completely the *Sullivan* rule. In that case, the break from long

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[11] See Time Mazagine, June 17, 1966, p. 62, "The 'Death' Blunder."

established precedent was accomplished as a corollary of "Equal Justice Under Law," by extending to a private citizen the reciprocal right and privilege to criticize, with immunity, the conduct of public officials who, in turn, were protected against liability for defamation in the course of official statements, unless actual malice can be proved.[12]

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[12] *New York Times Co.* v. *Sullivan,* 376 U.S. 254:

"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 avoid damages in a libel action brought by a *public official against critics of his official conduct.*

"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.*

"The question before us is whether this rule of law 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.

"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.

"A rule compelling the critic of official conduct to guarantee the truth of all of his factual assertions . . . Under such a rule, would-be *critics of official conduct* may be deterred from voicing their criticism

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

"Such a privilege for criticism of *official conduct* is appropriately analogous to the protection accorded a public official when he is sued for libel by a private citizen.

"It would give public servants an unjustified preference over the public they serve, if *critics of official conduct* did not have a fair

A continuation of the concept of protecting the individual citizen against official "overbearing" is well illustrated in *Miranda* v. *State of Arizona*[13] (U.S. Sup. June 13, 1966), 86 Sup. Ct. Rep. 1602.

It is obvious that the "overbearing," as condemned in *Miranda* was a product of official power. The Associated Press has even greater power, on a national level, and newspapers, including newspaper chains, have similar power on both national and local levels. Where public officials are ultimately subject to public opinion, the news media actually creates and controls public opinion, and will have no restraint if financial responsibility is removed.

If the conduct of Associated Press in the instant case is condoned and approved as a precedent for future Freedom of the Press, the right of the individual citizen to secure vindication and compensation for injury for defamation and accusation, as a question of fact for jury trial, will be

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[12] (Continued)
equivalent of the immunity granted to the officials themselves . . . We hold today that the Constitution limits 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.

[13] *Miranda* v. *State of Arizona,* 86 Sup. Ct. Rpr. 1602 (1966), — U.S. —:

"* * * basic rights that are enshrined in our Constitution—that 'No person * * * shall be compelled in any criminal case to be a witness against himself,' and that 'the accused shall * * * have the Assistance of Counsel'—*rights which were put in jeopardy in that case through official overbearing.* These precious rights were fixed in our Constitution only after centures of persecution and struggle. And in the words of Chief Justice Marshall, they were secured 'for ages to come * * * designed to approach immortality as nearly as human institutions can approach it.'"

destroyed as a matter of law. Equal weight and consideration should be given to the *duty and responsibility* of the Press, as well as the Freedom of the Press. Without a legal duty and responsibility, clearly defined and recognized, Freedom of the Press can degenerate into oppression . . . can sink into license . . . to smear . . . to create false images . . . to slant news . . . to propagandize. Once the bars are down, and the cycle started, we can expect competition between different wire services, between different newspapers and between different types of news media for the most sensational and salable items of news. In such competition, the one least restrained by concepts of accuracy, integrity and responsibility *would have a substantial competitive advantage over the* other. *The dividing* line between fact and fiction will become more obscure, and the news media will be more inclined to *make the news, rather than to report the news.* Public confidence in all of them will deteriorate in direct proportion.

Amicus Curiae, upon the sole basis of expediency and freedom from financial responsibility in reporting on-the-scene news, seeks extension of the *Sullivan* rule beyond the public official to include the public "figure" and also the public "event." The "Equal Justice" concept for a private citizen to criticize the public official is not applicable in the instant case; and the requested constitutional Freedom of the Press to defame and accuse a private citizen with immunity must be based upon some other ground. We recognize that some lower courts have extended the rule to a "public figure who has voluntarily thrust himself into

the vortex of public discussion of an issue which is of pressing public interest and concern.'[14]

The Colorado Supreme Court states:

> "We recognize that there is authority from other jurisdictions which looks away from such a holding. See, e.g., Fignole v. The Curtiss Publishing Co., 247 F. Supp 595. But in our considered view the *rationale of New York Times* Company v. Sullivan, supra, clearly suggests that the rule announced therein should apply to one in the position of this plaintiff."

And, now, with the parties in final confrontation before the ultimate judicial authority, the question arises, "What rationale?" Aside from the Equal Justice concept, *Sullivan* notes that the libel judgment was 1,000 times greater than the maximum fine in Alabama for criminal libel, and concludes:

> "Whether or not a newspaper can survive a succession of such judgments, the pall of fear and timidity imposed upon those who would give voice to public criticism is an atmosphere in which the First Amendment Freedoms cannot survive."

In this area the first question arises as to whether there is a First Amendment Freedom to publish false reports that

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[14] *Walker* v. *Associated Press* (Colo. 1966), — P.2d —; *Walker* v. *Courier-Journal, et al.* (6 Cir. 1966), — F.2d — (reviewing 246 F. Supp. 231, W.D. Ky. 1965); *Pauling* v. *National Review, Inc.*, 269 N.Y.S.2d 11; *Pauling* v. *News Syndicate Co., Inc.*, 335 F.2d 659; *Rosenblatt* v. *Baer*, 383 U.S. 75.

Other cases involving Walker in the lower courts are: *Associated Press and Times-Picayune Publ. Corp.* v. *Walker* (Ct. of App. La., 1966), — S.W.2d —; *Associated Press* v. *Walker* (Civ. App. Tex., 1965), 393 S.W.2d 671.

accuse a private citizen of a felony, and, next, whether such freedom in this very limited area would be necessary for survival of the Press. As to the instant case, there is no threat to the survival of Associated Press, whose annual operating budget exceeds $40,000,000.00. Its resources are further illustrated by comment at page 46 of Petitioner's Brief that Associated Press and its members had already incurred expenses in defending Respondent's actions far in excess of the judgment in this case. If Respondent could go equally outside the record, the comparison of his relatively poverty stricken budget in seeking vindication of the false charges against him would further emphasize the great disparity in power between the Press and individual members of the public, and the difficulty of proving "knowingly false" or "reckless disregard for the truth" by so powerful a defendant.

In a recent decision, *Faulk* v. *Aware, Inc.* (N.Y. 1964), 200 N.E.2d 778, 202 N.E.2d 372, an original verdict of $1,000,000 compensation and $1,250,000 punitive damages against a small publication and an individual was reduced to $400,000 compensatory and $150,000 punitive and certiorari was denied by this Honorable Court (380 U.S. 916, 1965). There the ruinous judgment issue was far more critical than in the instant case.

In *Fignole* v. *Curtiss Pub. Co.* (D.C. N.Y. 1965), 247 F.Supp. 595, the Court, after considering *Sullivan* and various other cases[15] and recognizing that "the law in this area

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[15] *Pauling* v. *News Syndicate Co.* (2 Cir. 1964), 335 F.2d 659, *cert. den.* 85 Sup. Ct. 662, 379 U.S. 968, 13 L.Ed. 561; *Walker* v. *Courier-Journal* (D.C. Ky. 1965), 246 F. Supp. 231.

is in a state of flux," held that a candidate for public office, although a "public figure" was entitled to *maintain an action for libel, without proving actual malice, with* language as follows:

> "At the moment, New York Times, which is the only decision binding upon me, does not foreclose this action. In order to grant this motion, *it would be necessary to go farther than the Supreme Court has gone to date in holding that, in the absence of actual malice as defined in New York Times, the United States Constitution forbids a state to grant redress under its libel laws* to a man who allegedly has been injured by a false defamatory statement.
>
> "I am less willing than was the court in Walker v. Courier-Journal, supra, to take this additional step. On the contrary, New York Times, to my mind, indicates that it should not be taken. The rationale of that decision appears to be that since a public official enjoys a privilege, either absolute or qualified, against liability for libelous statements which he makes in the course of his official duties, so a critic of a public official's conduct should possess an equal privilege.
>
> > 'It would give public servants an unjustified preference over the public they serve, if critics of official conduct did not have a fair equivalent of the immunity granted to the officials themselves.' (376 U.S. at 282-283, 84 S.Ct. 727).
>
> "If this is the basis of the New York Times rule, then there is *no reason to grant immunity to critics of mere candidates for office or of public figures in general, for the candidates and the miscellaneous public figures possess no corresponding immunity for their own defamatory utterances.* On the facts of the present case,

> therefore, and on the present state of the law, I hold that defendant is not entitled to a dismissal of the libel count."

A most scholarly analysis of the issue has been presented by District Judge Holtzoff in *Clark* v. *Drew Pearson* (U.S.D.C. Dist. of Col. 1965), 248 F.Supp. 188. The case involved a defamatory publication by columnist, Drew Pearson, wherein Pearson had written that the plaintiff, Clark, a Washington lawyer, had become friendly with a Congressman, after which the Congressman had reversed his position concerning opposition to the "Natural Gas Lobby," also represented by Clark. Plaintiff alleged that the Pearson article in effect charged him with the crime of endeavoring to bribe a Congressman. Among other defenses, defendant urged that plaintiff was a public figure, and that the libellous article related to matters of public interest. The Court held that the right to redress libel is a *civil right* and rejected defendant's argument, saying:

> "The arguments * * * included a plea for drastic changes in the law of libel, in a manner that would radically devitalize and impair the protection that it affords against defamatory publications. In view of this circumstance, it seems appropriate to make a few observations on the basic status of the law of libel in Anglo-American jurisprudence.
>
> "The common law sedulously guarantees to every indivdual various civil rights, such as the right of personal freedom, the right of personal safety, and the right of property. Another civil right safeguarded by the common law is the right to one's reputation. * * * (248 F.Supp. 190-191)

> "The current trend in the law is to enhance and augment the protection of individual civil rights. No reason appears for making an exception as to the right to reputation. * * * Most civil actions relate only to money, while actions for libel or slander involve honor and reputation, which are to be considered on a higher level. . . ." (248 F. Supp. 191).

The latest expression by this Honorable Court in the area of First Amendment Freedom is *Time, Inc.* v. *Hill* (Jan. 10, 1967), 35 L.W. 4108, wherein it was recognized that a guarantee of freedom to the Press, "for the benefit of all of us" should preclude the saddling of the Press with the "impossible burden of verifying to a certainty the facts associated in a news article with the person's name, picture or portrait, *particularly as related to non-defamatory matter.*"[16]

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[16] *Time, Inc.* v. *Hill* (Jan. 10, 1967), 35 Law Week 4108:

"Erroneous statement is no less inevitable in such case than in the case of comment upon public affairs, and in both, if innocent or merely negligent, . . . it must be protected if the freedoms of expression are to have the 'breathing space' that they 'need to survive' . . ." *New York Times Co.* v. *Sullivan, supra,* at 271-272. As James Madison said, "Some degree of abuse is inseparable from the proper use of everything and in no instance is this more true than of the press." 4 Elliot's Debates on the Federal Constitution (1876), p. 571. "We create grave risk of serious impairment of the indispensable service of a free press in a free society if we saddle the press with the impossible burden of verifying to a certainty the facts associated in news articles with a person's name, picture or portrait, *particularly as related to non-defamatory matter.* Even negligence would be a most elusive standard, especially *when the content of the speech* itself affords no warning of prospective harm to another through falsity." (p. 4112)

(The question then arises as to the responsibility of the press *where the content of the news report accuses a citizen of a felony.* Would it be an unreasonable restriction of freedom to require *reasonable* care before risking the freedom of another by a report of questionable accuracy?)

Confronted with the legal problem as to whether the rule of *Sullivan* requiring malice would apply in a "privacy" case that did not involve a public official, the opinion of this Court reveals an almost classic laboratory experiment where legal scholars have accomplished a delicate balance of the scales of justice, and have obviously weighted each side with extensions and denials of rights and responsibilities, remedies and defenses. In arriving at the Conclusion that this invasion of privacy case should require Proof of Malice ("knowingly false" or "reckless disregard for the truth"), the Court recognized that it involved "non-defamatory matter," and further stated:

> "We find applicable here the standard of knowing or reckless falsehood not through blind application of New York Times Co. v. Sullivan, *relating solely to libel actions by public officials,* but only upon consideration of the factors which arise in the particular context of the application of the New York statute in cases involving private individuals. *This is neither a libel action by a private individual nor a statutory action by a public official.* Therefore, although the First Amendment principles pronounced in New York Times *guide our conclusion,* we reach that conclusion only by *applying these principles in this discrete context.* It therefore serves no purpose to distinguish the facts here from those in New York Times. Were *this a libel action, the distinction which has been suggested between the relative opportunities of the public official and private individual to rebut defamatory charges might be germane.* And the additional *state interest in* the *protection of* the *individual against damage to his reputation* would be involved."

From the above, it appears that this Court has such an awareness of the boundary between the "breathing space" of the Press and the "security area" of the people that it would be presumptuous for counsel to make further suggestion, particularly in view of the concurring and dissenting opinions in *Time, Inc.* v. *Hill.*

It is respectfully submitted that the *Sullivan* rule should not be extended to apply to a private citizen, even though he may be a "public figure" involved in a "public event."

CONCLUSION

Objective evaluation may reveal that the proposition presented to the Court by Amicus Curiae is not a "friendly" suggestion—that abandonment of the rule which keeps financial responsibility behind the product liability of the news merchant[17] may create a "Frankenstein" that will return to haunt not only the public, but also the news media itself.

There is a functional basis for balancing the power of public officials against the Freedom of the public to make good faith errors in public criticism of such officials, especially since the power of the public official is ultimately subject to public opinion. With the power of the news media and especially the wire services, devoted primarily to the making of public opinion, however, the same safeguard does not exist when the power of defamation and accusation is extended to the news media. In the rationale of *Time, Inc.*,

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[17] *Associated Press* v. *U. S.*, 326 U.S. 1.

and particularly the concurring and dissenting opinions, it appears that the attention of this Honorable Court has been drawn to the necessity of increasing the responsibility of the Press from minimal requirements, where minor defamation is involved, to a progressively higher degree where the Press is gambling seriously with the reputation, and especially the Liberty, of citizens in the news.

Respectfully submitted,

CLYDE J. WATTS
Counsel for Respondent

Of Counsel:

WILLIAM ANDRESS, JR.
Fidelity Union Life Building
Dallas, Texas

WATTS, LOONEY, NICHOLS & JOHNSON
219 Couch Drive
Oklahoma City, Oklahoma 73102

January, 1967

APPENDIX

AFFIDAVIT

STATE OF OKLAHOMA
SS
OKLAHOMA COUNTY

CLYDE J. WATTS, having been duly sworn, on oath states:

1) He is a practicing attorney in Oklahoma City, a member of the Bar of the Supreme Courts of the United States of America and the State of Oklahoma. He is counsel for Respondent, Edwin A. Walker, in the instant case, and also represented Edwin A. Walker in Case WC-29-62, U. S. District Court for the Northern District of Mississippi, "United States of America v. Edwin A. Walker," wherein Walker was charged with crimes as hereafter set forth.

2) On the night of September 30, 1962, Associated Press published on its World-wide news wires that "former Maj. Gen. Edwin Walker led a charge of about 1,000 students against the Marshals" (R. 1225, 1229, 1240).

3) On October 1, 1962, the U. S. Attorney at Oxford, Mississippi, filed a Complaint against Walker, "on the basis of information obtained from Van H. Savell" (Associated Press newsman), charging him with: 1) Insurrection, 2) Assaulting U. S. Officers, 3) Sedition, 4) Seditious conspiracy. (See Apx. vi-vii.)

4) On the same date, Walker was committed to the custody of the U. S. Marshal for the Northern District of Mississippi, who was ordered to commit him in a place of confinement within the Northern District of Mississippi. (See Apx. viii-ix.)

5) Within a few hours after this commitment for confinement in the Northern District of Mississippi, the U. S. Marshall received a telegram from the U. S. Director of Prisons, directing that Walker be committed to the U. S. Medical Center at Springfield, Missouri. (See Apx. ix.) *Without a Court Order,* and without a reasonable opportunity to make the $100,000.00 bail fixed by the U. S. Commissioner, Walker was placed upon a border patrol plane, without being told where he was being taken, and transported to Springfield, Missouri, where he was committed to the custody of the Warden of the U. S. Medical Center.

6) On October 2, 1962, the U. S. Attorney at Oxford, Miss., filed with the Federal Court a Motion for Judicial Determination of Mental Capacity (see Apx. x-xiii) with attached Affidavit by Dr. Charles E. Smith, Chief Psychiatrist of the Federal Bureau of Prisons, who had never seen Walker, stating that he had "examined carefully various news reports concerning General Walker's actions and behavior, including . . . news reports of his appearances on the University Campus during the past several days." "Some of his *described behavior* reflects . . . bizarre outbursts of the types often observed in indiivduals suffering with paranoid mental disorders . . . I believe his recent behavior may be indicative of an underlying mental disturbance."

7) On the same date, and pursuant to such motion, the U. S. District Judge at Oxford ordered Walker to be "transferred and committed" to the Medical Center for Federal Prisoners at Springfield, Mo., which Order was entered without notice to Walker, representation by counsel or a hearing, and at a time when Walker had already been transferred to Springfield. (Apx. xiv-xv.)

8) Walker's Petition for *Writ of Habeas Corpus* in the U. S. District Court, filed October 3, 1962, could not receive a prompt hearing, under Order of the Court that Answer and Briefs should be filed by October 9, 1962 and the

Respondent (Warden) was granted until October 14, 1962, to file answer and return certifying the true cause for detention of Walker (Apx. xvi-xviii). Time was allowed for filing of briefs. Meanwhile Walker was in Prison in Missouri, until released on bond by the Mississippi Court on October 6, 1962.

9) In addition to the original false report that Walker had assumed command of the mob and led a charge against U. S. Marshals, Associated Press proceeded to slant the news coverage concerning Walker as follows:

a) Extensive World-wide coverage was given to Walker's arrest and commitment to the mental hospital, including one feature story that Al Capone had once been an inmate and that many of the inmates were lunatics and sexual deviates (Apx. xix).

b) No coverage was given to the fact that Walker's rights had been violated, in transporting him to Springfield, without a Court Order, and without reasonable time to make bail, and subsequently committing him, without notice, counsel or hearing, upon the Affidavit of a psychiatrist who had never examined him or even seen him.

c) At a hearing before the Federal Court in Oxford on Oct. 21, 1962, extensive coverage was given on the national "A" wire of Associated Press, that government psychiatrists had questioned Walker's mentality (R. 1384). Report of the Court appointed Psychiatrist, including his statement that "Walker was functioning under the superior level of intelligence" was placed upon the "B" wire, with limited local circulation (R. 1373, 1419). The trial judge was misquoted by the AP as having indicated that the latter report expressed no opinion as to Walker's sanity (R. 1395).

d) After the Department of Justice dismissed its charges against Walker, the story was de-emphasized by an insertion that the charges could be re-filed at any time within five years (R. 1425-6).

10) Based upon extensive investigation of the actions of Associated Press newsmen in the handling of the Walker case, and the depositions and testimony of several high level executives of Associated Press, affiant takes issue with the conclusions in the Affidavit of Mr. W. D. Maxwell that more latitude for reporters of the News Service is required by the Constitution for "on the scene spot news reports," and that "true freedom of the Press cannot endure unless the Press can report, in depth and detail and without fear of economic reprisal, all the news of the day *as received.*" Affiant would respectfully suggest to Mr. Maxwell, and to the news media, generally, that their newsmen should be trained and disciplined to avoid false charges of criminal acts against even "public figures." Associated Press Newsrooms should be instructed that Associated Press would be responsible for false reports of acts constituting the commission of a crime, at least until the alleged criminal is taken into custody. This should not delay the reporting of actual news more than a few hours at the most and would avoid the spectre of having a "public figure" arrested upon the public statement of a newsman, who may have "made the news," rather than reported the news.

11) It is also respectfully suggested that, if the news media is relieved from financial responsibility for defamation so serious as to cause arrest of the victim, news, as a very salable commodity, will become competitive upon the basis of relative sensationalism of the report, with the less spectacular true and accurate news becoming consistently less marketable. Removal of financial responsibility, as a

guarantee for accuracy and integrity, would ultimately do do more harm than good to the news media, in terms of loss of public confidence.

12) It is finally respectfully suggested that, since riots and civil disorders present problems increasingly similar to war-time combat, the Wire Services could profitably copy the basic requirement that combat reconaissance patrols travel in pairs. Such a directive by Associated Press to its newsmen would have avoided the Walker debacle, and would have prevented confinement of an innocent man for six gruesome days and nights in a Prison Hospital for criminal insane, under maximum security and in solitary confinement. There must be a better way to provide "on the spot" news coverage than to eliminate, by Constitutional construction, what little restraint and discipline may exist among certain merchants of news.

CLYDE J. WATTS

Subscribed and sworn to before me on January ____, 1967.

Notary Public

My Commission Expires:

[APPENDIX]

FILED IN EVIDENCE
IN SUIT NO. 160536
OCT 18 1965
(Name illegible)
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF MISSISSIPPI, WESTERN DIVISION

Commissioner's Docket No. 1
Case No. 61

	)	COMPLAINT for
UNITED STATES OF AMERICA	)	VIOLATION OF
v.	)	U. S. C. Title 18
EDWIN WALKER	)	Sections 111, 372, 2383,
	)	and 2384

BEFORE Omar D. Craig, Oxford, Mississippi.

The undersigned complainant being duly sworn states:

That on or about September 30, 1962, at Lafayette County, in the Northern District of Mississippi, Edwin Walker did forcibly assault, resist, oppose, impede, imtimidate, and interfere with United States marshals and persons employed to assist such marshals, the marshals being a class of persons designated in Section 1114, Title 18, United States Code, while engaged in the performance of their official duties, in violation of Section 111, Title 18, United States Code;

That said defendant and other persons unknown in the state of Mississippi, did conspire to prevent by force, intimidation, and threats United States Marshals from discharging their duties and to injure them in their person while engaged in the lawful discharge of the duties of their office, in violation of Section 372, Title 18, United States Code;

That said defendant did incite, assist, and engage in an insurrection against the authority of the United States and the laws thereof, in violation of Section 2383, Title 18, United States Code;

That said defendant and other persons unknown in the state of Mississippi, did conspire to and oppose by force the authority of the United States and by force to prevent, hinder, and delay the execution of the laws of the United States, in violation of Section 2384, Title 18, United States Code.

And the complaint states that this complaint is based on information and belief *on the basis of information obtained from Van H. Savell.*

/s/ H. M. RAY
United States Attorney

Sworn to before me, and subscribed in my presence, October 1, 1962.

/s/ Omar D. Craig
United States Commissioner

[APPENDIX]

FILED
This 8 day of Oct. 1962
— T. Robertson, Clerk
By Shirley S. Lumpkin
Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

Commissioner's Docket No. 1
Case No. 61

UNITED STATES OF AMERICA	)	FINAL COMMITMENT
v.	)	of
EDWIN WALKER	)	EDWIN WALKER

To: The United States Marshal of the Northern District Mississippi;

You are hereby commanded to take the custody of the above named defendant and to commit him with a certified copy of this commitment to the custodian of a place of confinement within the Northern District of Mississippi approved by the Attorney General of the United States where the defendant shall be received and safely kept until discharged in due course of law. The above named defendant was arrested upon the complaint of H. M. Ray, United States Attorney, charging that on or about 30 Sept., 1962, in the Northern District of Mississippi, the defendant did Assault, resist, and impede officers and employees of the United States, and conspire to impede and injure officers of the United States, insurrection, and seditious conspiracy, in violation of U.S.C. Title 18, Sections 111, 372, 2383, and 2384, and he, (*having duly waived preliminary examination before me on* Oct. 1, 1962), has been directed to furnish bond in the sum of One Hundred Thousand dollars ($100,000.00) for his appearance in the United States District Court for the Northern District of Mississippi at Oxford, Mississippi,

in accordance with all orders and directions of the court relative to his appearance before the court, and he failed to do so.

/s/ Omar D. Craig
United States Commissioner

Dated: October 1, 1962

Omar D. Craig

TO WARDEN RUSSELL SETTLE FROM DIRECTOR

OCT. 2

HERE IS A COPY OF THE TELEGRAM FORWARDED LAST NIGHT TO JOHN H. PHILLIPS UNITED STATES MARSHAL POST OFFICE AND FEDERAL BUILDING OXFORD MISSISSIPPI QUOTE IN VIEW OF FACT THAT THERE IS NO AVAILABLE SUITABLE FACILITY FOR THE TEMPORARY DETENTION OF EDWIN A. WALKER ELSEWHERE THAN IN THE MEDICAL CENTER FOR FEDERAL PRISONERS AT SPRINGFIELD MISSOURI YOU ARE AUTHORIZED AND DIRECTED TO PROMPTLY COMMIT WALKER THERE PENDING FURTHER ACTION ACTION BY APPROO APPROPRIATE COURT JAMES V. BENNETT DIRECTOR UNQUOTE END ACA

WILLDEL MSG TU END ENDM

[APPENDIX]

FILED
2 October 1962
Claude F. Clayton
District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

UNITED STATES OF AMERICA	)	
v.	)	No. W-C-29-62
EDWIN A. WALKER	)	

MOTION FOR JUDICIAL DETERMINATION OF MENTAL COMPETENCY

Comes now the United States of America by H. M. Ray, United States Attorney for the Northern District of Mississippi, and moves this Court for a judicial determination as to the mental competency of the defendant Edwin A. Walker under the provisions of Section 4244, Title 18, U. S. Code, and for grounds for this motion would respectfully show the following:

1) That on October 1, 1962, a complaint was filed with the United States Commissioner, Oxford, Mississippi, against this defendant charging him with—

> forcibly assaulting, resisting, opposing, impeding, intimidating, and interfering with United States Marshals and persons employed to assist such marshals, the marshals being a class of persons designated in Section 1114, Title 18, United States Code, while engaged in the performance of their official duties, in violation of Section 111, Title 18, United States Code;
>
> conspiring, with other persons unknown in the State of Mississippi, to prevent by force, intimidation, and threats United States Marshals from discharging their duties and to injure them in their

person while engaged in the lawful discharge of the duties of their office, in violation of Section 372, Title 18, United States Code;

inciting, assisting, and engaging in an insurrection against the authority of the United States and the laws thereof, in violation of Section 2383, Title 18, United States Code;

conspiring to and opposing by force, with other persons unknown in the State of Mississippi, the authority of the United States and by force to prevent, hinder, and delay the execution of the laws of the United States, in violation of Section 2384, Title 18, United States Code;

and that bond was fixed in the sum of $100,000.00;

2) That Dr. Charles E. Smith, Medical Director and Chief Psychiatrist of the Federal Prison Bureau, has informed James V. Bennett, Director of the Federal Bureau of Prisons, who in turn has informed the United States Attorney, by telegram, a copy of which is attached hereto as Exhibit "A", that there is probable cause to believe that the defendant is suffering from a mental disturbance;

3) That on the basis of the aforesaid information furnished concerning this defendant, the United States Attorney has reasonable cause and does believe that it is very likely that the defendant Edwin A. Walker may be presently insane or otherwise so mentally incompetent as to be unable to understand the proceedings against him or properly to assist in his own defense; that the Court should cause the defendant to be examined as to his mental condition; and that for the purpose of this examination the defendant should be com-

mitted to a suitable hospital or other facility to be designated by the Court.

Respectfully submitted,

/s/ H. M. Ray
H. M. Ray
United States Attorney

AFFIDAVIT

United States of America
Northern District of Mississippi

This day personally appeared before me, the undersigned authority, H. M. Ray, U. S. Attorney for the Northern District of Mississippi, who being by me first duly sworn according to law, upon his oath states that to the best of his knowledge, information, and belief, the matters and things set forth in the foregoing motion are true and correct as therein stated.

/s/ H. M. Ray
H. M. Ray
United States Attorney

Sworn to and subscribed before me this the 2nd day of October, 1962.

William T. Robertson, Clerk
By /s/ Katherine H. Butts
Deputy Clerk

(SEAL)

I hereby certify that the foregoing is a true copy of the original thereof now in my office.
Attest 10-16-65
William T. Robertson, Clerk
By Gena S. Lamb, D.C.

October 2, 1962

Telegram to Mr. Hosea M. Ray, United States Attorney, Oxford, Mississippi

The following is a memorandum to me concerning Edwin A. Walker submitted by Dr. Charles E. Smith, Medical Director and Chief Psychiatrist of the Federal Prison Bureau: "I have carefully examined various news reports concerning General Walker's actions and behavior including his appearance before the Committee of the United States Senate on Armed Forces in April of this year and news reports of his appearances on the University Campus during the past several days STOP Some of his described behavior reflects sensitivity and essentially unpredictable and seemingly bizarre outbursts of the types often observed in individuals suffering with paranoid mental disorders. There are also indications in his medical history of functional and psychosomatic disorders which could be precursers of the more serious disorders which his present behavior suggests. From this and other information available to me I believe his recent behavior has been out of keeping with that of a person of his station, background, and training, and that as suggested it may be indicative of an underlying mental disturbance. Signed Charles E. Smith." The foregoing being forwarded to you in affidavit form by air mail.

James V. Bennett
Director of Prisons

Exhibit "A"

[APPENDIX]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

UNITED STATES OF AMERICA	)	
v.	)	No. W-C-29-62
EDWIN A. WALKER	)	

ORDER COMMITTING DEFENDANT
FOR PSYCHIATRIC EXAMINATION

On a motion filed by the United States Attorney for a judicial determination of the mental compentency of the above-named defendant under the provisions of Section 4244, Title 18, United States Code, the Court advises that the motion is sufficient and should be sustained.

It is, therefore,

ORDERED:

That the defendant be transferred and committed to the Medical Center for Federal Prisoners, Springfield, Missouri, for psychiatric examination and there remain for such reasonable time for such examination as may be determined by the Center to be necessary or desirable for the completion of such examination;

That upon completion of said examination a report of the results thereof be transmitted to this Court;

That the Attorney General of the United States of America, upon receipt of a certified copy of this order, deliver defendant to said Center; and upon completion of said examination said Center notify the Attorney General of the United States or his duly authorized representatives and the United States Marshal for the Northern District of Mississippi; and upon receipt of the notice the Attorney General or his duly authorized representatives shall then return the defendant to the custody of the United States Marshal for the Northern District of Mississippi;

That for delivery of said defendant to the Medical Center for Federal Prisoners and subsequently returning said defendant to the jurisdiction of this Court, a certified copy of the order shall be full warrant and authority to the Attorney General of the United States or his duly authorized representatives and to the said United States Marshal.

This the 2nd day of October, 1962.

/s/ Claude F. Clayton
Claude F. Clayton
District Judge

(SEAL)

I hereby certify that the foregoing is a true copy of the original thereof now in my office.
Attest 10-16-65
William T. Roberston, Clerk
By Gena S. Lamb, D.C.

[APPENDIX]

FILED
OCT 4 1962
J. C. Truman, Clerk
By Axie Powell
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

EDWIN A. WALKER	)	
Petitioner,	)	
-vs-	)	
DR. R. O. SETTLE, Warden of the	)	No. 14068-K.C.
United States Medical Center,	)	
Springfield, Missouri.	)	
Respondent.	)	

ORDER TO SHOW CAUSE

Petitioner has this day filed his petition for Writ of Habeas Corpus praying that this Court "take cognizance of the manner in which Petitioner is being restrained and denied his liberty by the Respondent; and that a writ be issued directing the Respondent to show cause why Petitioner should not be immediately released from custody and restored to his full liberty; that Petitioner be given an opportunity to make bail in a reasonable amount under the protection and supervision of this Honorable Court; that Petitioner have such further relief as may appear just and proper."

Petitioner alleges that he is being held "by virtue of an order issued by Omar D. Craig, United States Commissioner for the Northern District of Mississippi, Western Division, dated the 1st day of October 1962"; that he "was illegally transported from the Northern District of Mississippi to the Western District of Missouri by virtue of a telegram to John H. Phillips, U. S. Marshal, of Oxford, Mississippi, from James V. Bennett, Director of Prisons";

and that he is "further held by virtue of an order made by Claude F. Clayton, District Judge of the United States District Court for the Northern District of Mississippi," dated October 2, 1962. Petitioner's allegations concerning alleged violations of his Constitutional rights raise numerous questions that may not necessarily need to be determined simultaneously.

Specifically, Petitioner in Paragraph 4A(1) of his petition, alleges that his Constitutional rights have been violated in that he "has been and is being denied his right of bail."

On the other hand, Petitioner's allegations concerning the validity of the order of the U. S. Commissioner, the telegraphic direction from the Director of Federal Prisons to the Marshal in the Northern District of Mississippi, and the order of the United States District Court for the Northern District of Mississippi raise different and separable questions of law.

For that reason the Court orders that:

1. On or before Tuesday, October 9, 1962, Respondent shall make answer and file a return as to why Petitioner should not be given an opportunity to make bail.

2. Counsel for Respondent and counsel for Petitioner shall file simultaneous suggestions in support of their respective legal positions on or before Tuesday, October 9, 1962. The Court requests counsel for both parties to submit authorities on the question of:

(a) Whether any defendant is entitled to bail under circumstances which would assume the validity of the orders under which Petitioner is presently confined.

(b) Whether, assuming petitioner is entitled to bail, this Court or some other United States Court has

jurisdiction to admit Petitioner to bail consistent with Rule 46 of the Rules of Criminal Procedure and Article VIII of the Constitution of the United States.

3. Respondent, within ten (10) days of this order, shall further file an answer and return certifying the true cause of the detention of Petitioner in accordance with Chapter 153 of the United States Code.

4. Counsel for Petitioner may file with the Court such suggestions in support of Petitioner's petition for writ of habeaus corpus at the earliest convenient time.

5. Counsel for Respondent shall file an answer brief within ten *(10) days of the filing* of the Petitioner's suggestions.

6. Thereafter, if counsel for Petitioner so desire, they may have an additional five (5) days in which to reply to Respondent's answer brief.

7. Counsel are directed to file the originals of all papers in the Western Division of this Court at Kansas City, Missouri, but that, in order that a copy of all papers filed be available in the Southern Division at Springfield, Missouri, copies of all papers be filed in the Southern Division at Springfield, Missouri.

8. The Court will set a date for hearing after all documents above required to be filed are in fact filed.

IT IS SO ORDERED.

/s/ (Name illegible)
Judge

Springfield, Missouri
October 4, 1962

A 21 NU

"Deputy Atty. Gen. Nicholas Katzenbach ordered Walker's arrest after the 53 year old Texan led one student charge against federal marshals on the U. of Miss. Campus and later appeared in the midst of rioting in downtown Oxford."

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"The Springfield Center known to some as the 'Country Club of Federal Prisons' is no stranger to celebrities. Al Capone was there once and Robert Stroud, the famed 'Birdman of Alcatraz' is one of the present inmates."

"Most of the prisoners in the center which takes in some 12-15 buildings at the South Side of the Southwest Missouri city nestled in the Ozark Mountains, are mental patients. A good many are sexual deviates also."