Appendix D

ACLU / US Supreme Court Case Summaries

1. Gitlow v. New York

(Decided June 8, 1925; 268 U.S. 652)

I. ISSUE

A. Issues Discussed

First Amendment, Fourteenth Amendment, freedom of speech and of the press

B. Legal Question Presented

Does a state statute regulating speech by prohibiting advocacy of criminal anarchy deprive the defendant of freedom of speech or of the press in violation of the due process clause of the Fourteenth Amendment?

C. Supreme Court's Answer

The state statute is constitutional. However, fundamental rights federally protected under the First Amendment, such as freedom of speech and press, are protected from state impairment by the due process clause of the Fourteenth Amendment.

II. CASE SUMMARY

A. Background

"The defendant [was] a member of the Left Wing Section of the Socialist Party [which] was organized nationally at a conference in New York City in June, 1919 . . . . The conference elected a National Council, of which the defendant was member, and left to it the adoption of a 'Manifesto.' This was published in The Revolutionary Age, the official organ of the Left Wing. . . . Sixteen thousand copies were printed [and] paid for by the defendant, as business manager of the paper . . . . [D]efendant signed a card subscribing to the Manifesto and Program of the Left Wing [and] went to different parts of the State to speak to branches of the Socialist Party about the principles of the Left Wing and advocated their adoption.

[The Manifesto] advocated, in plain and unequivocal language, the necessity of accomplishing the 'Communist Revolution' by a militant and 'revolutionary Socialism,' based on 'the class struggle' and mobilizing the 'power of the proletariat in action,' through mass industrial revolts developing into mass political strikes and 'revolutionary mass action,' for the purpose of conquering and destroying the parliamentary state and establishing in its place, through a 'revolutionary dictatorship of the proletariat,' the system of Communist Socialism."

Defendant was "convicted and sentenced to imprisonment" by the trial court. "The Court of Appeals held that the Manifesto 'advocated the overthrow of [the] government by violence, or by unlawful means.' . . . And both the Appellate Division and the Court of Appeals held the statute constitutional."

The Supreme Court granted certiorari to review the case and affirmed the judgment of the Court of Appeals.

B. Counsel of Record / ACLU Attorney

ACLU Side (Petitioner / Appellant): Walter H. Pollak and Walter Nelles argued the cause for appellant.

Opposing Side (Respondent / Appellee): John Caldwell Myers and W. J. Wetherbee argued the cause for appellee.

III. AMICI CURIAE

ACLU Side (Petitioner / Appellant)

No briefs of amici curiae were filed in support of appellant.

Opposing Side (Respondent / Appellee)

No briefs of amici curiae were filed in support of appellee.

IV. THE SUPREME COURT'S DECISION

In upholding the statute and affirming the Court of Appeals decision, the Court determined "[t]he statute does not penalize the utterance or publication of abstract 'doctrine' or academic discussion having no quality of incitement to any concrete action. . . . What it prohibits is language advocating, advising or teaching the overthrow of organized government by unlawful means. [The Manifesto] advocates and urges in fervent language mass action which shall progressively foment industrial disturbances and through political mass strikes and revolutionary mass action overthrow and destroy organized parliamentary government."

The Court "assume[d] that freedom of speech and of the press—which are protected by the First Amendment from abridgment by Congress—are among the fundamental personal rights and 'liberties' protected by the due process clause of the Fourteenth Amendment from impairment by the States." However, "[i]t is a fundamental principle, long established, that the freedom of speech and of the press which is secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility. . . ."

State "'statutes may only be declared unconstitutional where they are arbitrary or unreasonable attempts to exercise authority vested in the State in the public interest.' That utterances inciting to the overthrow of organized government by unlawful means, present a sufficient danger of substantive evil to bring their punishment within the range of legislative discretion, is clear. Such utterances, by their very nature, involve danger to the public peace and to the security of the State."

The Court ultimately found "that the statute is not in itself unconstitutional, and that it has not been applied in the present case in derogation of any constitutional right . . . ."

V. JUSTICE VOTE

2 Pro ACLU Side vs. 7 Con Opposing Side

ACLU Side (Petitioner / Appellant)

1. Holmes, O. – Wrote dissenting opinion
2. Brandeis, L. – Joined dissenting opinion

Opposing Side (Respondent / Appellee)

1. Sanford, E. – Wrote majority opinion
2. Taft, W. – Joined majority opinion
3. Van Devanter, W. – Joined majority opinion
4. McReynolds, J. – Joined majority opinion
5. Sutherland, G. – Joined majority opinion
6. Butler, P. – Joined majority opinion
7. Stone, H. – Joined majority opinion

VI. A WIN OR LOSS FOR THE ACLU?

The ACLU, as attorney of record, urged reversal of the judgment of the Court of Appeals; the Supreme Court affirmed in a 7-2 vote, giving the ACLU an apparent loss.

(Some believe that this case should be viewed as a win overall because the Court established in Gitlow that fundamental rights, such as freedom of speech and press, must not be impaired by the states, incorporating these rights under the due process clause of the Fourteenth Amendment.)

2. Whitney v. California

(Decided May 16, 1927; 274 U.S. 357)

I. ISSUE

A. Issues Discussed

Due process, equal protection

B. Legal Question Presented

Whether the Criminal Syndicalism Act in California violates either the due process or equal protection clauses of the Fourteenth Amendment.

C. Supreme Court's Answer

The Criminal Syndicalism Act in California does not violate either the due process clause or equal protection clause of the Fourteenth Amendment.

II. CASE SUMMARY

A. Background

Defendant was a member of the Community Labor Party. She was "charged, in five counts, with violations of the Criminal Syndicalism Act of [California]. She was tried, convicted on the first count, and sentenced to imprisonment. The judgment was affirmed by the District Court of Appeal."

"The first count of the information, on which the conviction was had, charged that on or about November 28, 1919, in Alameda County, the defendant, in violation of the Criminal Syndicalism Act, 'did then and there unlawfully, willfully, wrongfully, deliberately and feloniously organize and assist in organizing, and was, is, and knowingly became a member of an organization, society, group and assemblage of persons organized and assembled to advocate, teach, aid and abet criminal syndicalism.'"

On certiorari the Supreme Court affirmed the judgment of the District Court of Appeal, upholding the conviction.

B. Counsel of Record / ACLU Attorney

ACLU Side (Petitioner / Appellant): Walter H. Pollak argued the cause for appellant. With him on the brief were John Francis Neylan, Thomas Lloyd Lennon, Walter Nelles, and Ruth I. Wilson.

Opposing Side (Respondent / Appellee): John H. Riordan argued the cause for appellee. With him on the brief was Attorney General of California U. S. Webb.

III. AMICI CURIAE

ACLU Side (Petitioner / Appellant)

No briefs of amici curiae were filed in support of appellant.

Opposing Side (Respondent / Appellee)

No briefs of amici curiae were filed in support of appellee.

IV. THE SUPREME COURT'S DECISION

"By enacting the provisions of the Syndicalism Act the State has declared, through its legislative body, that to knowingly be or become a member of or assist in organizing an association to advocate, teach or aid and abet the commission of crimes or unlawful acts of force, violence or terrorism as a means of accomplishing industrial or political changes, involves such danger to the public peace and the security of the State, that these acts should be penalized in the exercise of its police power. That determination must be given great weight. Every presumption is to be indulged in favor of the validity of the statute, and it may not be declared unconstitutional unless it is an arbitrary or unreasonable attempt to exercise the authority vested in the State in the public interest. . . .

We cannot hold that, as here applied, the Act is an unreasonable or arbitrary exercise of the police power of the State, unwarrantably infringing any right of free speech, assembly or association, or that those persons are protected from punishment by the due process clause who abuse such rights by joining and furthering an organization thus menacing the peace and welfare of the State.

We find no repugnancy in the Syndicalism Act as applied in this case to either the due process or equal protection clauses of the Fourteenth Amendment on any of the grounds upon which its validity has been here challenged."

The Supreme Court upheld the judgment of the District Court of Appeal.

V. JUSTICE VOTE

0 Pro ACLU Side vs. 9 Con Opposing Side

Opposing Side (Respondent / Appellee)

1. Sanford, E. – Wrote majority opinion
2. Brandeis, L. – Wrote concurring opinion
3. Holmes, O. – Joined concurring opinion
4. McReynolds, J. – Joined majority opinion
5. Sutherland, G. – Joined majority opinion
6. Butler, P. – Joined majority opinion
7. Stone, H. – Joined majority opinion
8. Taft, W. – Joined majority opinion
9. Van Devanter, W. – Joined majority opinion

VI. A WIN OR LOSS FOR THE ACLU?

The ACLU, as attorney of record, urged reversal of the judgment of the District Court of Appeal; the Supreme Court affirmed in a 9-0 vote, giving the ACLU an apparent loss.

3. Stromberg v. California

(Decided May 18, 1931; 283 U.S. 359)

I. ISSUE

A. Issues Discussed

Freedom of speech

B. Legal Question Presented

Whether any part of a state statute prohibiting displays of red flags or banners is so vague as to make a conviction under the statute invalid under the liberty protections of the due process clause of the Fourteenth Amendment?

C. Supreme Court's Answer

Part of the statute is so vague that the conviction cannot be upheld.

II. CASE SUMMARY

A. Background

"[T]he appellant . . . was one of the supervisors of a summer camp for children . . . . Appellant was a member of the Young Communist League, an international organization affiliated with the Communist Party. The charge against her concerned a daily ceremony at the camp, in which the appellant supervised and directed the children in raising a red flag, 'a camp-made reproduction of the flag of Soviet Russia, which was also the flag of the Communist Party in the United States.'"

Appellant was convicted under a state statute prohibiting the display of a red flag "as a sign, symbol or emblem of opposition to organized government or as an invitation or stimulus to anarchistic action or as an aid to propaganda that is of a seditious character." Appellant argued "that, under the Fourteenth Amendment, the statute was invalid as being 'an unwarranted limitation on the right of free speech.'"

The District Court affirmed the superior court's judgment. On appeal the Supreme Court reversed the District Court's judgment, determining that part of the statute was "so vague" as to be "repugnant to the guaranty of liberty contained in the Fourteenth Amendment."

B. Counsel of Record / ACLU Attorney

ACLU Side (Petitioner / Appellant): John Beardsley argued the cause for appellant.

Opposing Side (Respondent / Appellee): John D. Richer argued the cause for appellee.

III. AMICI CURIAE

ACLU Side (Petitioner / Appellant)

No briefs of amici curiae were filed in support of appellant.

Opposing Side (Respondent / Appellee)

No briefs of amici curiae were filed in support of appellee.

IV. THE SUPREME COURT'S DECISION

"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 . . . is a fundamental principle of our constitutional system. A statute which upon its face, is so vague and indefinite as to permit the punishment of the fair use of this opportunity is repugnant to the guaranty of liberty contained in the Fourteenth Amendment. The first clause of the statute being invalid upon its face, the conviction of the appellant, which so far as the record discloses may have rested upon that clause exclusively, must be set aside."

The decision revolves around whether any part of a statute prohibiting displaying the red flag "as a sign, symbol or emblem of opposition to organized government or as an invitation or stimulus to anarchistic action or as an aid to propaganda that is of a seditious character" is so vague as to necessitate setting aside a conviction under the statute.

The state court reasoned that "[t]he constitutionality of the phrase . . . , 'of opposition to organized government,' is questionable." However, the state court upheld the two subsequent clauses of the statute addressing "anarchistic action" and "seditious character" and "the conviction of the appellant was sustained."

The Supreme Court reversed, reasoning that the clause identified by the state court was vague, the verdict "did not specify the ground upon which it rested" and "if any of the clauses in question is invalid under the Federal Constitution, the conviction cannot be upheld."

The Supreme Court reversed the judgment of the District Court.

V. JUSTICE VOTE

7 Pro ACLU Side vs. 2 Con Opposing Side

ACLU Side (Petitioner / Appellant)

1. Stone, H. – Joined majority opinion
2. Roberts, O. – Joined majority opinion
3. Hughes, C. – Wrote majority opinion
4. Holmes, O. – Joined majority opinion
5. Van Devanter, W. – Joined majority opinion
6. Brandeis, L. – Joined majority opinion
7. Sutherland, G. – Joined majority opinion

Opposing Side (Respondent / Appellee)

1. McReynolds, J. – Wrote dissenting opinion
2. Butler, P. – Wrote dissenting opinion

VI. A WIN OR LOSS FOR THE ACLU?

The ACLU, as counsel of record, urged reversal of the judgment of the District Court; the Supreme Court reversed the lower court's decision in a 7-2 vote, giving the ACLU an apparent win.

4. Powell v. Alabama

(Decided November 7, 1932; 287 U.S. 45)

I. ISSUE

A. Issues Discussed

Right to counsel

B. Legal Question Presented

"[W]hether the defendants were in substance denied the right of counsel, and if so, whether such denial infringes the due process clause of the Fourteenth Amendment."

C. Supreme Court's Answer

The defendants were effectively denied the right to counsel in violation of the due process clause of the Fourteenth Amendment.

II. CASE SUMMARY

A. Background

Defendants were "negroes charged with the crime of rape, committed upon the persons of two white girls." The record of the arraignment shows "that on the same day the defendants were arraigned and entered pleas of not guilty. There is a further recital to the effect that upon the arraignment they were represented by counsel. But no counsel had been employed, and aside from a statement made by the trial judge several days later during a colloquy immediately preceding the trial, the record does not disclose when, or under what circumstances, an appointment of counsel was made, or who was appointed. During the colloquy referred to, the trial judge, in response to a question, said that he had appointed all the members of the bar for the purpose of arraigning the defendants and then of course anticipated that the members of the bar would continue to help the defendants if no counsel appeared.

There was a severance upon the request of the state, and the defendants were tried in three several groups . . . . Each of the three trials was completed within a single day. . . . The juries found defendants guilty and imposed the death penalty upon all. The trial court overruled motions for new trials and sentenced the defendants in accordance with the verdicts. The judgments were affirmed by the state supreme court."

On appeal the U.S. Supreme Court reversed the judgment of the Supreme Court of Alabama.

B. Counsel of Record / ACLU Attorney

ACLU Side (Petitioner / Appellant): Walter H. Pollak argued the cause for appellant.

Opposing Side (Respondent / Appellee): Attorney General of Alabama Thomas E. Knight, Jr. argued the cause for appellee.

III. AMICI CURIAE

ACLU Side (Petitioner / Appellant)

No briefs of amici curiae were filed in support of appellant.

Opposing Side (Respondent / Appellee)

No briefs of amici curiae were filed in support of appellant.

IV. THE SUPREME COURT'S DECISION

"The record shows that immediately upon the return of the indictment defendants were arraigned and pleaded not guilty. Apparently they were not asked whether they had, or were able to employ, counsel, or wished to have counsel appointed . . . .

It is hardly necessary to say that, the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice. Not only was that not done here, but such designation of counsel as was attempted was either so indefinite or so close upon the trial as to amount to a denial of effective and substantial aid in that regard."

"[T]he necessity of counsel was so vital and imperative that the failure of the trial court to make an effective appointment of counsel was likewise a denial of due process within the meaning of the Fourteenth Amendment. . . . All that it is necessary now to decide, as we do decide, is that in a capital case, where the defendant is unable to employ counsel, and is incapable adequately of making his own defense because of ignorance, feeble-mindedness, illiteracy, or the like, it is the duty of the court, whether requested or not, to assign counsel for him as a necessary requisite of due process of law; and that duty is not discharged by an assignment at such a time or under such circumstances as to preclude the giving of effective aid in the preparation and trial of the case."

The U.S. Supreme Court reversed the judgment of the Supreme Court of Alabama.

V. JUSTICE VOTE

7 Pro ACLU Side vs. 2 Con Opposing Side

ACLU Side (Petitioner / Appellant)

1. Sutherland, G. – Wrote majority opinion
2. Hughes, C. – Joined majority opinion
3. Van Devanter, W. – Joined majority opinion
4. Brandeis, L. – Joined majority opinion
5. Stone, H. – Joined majority opinion
6. Roberts, O. – Joined majority opinion
7. Cardozo, B. – Joined majority opinion

Opposing Side (Respondent / Appellee)

1. McReynolds, J. – Joined dissenting opinion
2. Butler, P. – Wrote dissenting opinion

VI. A WIN OR LOSS FOR THE ACLU?

The ACLU, as counsel of record, urged reversal of the judgment of the Supreme Court of Alabama; the U.S. Supreme Court reversed in a 7-2 vote, giving the ACLU an apparent win.

5. Patterson v. Alabama

(Decided April 1, 1935; 294 U.S. 600)

I. ISSUE

A. Issues Discussed

Jury trials, racial discrimination

B. Legal Question Presented

Whether exclusion of African-American individuals from the jury pool violates the Fourteenth Amendment.

C. Supreme Court's Answer

Exclusion of African-American individuals from the jury pool was unconstitutional and the judgment must be vacated.

II. CASE SUMMARY

A. Background

"After the remand [in *Powell v. Alabama*], all of the cases were transferred for trial to Morgan County. Patterson was the first of those retried. The jury found a verdict against him which the trial judge set aside as against the weight of evidence. He was then brought to trial for a third time before another judge, in November, 1933, and was again convicted. The judgment was affirmed by the Supreme Court of [Alabama]. . . .

At the beginning of the last trial, as on the previous trial, a motion was made on Patterson's behalf to quash the indictment upon the ground of the exclusion of negroes from juries in Jackson county where the indictment was found. Defendant also moved to quash the trial venue in Morgan County because of the exclusion of negroes from jury service in that county. In each of these motions, defendant contended that there was a long-continued, systematic, and arbitrary exclusion of qualified negroes from jury service, solely by reason of their race or color, in violation of the Federal Constitution (amendment 14, § 1)." The trial judge denied the motions.

On appeal the Supreme Court vacated the judgment of the Supreme Court of Alabama.

B. Counsel of Record / ACLU Attorney

ACLU Side (Petitioner / Appellant): Walter H. Pollak argued the cause for appellant. With him on the brief were Osmond K. Fraenkel and Carl S. Stern.

Opposing Side (Respondent / Appellee): Attorney General of Alabama Thomas E. Knight, Jr. argued the cause for appellee.

III. AMICI CURIAE

ACLU Side (Petitioner / Appellant)

No briefs of amici curiae were filed in support of appellant.

Opposing Side (Respondent / Appellee)

No briefs of amici curiae were filed in support of appellee.

IV. THE SUPREME COURT'S DECISION

"[T]he state, by its Attorney General, contends that this Court has no jurisdiction in the instant case, in the view that the decision of the state court rested entirely upon a question of state appellate procedure and that no federal question is involved."

"While we must have proper regard to this ruling of the state court in relation to its appellate procedure, we cannot ignore the exceptional features of the present case. An important question under the Federal Constitution was involved, and, from that standpoint, the case did not stand alone. . . . The validity of the common indictment had been challenged by a motion on behalf of both defendants because of the unconstitutional discrimination."

"We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition on the case as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered. We may recognize such a change, which may affect the result, by setting aside the judgment and remanding the case so that the state court may be free to act. We have said that to do this is not to review, in any proper sense of the term, the decision of the state court upon a nonfederal question, but only to deal appropriately with a matter arising since its judgment and having a bearing upon the right disposition of the case."

The U.S. Supreme Court vacated the judgment of the Supreme Court of Alabama and remanded the case.

V. JUSTICE VOTE

8 Pro ACLU Side vs. 0 Con Opposing Side

ACLU Side (Petitioner / Appellant)

1. Hughes, C. – Wrote majority opinion
2. Sutherland, G. – Joined majority opinion
3. Butler, P. – Joined majority opinion
4. Van Devanter, W. – Joined majority opinion
5. Brandeis, L. – Joined majority opinion
6. Stone, H. – Joined majority opinion
7. Roberts, O. – Joined majority opinion
8. Cardozo, B. – Joined majority opinion

McReynolds, J – Took no part in the decision

VI. A WIN OR LOSS FOR THE ACLU?

The ACLU, as counsel of record, urged reversal of the judgment of the Supreme Court of Alabama; the U.S. Supreme Court vacated in an 8-0 vote, giving the ACLU an apparent win.