

ARE COURTS TAKING A DIM VIEW OF THE MEDIA?

By: Jack Greiner on April 25, 2021 on graydon.law

I came across this [interesting article in](#) the New York Times that explores the relationship between the media and our courts. It appears that relationship may be fraying. According to a law review article cited in the Times piece, “[t]here hasn’t been a single positive reference to the trustworthiness of the press from any justice on the [United States Supreme] court in more than a decade.”

But beyond the lack of positive commentary, there is the issue of more open hostility. The Times article leads off with a discussion of a recent dissent in a routine libel case where Judge Laurence H. Silberman of the U.S. Court of Appeals for the D.C. Circuit wrote that “[t]wo of the three most influential papers (at least historically), The New York Times and The Washington Post, are virtually Democratic Party broadsheets, and the news section of The Wall Street Journal leans in the same direction.”

That of course is a long way from the Supreme Court’s attitude expressed in the 1971 Pentagon Papers where it lauded the role of the New York Times and Washington Post in shining a light on the misdeeds of the U.S. government’s prosecution of the Vietnam war.

So what is the big deal? Does it matter that the courts have developed a chip on their collective shoulders? It might. The landmark 1964 decision in *New York Times v. Sullivan*, which made it far more difficult to politicians and public figures to bring libel cases no doubt reflected a fundamental respect for the role of the media in our democracy. That decision has served us well for 60 years. But more recently, there has been some sentiment, expressed by Justice Clarence Thomas, for revisiting that landmark decision. If courts no longer believe in the value of the media, it may be easier for the courts to accept the notion that *New York Times v. Sullivan* has run its course. And that is not a good thing.