HISTORIC DECISION AIDS 'RIGHTS'

CONSTITUTIONAL Lawyers today were still digesting an historic Supreme Court decision reversing a $500,000 Alabama libel judgment against four Negro ministers and the New York Times. The decision was hailed in some quarters as a new "constitutional landmark for freedom of the press and speech,' and a definite victory for civil rights advocates.

The nine Justices of the nation's highest tribunal were unanimous in setting aside the half-million dollar award arising from a full-page advertisement published in the Times on March 29, 1960. The ad, entitled "Heed Their Rising Voices", sought to raise funds for the defense of Dr. Martin Luther King, Jr., distinguished Negro leader, and for other civil rights causes.

The reversal decision undoubtedly will have an important effect on other litigation involving civil rights cases, including another $500,000 judgment rendered by an Alabama court in connection with the same advertisement.

Another case expected to be influenced by the decision is a libel suit for $2,000,000 against New York Times writer Harrison Salisbury for a series of articles on conditions in Birmingham, Ala. Salisbury, who spoke at Nevada Southern University last week, has been charged with 42 counts of criminal libel. All told, there are libel suits asking for more than $10,000,000 in damages against the Times and the Columbia Broadcasting Co. now on file in Alabama alone.

OBSERVORS SAID THE Supreme Court decision in the 1960 advertisement case would have an immediate and far-reaching effect on press coverage of race relations in the south.

The advertisement case was brought by L. B. Sullivan, a Montgomery, Ala., city commissioner who supervised the police department. The ad attacked conditions in many parts of the south in strong terms and was signed by four Alabama Negro ministers - Fred L. Shuttleworth, J. F. Lowery, Ralph D. Abernathy and S. S. Seay, Sr. All four clergymen claimed their signatures had been used without their permission.

Although no southern official was mentioned by name in the ad, Sullivan and three other Montgomery officials, together with then Alabama governor John P. Patterson, claimed they had been defamed in two paragraphs of the lengthy indictment.

Montgomery was mentioned in one of these paragraphs. An accusation was made that leaders of a Negro college student protest there had been expelled, the campus ringed with police and the college dining hall padlocked to starve the students into submission. Another statement said "southern violators" had bombed King's home and had arrested him seven times among other acts of harassment.

Sullivan was the first to file suit. He claimed the public would connect him with the alleged illegal activity described in the aid, thereby injuring him. He did not try to prove any actual financial loss but under Alabama law, there was no limit on the amount the jury could award for either compensatory or punitive damages. The jury gave Sullivan all he had asked--$500,000.

ANNIVERSARY CELEBRATION- Margaret Stephenson (center), director of Nellis Air Force Base Falcon Service Club, and Nellis recreation director Richard Burch (right) cut cake at club's recent first anniversary party. First in line among large number of Nellis airmen and friends attending affair was A3C Francis Zellar (left), 4520th Combat Support Group.

THE JUDGMENT WAS UPHELD in the Alabama higher courts. They found the ad to be "libelous per se" because it tended to injure Sullivan's reputation and therefore was presumptively malicious.

Herbert Wechsler of New York, who argued the case for the Times, was unable to defend his client on the ground of "absolute truth" because of certain errors in the advertisement. For example, the college dining hall had never been padlocked and Dr. King had been arrested four times instead of seven.

Wechsler therefore based his defense on the contention that the First Amendment to the United States barred libel suits against anyone commenting on the official acts of public officials or at least ruled out so loose a test of libel as had been applied by Alabama.

The ministers were defended by former U. S. Attorney General William P. Rogers and Samuel Pierce, Jr., of New York. Sullivan was represented by M. Roland Nachman, Jr., of Montgomery.

Justice William J. Brennan wrote the Supreme Court decision reversing the award to Sullivan on the grounds presented by Wechsler, with Chief Justice Earl Warren and Justices Tom C. Clark, John Marshall Harlan, Potter Stewart and Byron R. White concurring.

Justices Hugo L. Black and Arthur J. Goldberg, in separate opinions agreeing with the reversal, said the court should have gone further and established the criticism of officials as an absolute privilege, even when

THE TIMES HAD ARGUED that the purpose and effect of such suits as Sullivan's was to discourage detailed coverage of racial situations. This view was supported in friend-of-the-court briefs by the Civil Liberties Union, the Chicago Tribune and the Washington Post.

In extending examination of the issue beyond its racial context, the Supreme Court said that freedom of comment on official conduct as protected by free speech and free press clauses of the First Amendment would be endangered by unlimited libel awards.

"Whether or not a newspaper can survive a succession of such judgments," Brennan wrote, "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."

Noting the admitted errors in the advertisement, Brennan said it would put too great a burden on free speech to make a person sued for libel to prove the absolute truth of every statement.

In effect, the court decision bars libel or slander suits against anyone for comments on official conduct unless malice can be proved. Noting that the opinion was the first time an ordinary civil libel action had been found by the Supreme Court to conflict with the First Amendment, Brennan observed that Sullivan might seek a new trial to prove "actual malice" by the Times and the four ministers.

BRENNAN MADE IT PLAIN, however, that the court would upset any jury verdict for Sullivan based on the sort of evidence produced at the first trial.

At most, Brennan, contended, the Times may have shown "negligence" in failing to discover the misstatements in the ad, rather than the "recklessness" constitutionally required for a finding of actual malice. Brennan further pointed out that it had not been proved that the ministers had known of the errors or even authorized the ad.

In conclusion, the opinion held the evidence "constitutionally defective' in that it could not support the contention that the ad referred to Sullivan at all.

Justice Black's separate opinion protested that the court's findings provided only "stopgap measures." He called for "granting the press an absolute immunity for criticism of the way public officials do their public duty." Black inferred that because of hostitity over the racial issue, a Montgomery jury would have returned a verdict for Sullivan regardless of what rules it was told to apply.

In approaching the matter from a similar view, Justice Goldberg said the right to speak out about public affairs "should not depend upon a probing by the jury of the motivation of the citizen or press."