

FOR RELEASE IN A.M. PAPERS  
OF FRIDAY, APRIL 16, 1954

ADDRESS

BY

HONORABLE HERBERT BROWNELL, JR.  
ATTORNEY GENERAL OF THE UNITED STATES

Prepared for Delivery

at

The Women's National Press Club's  
Dinner for Editors

Hotel Statler

Washington, D. C.

Thursday, April 15, 1954

8:00 P.M.

It always is a sincere pleasure to meet with a group like this.

Yours is a profession in which women have never had much difficulty in making their own way. I think that is evidenced by this dinner party, with the members of the Women's National Press Club playing hostess to the boss -- and doing a fine job of it.

I know of no phase of the newspaper business in which the ladies haven't served with distinction. And I'm not forgetting the press room because I've seen some wives of editors of country weeklies in my native State of Nebraska doing yeoman work there, too.

Of course, not all of the women of the press had to go to such extremes as Nellie Bly. Back in the 1880's, Nellie was working as a reporter on the old "World" in New York City. To investigate conditions at Blackwell's Island, she had herself declared insane by six doctors and committed to the institution. She stayed there, as an inmate, for 10 days. The stories she reported resulted in Grand Jury investigation and ultimate improvement in treatment of the insane.

Her stay at Blackwell's Island also furnished the material for a book, "Ten Days in a Mad House." Now, from what I've seen of some of the hectic times around a news room, a reporter need not go to an asylum to gather material for a book of that title.

To the uninitiated, a news room at deadline often resembles nothing so much as a mad house. The wonder of it is that, despite the constant pressure of deadlines, the pressures of sorting fact from fantasy, our newspapers reflect a great tradition.

That tradition we know as freedom of the press to tell the truth. It's a tradition of your profession -- and one to which you devote a great deal of careful study.

But, freedom of the press is more than just a tradition. It's a very important part of our way of life and, like any privilege, it carries with it very grave responsibilities -- very great public trust.

Freedom of the press is expressly granted to the people in the First Amendment to our Constitution. It's a part of our Bill of Rights.

The men who wrote the Bill of Rights were familiar with the long struggle for freedom of the press in England. It was not uncommon there for writers who criticized the state or the church to be whipped, imprisoned or even exiled.

The case of William Prynne in 1632 is an example of the severity of punishment for libel. Prynne wrote a book. In criticizing plays, he mentioned that lewd women sometimes took parts in plays. It seems that the Queen had taken a role in a pastoral play so Prynne was charged with seditious libel against the Queen. He was convicted, fined 10,000 pounds, sentenced to life imprisonment, his ears cropped off and the book ordered burned. It was of little solace to Prynne that he later was released by Parliament on the ground his trial had been illegal.

England used many methods to control the press. Strict licensing was one. Another was censorship in advance of publication -- including censorship of both factual and editorial comment. Publications were suppressed by taxation, both on the papers and on their advertisements. Prosecutions for libel against officials of papers were frequent.

The picture was similar in early colonial America, and I think that perhaps one case did more than anything else to plant the seed of freedom of the press as we know it. The case was that of John Peter Zenger, in 1735.

In Zenger's day, many of the colonists were incensed because of arbitrary actions of Governor Cosby, then colonial governor of New York. These colonists had no paper which would publish their grievances, so they made arrangements to establish their own publication, the "Weekly New York Journal." They chose as Publisher John Peter Zenger, a German immigrant.

Zenger's first edition carried an article on freedom of the press. It contained some unfriendly barbs at Governor Cosby, and Zenger was promptly charged with criminal libel and arrested.

When his case came to trial, Zenger's attorney was disbarred. Andrew Hamilton, one of the most able attorneys of the day, took over the case. Even so, it looked as though Zenger's cause -- and our cause -- might be lost.

Now -- and consider this in the light of present practices of exposes and publications of unpleasant truths -- the Court followed an English precedent and instructed the jury that truth was no defense. That's right, the question of truth was not involved, the Court said. The sole question the jury could determine was the fact of publication.

Since publication was admitted, the cards seemed stacked against Zenger. However, Hamilton made a masterful speech to the jury. He stressed that the verdict meant much to the future liberty of the nation. The issue, Hamilton argued, was not whether Zenger was responsible for the publication but whether the jury wanted a press restrained by constant legal harassment. The jury's verdict of "not guilty" was the answer. That verdict went far to establish our freedom of the press to tell the truth.

Prior to the adoption of the first 10 amendments, our Constitution did not even refer to freedom of the press. Alexander Hamilton -- and others -- felt that no specific mention was needed.

Thomas Jefferson, however, believed that such a provision should be firmly guaranteed. So strong was Jefferson in this view that he said "were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter." Jefferson's views prevailed. The provision for freedom of the press was included in the First Amendment.

The First Amendment presupposed that the right conclusion would be reached by the people as a result of freedom of speech and of the press, rather than through official dogma. As Mr. Justice Cardozo once said, freedom of expression was "the matrix, the indispensable condition of nearly every other form of freedom" in our country.

The Sedition Law enacted in 1798 constituted one of the last great threats by Congress to freedom of the press in this country. Under this law, publication of any false, scandalous or malicious writings to bring the government, Congress or the President into contempt was made punishable by fine and imprisonment. This law proved to be so abhorrent to the people that it contributed to the demise of the Federalist Party which enacted it. When the law expired in 1801, it was not renewed.

After the Sedition Act of 1798, there were some instances of censorship. In early colonial times, not only did the press fail to enjoy the right of free criticism of public men and affairs, but it was excluded from the legislative halls and denied the privilege of publishing legislative debates. These rules were relaxed by the Senate after the

ratification of the Constitution in 1788. Since the War of 1812, the House has usually convened with the galleries open. Yet in 1846 reporters from "The New York Tribune" were expelled from the House for publication affecting the reputation of some of its members.

In the courts, the First Amendment has been the subject of great controversy. The question soon arose, as in the case of other freedoms guaranteed by the Constitution, where to strike a proper balance between the rights of the press and the rights of society.

The basic tests to be applied both to freedom of press and of speech were laid down in 1919 by the Supreme Court in several cases arising under the Espionage Act of 1917. One defendant -- Schenck -- had mailed circulars to men who had passed exemption boards. The circulars declared conscription to be an unconstitutional despotism and urged the draftees to assert their rights.

Affirming Schenck's conviction, the Court held that the statements published may be prevented and punished if they were of such a nature as to create "a clear and present danger" that they will result in the evils which Congress had authority to avert. It is a question of degree. What was permissible in time of peace, the Court said, might be such an intolerable utterance in time of war as not to be protected by the Constitution. As Mr. Justice Holmes stated for the unanimous Court:

"The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater, and causing a panic."

Another important case involving a newspaper "gag" law came before the Supreme Court in 1931:

Under the laws of Minnesota, a person publishing a lewd or malicious, scandalous or defamatory newspaper could be permanently enjoined from publication as a public nuisance under the police power of the State. "The Saturday Press" of Minneapolis was charged with violating the law in issuing a statement that certain law enforcement officials were in league with criminals.

An injunction was issued which barred the publisher from publishing or circulating any editions for two months back, and barred him from publishing any future editions of the same newspaper. The question was raised whether this law, which permitted prior restraints upon publication was valid. By a five to four vote, the Court, in an opinion by Chief Justice Hughes, held the law to be invalid upon the ground that one of the chief purposes of the guaranty of freedom of the press was to prevent previous restraint upon publication. The remedy, if any, against abuse of freedom of the press was by subsequent punishment.

The Court recognized that freedom of the press may be and has been abused, but declared that is no reason to censor it in advance. Reliance was placed upon a statement of James Madison, architect of the First Amendment, as follows:

"Some degree of abuse is inseparable from the proper use of everything, and in no instance is this more true than in that of the press. It has accordingly been decided \* \* \* that it is better to leave a few of its noxious branches to

their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding the proper fruits."

There were two other points worthy of note in this case:

First, it was held that previous restraints against the press could be applied in extraordinary cases. For example, the Government could prevent publication of sailing dates of troop transports or other information vital to the enemy. So too, incitement to acts of violence and the overthrow by force of the government could be forbidden.

Second, the Court noted that the need for a vigilant and courageous press increased as government became more complex. The opportunity for malfeasance and corruption in office was now greater than ever, and therefore publishers conducting a campaign should not be obstructed by threat of suppression.

Another question before the Supreme Court has been whether the liberty of the press is confined to newspapers and periodicals. Does it also embrace pamphlets and leaflets -- historic weapons in defense of liberty?

Within the meaning of the Constitution, the court has said, the press includes every publication which is a source of information and opinion. Freedom of the press relates not only to publications but also to circulation. Thus, an ordinance which required a permit before distribution of pamphlets, magazines and periodicals of any kind within a city regardless of whether it was obscene, was held to be invalid.

Moreover, the First Amendment was held to apply to any form of previous restraint upon printed newspapers including restraints by taxation of newspapers and their advertising.



In 1934, Huey Long, who dominated politics in Louisiana, attempted to muzzle the large hostile newspapers, by getting the state legislature to pass a special tax on their advertising. The Supreme Court held the tax to be invalid because it constituted a deliberate and calculated device in the guise of a tax to limit the circulation of information to which the public was entitled. The Court said:

"A free press stands as one of the great interpreters between the government and the people. To allow it to be fettered is to fetter ourselves."

Occasionally, freedom of the press has clashed with other rights guaranteed by the Constitution such as the right to a fair trial.

Unfair report of a trial may be punished as a contempt of court if it constitutes a clear and present danger to the administration of justice or to the integrity of the trial. In this way the courts exercise their authority to protect prisoners and litigants from attempts to pervert judicial action.

In a recent case, a publisher of a Florida paper and associate editor were held in contempt of court for publishing two editorials and a cartoon claimed to be contemptuous of the court's handling of certain criminal cases. The cartoon showed a judge on the bench as a compliant figure tossing aside formal charges by handing a document marked "Defendant dismissed" to a sinister criminal looking figure near him. At the right of the bench, a futile individual labeled "Public Interest" vainly protested.

The Supreme Court reversed this conviction, saying through Mr. Justice Reed:

"\* \* \* Freedom of discussion should be given the widest range compatible with the essential requirement of the fair and orderly administration of justice."

In his concurring opinion in this case, Mr. Justice Frankfurter said:

"\* \* \* A free press is not to be preferred to an independent judiciary, nor an independent judiciary to a free press. Neither has primacy over the other; both are indispensable to a free society. The freedom of the press in itself presupposes an independent judiciary through which that freedom may, if necessary, be vindicated. And one of the potent means for assuring judges their independence is a free press."

From these decisions it is plain that freedom of the press is not freedom from responsibility for its exercise. There are many other restraints upon freedom of the press of an indirect character. You know them, of course. A publisher is subject to the laws of slander and libel where statements are deliberately made to blacken the character of a person. Use of obscene language or pictures may subject the publisher to criminal action under state laws, or may deprive him of favorable mailing privileges.

The freedom of the press granted by the First Amendment has by judicial decision been incorporated into the Fourteenth Amendment.

Accordingly, neither the state nor Federal governments may now encroach upon it.

Thus, as a whole, just as the framers of the First Amendment intended, the Courts have given freedom of the press the broadest scope that can be countenanced in an orderly society.

However, the great battles for freedom of the press are not won in the courts alone. They are also won through courage and conviction of citizens everywhere to speak their minds in the town meetings and in letters to the press. Judge Learned Hand expressed the thought in these eloquent words:

"\* \* \* I often wonder whether we do not rest our hopes too much upon constitutions, upon laws and upon courts. These are false hopes; believe me, these are false hopes. Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it; no constitution, no law, no court can even do much to help it. While it lies there it needs no constitution, no law, no court to save it."

We have seen that Congress and the courts have made their contribution to the healthful climate in which our country and our press have grown up together. The Executive Branch of the Government also has done - and will continue to do - its part in freeing various channels of information so that the people may be kept fully informed of events in this and other countries.

President Eisenhower has already done his share by lifting censorship in the Government to the extent consistent with our national defense. As a result of a new Presidential Order issued last fall, there has been a definite increase in the flow of information from the Government to the public which should not be withheld. Every effort will be made hereafter to make information public as soon as the reasons for keeping it secret have passed. Indiscriminate description of information as "security information" has also been ended. The new order of the President achieves the proper balance between the needs of defense and the needs of a free press.

The Department of Justice too has lifted the lid on information previously kept a dark secret from the press. Pardons or commutations are now a matter of public record. Settlements of certain cases involving monetary considerations such as tax claims, damage suits and Alien Property settlements have now been made public.

In addition the Department of Justice has cooperated with the press in making it easier for press photographers to obtain pictures of Federal prisoners. Previously, overzealous United States marshals would interfere with press photographers by keeping criminals concealed or covered while transporting them from jail to courthouse or back. Early this year, the United States marshals were directed that neither they nor their deputies shall, under any circumstances, interfere with a reporter or photographer taking a photograph on the street or in other places outside of the Federal Courthouse. This new regulation has brought

widespread commendation from the entire newspaper community.

The Department of Justice is not only making the job of the press photographer easier in getting his pictures in federal cases but also is guarding him against unlawful state interference. Last month the Department obtained a conviction of the police chief of Newport, Kentucky, for violating the Civil Rights Act. The defendant was fined \$1,000. He had seized the camera of a photographer of the Louisville Courier-Journal, destroyed the films taken during the course of a gambling raid, and then arrested and jailed the photographer. This is believed to be the first civil rights conviction against unlawful state interference with freedom of the press.

Compare then, for a moment, the freedom of the press which exists in this Republic, on the one hand, and in a dictatorship, on the other. Hitler, Stalin and Mussolini each put a padlock on the press. The people under their control have been cut off from nearly all information-- except that sifted and re-sifted for them by their rulers, or that which they can glean by furtive listening to reports from the free world.

There is and cannot be any degree of objectivity, fairness or accuracy in a Communist-controlled newspaper. The purpose of the Iron Curtain newspaper, is not to furnish facts, but to shape the thinking of the people into uniformity of opinion. Control is so tight that even the size of a headline is dictated. It is little wonder that the Communists have reverted to the darkest period of the middle ages where every new thought is deemed to be dangerous.

The Communists need not think that the dangers from within their own and other satellite countries have subsided merely because open differences of opinion on political matters have been exterminated. On the contrary, if the discontented were merely permitted to express their displeasure occasionally their feelings might possibly abate.

It was once said in England that "a man who is not allowed to kill kings and ministers with ink is more, not less, likely to try to murder them with dynamite." There is scarcely any wrong so grievous as one which makes men silent when they want to speak out against oppression. Such conditions help strengthen the will of enslaved people to rid themselves of despotic rulers.

Chief Justice Warren recently said:

"Liberty -- not Communism -- is the most contagious force in the world. It will permeate the Iron Curtain. It will eventually abide everywhere. For no people of any race will long remain slaves."

History has proven -- and will prove again -- how right that statement is. The greatest fear the men in the Kremlin have today is the fear of truth. It is truth which can hurt them most.

"Our strength," Chief Justice Warren continued, "is in our diversity. Our power is in freedom of thought and of research."

The story of the United States teaches us how much may be gained from enlightenment, from free exploration of ideas -- no matter how unorthodox some seemed at first utterance.

The history of the press is studded with great figures -- men of honesty and courage who helped mold our nation.

The patriot press hastened the day of independence for the colonies -- some say by as much as 20 years. In 1840, Horace Greeley of "The New York Tribune" wielded great influence in his fight for the underprivileged and in his fight against slavery. "The New York Times" turned a trend to greater reporting of foreign news. Wherever the covered wagon, flatboat or packtrain took our pioneers, the newspaper followed with the news.

The intense rivalry of being first with the news was a great impetus to the development of wire and radio communications. The growth of our newspapers brought a growth of industry to supply them-- paper mills, presses and other machinery, buildings to house them. Through newspaper advertising, industry found new markets.

Where slums were abolished, working conditions bettered, disease combatted, famine fought, corruption condemned--a major force always was the free press. Through the press, the people learned of what their neighbors--near and distant--were doing and thinking.

Today, when every phase of life is complex--and most of all where government is complex--we cannot afford to "gag" the press, to throw a veil over everything which may smack of controversy. Only by vigorous public debate may we evaluate new ideas and arrive at mature judgments respecting the vital matters which affect our freedom, our enterprise and our security.

As President Eisenhower said, the free press of our Nation "helps arm our people with the knowledge and understanding without which free choice, free government, free men, could not be."

In a Republic, the leaders do not make all the decisions, or even the important ones. The theory on which our Government is based is that the people will choose the course of action that the Nation will follow. Thus, it is more important, under our Government, that the people have full information so that they can exercise a sound judgment in deciding their own future.

Freedom of the press was not written into the Constitution for the benefit of the press. It was for the benefit of the people as a whole.

Since freedom of the press belongs to the people, it requires their constant effort and attention to keep it free. The press is like a trustee of this precious inheritance. We must be careful to preserve it. This we must do by a high regard for truth, accuracy, fairness and decency; by showing courage in its treatment of crucial issues; and by fighting encroachment of its freedom whenever and wherever the challenge is raised. Grant that sometimes the press might abuse its great powers and mislead the people. But if the press is free for error, it will, so long as both sides can be heard, also be free for truth.

Ours is a far firmer foundation than that of tyranny. We shall continue to endure long after the Communists have been destroyed and their perfidy is described as a stained page in history.