

# A FREE AND RESPONSIBLE PRESS

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Freedom of speech, and of the press, is one of the cornerstones of democracy. This truth was recognized by the drafters of the Constitution of the United States. They clearly defined this basic right in the First Amendment, which reads:

“Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition for a redress of grievances.”

It should be noted that this provision of the Constitution is more than merely an assurance of the right of a free press. The founding fathers wrote into it the specific declaration that the legislative branch of the government does not have the right to pass any law which would restrict the freedom of the press.

This basic right has been reaffirmed many times since it was adopted in the Bill of Rights in 1789. President Franklin D. Roosevelt broadened it when he made the people's “right to know” one of the Four Freedoms of the Atlantic Charter in World War II. Its validity is attested by the significant fact that one of the first acts of every totalitarian regime is to suppress freedom of expression and to deny the people's “right to know”. Truth, in history's long perspective, has always proved to be the only weapon against which a dictator cannot erect an effective barricade.

The American Society of Newspaper Editors expressed it this way: “Freedom of the press is to be guarded as a vital right of mankind. It is an unquestionable right to discuss whatever is not explicitly forbidden by law, including the wisdom of any restrictive statute.”\*

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\* Article II of the Canon of Ethics of the American Society of Newspaper Editors



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While there is general acceptance in the free world of the importance of press freedom, there is, however, a wide area of misunderstanding of what it means. It is not a constitutional guarantee of immunity from the responsibility for printing untruths. Nor is it a guarantee that all sources of news should be opened to the press. The concept of a free press in America, as elsewhere in the world, carries with it responsibility for the proper use of that freedom. The American Society of Newspaper Editors in its Canons of Ethics expressed it this way:

"Good faith with the reader is the foundation of all journalism worthy of the name. By every consideration of good faith a newspaper is constrained to be truthful. It is not to be excused for lack of thoroughness or accuracy within its control or failure to obtain command of these essential qualities".\*

Probably one of the best known statements on press responsibility was written by the late United States Justice Oliver Wendell Holmes. In a decision prior to World War II involving the right to publish Communist doctrines in the United States, he pointed out that while the Constitution provides for freedom of the press and of speech, it does not give a man the right "to cry fire in a crowded theater."

His words are another way of expressing the fact that the press must be held responsible for the effect of what it publishes. In American jurisprudence, this responsibility is clearly defined by the libel laws of the individual states. Responsibility is also affirmed in the federal statutes. It is beyond the scope of this discussion to explain the state libel laws in detail, but there are some common elements worthy of note.

There are two general types of libel: criminal and civil. Criminal libel is a false statement which tends to provoke a breach of the peace, and it is punishable by fine or imprisonment. Examples of criminal libel would be stories which might provoke a run on a bank, or incite a riot, or which might be construed as treasonable. In some states there are specific laws regarding false statements concerning financial institutions. It should be noted that cases of criminal libel are comparatively rare.

Civil libel is an action brought by an individual or a corporation and is

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punishable by the assessment of damages. In some types of civil libel the law presumes damages and it is only necessary to prove that the story was published and that it is false. This type is referred to as libel per se. In other types of civil libel it is necessary to prove in addition that damages have been suffered. These are known as cases of libel per quod.

There are state statutes which are intended to protect individuals and companies from the rightful invasion of their privacy, although in this field there have not been sufficient decisions to define clearly the limits of privacy. In general the courts have held that where the public interest is involved there is no right of privacy. An example of what does constitute an invasion of privacy is the case of a woman in Kansas City, Missouri, who sued Time Magazine for publishing a story about an unusual disease from which she suffered. In that case the courts held that to disclose details of her affliction did constitute an invasion of her privacy.

In addition to the libel laws there are a number of other laws intended to protect the public and define the rights of the press. American courts have the right to cite editors for contempt of court and to impose punishment of fines or imprisonment, or both. There are specific statutes prohibiting the publication of obscene matter, blackmail, false financial statements and stories relating to any form of gambling.

These statutes are intended, not so much to limit the freedom of the press, but to define its responsibilities. There are, however, some fields in which there are no restrictions, and specified types of news which can be printed without fear of libel, regardless of the truth or falsehood of the stories. This principle is described as privilege. It is limited to these specific areas:

1. The official acts of official bodies. In this category are included the proceedings of Congress, the state legislatures, the municipal governing boards, etc. Anything that is said on the floor of Congress, for example, can be printed without fear of libel. It is this right which explains how the press was able to print statements by the late Senator Joseph McCarthy of Wisconsin in which he made what was subsequently shown to be untrue charges of Communist activities against American officials and others in public life. The same immunity applies to members of official bodies, which explains why he was not sued for libel by those he attacked.

2. Court proceedings. This protection extends to everything that trans-

pires in the trial of a case, after a jury has been sworn in. It does not apply to suits filed in the courts, nor to any of the proceedings prior to the start of the actual trial.

3. Official statements of elected officials, acting in their official capacity. In this category are meant the statements made by a president, governor, mayor, or other elected official, speaking in the name of his office. It does not include statements he might make under any other circumstances.

In addition to these three types of privileged news, there is also the right of fair comment, sometimes called qualified privilege. The theory of this right is that anyone who offers something for public approval cannot complain when the press comments upon what is offered. This right would include criticism of books, plays, concerts, and the candidacies of persons seeking elective office.

These laws in America are not intended to restrict the freedom of the press to print the truth. Rather, they have been enacted to protect the people from unjust attacks and to emphasize the obligations of the press. America's laws are more stringent than those of many other countries, including the Republic of China. Insofar as libel and the right of free comment, are concerned editors and publishers in Taiwan enjoy far greater freedom than do their counterparts in the United States.

There have been attempts at various times to restrict the freedom of the press in America. The first attempt, which set a precedent, predated the American Revolution. It was the trial before a British judge in New York City, of a colonial editor, John Peter Zenger, on a charge of having libeled the Crown and its officials. Some of the words of Alexander Hamilton, who defended Zenger are worth noting here.

"If a libel is understood in the large and unlimited sense urged by Mr. Attorney," Hamilton said in his argument to the jury, "there is scarce a writing I know that may not be called a libel, or scarce a person safe from being called to account as a libeler. For Moses, meek as he was, libeled Cain; and who has not libeled the Devil? How must a man speak or write, or what must he hear, read or sing? Or when must he laugh to be secure from being taken up as a libeler?" \* Zenger was acquitted and his memory is still

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\* From the argument to the jury by Alexander Hamilton at the trial of John Peter Zenger in New York City, August, 1735.

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revered as one of the defenders of a free press.

It is recognized, however, that there may be some justification for censorship in time of national crisis. The first attempt at censorship after the adoption of the American Constitution was the enactment of the Alien and Sedition Acts in 1798. The Alien Acts, three in all, were directed primarily at alien editors. The Sedition Act was directly intended to apply to American editors. It made the uttering or writing of "any false, scandalous and malicious" statement against the government a crime punishable by fine and up to two years imprisonment. In all there were twenty-five arrests made under this law, fifteen editors were indicted and eleven brought to trial. \* It was significant in those prosecutions that not even truth was considered a defense. It was the position of the government that the greater the truth the greater the libel. However, the Alien and Sedition Acts did not receive popular support and were repealed within a few years.

Probably the first time there was an attempt to censor news in wartime came during the Civil War; not so much by official edict as through the practical application of the power at the government's disposal. The government at that time had control over the telegraph lines. It exercised censorship from time to time by merely withholding from the wires the dispatches of some correspondents with the armies. This censorship was never officially recognized and it was not extensive.

In World War I the United States did impose wartime censorship upon American newspapers. In World War II, however, there were no official regulations governing censorship, but the press was asked to cooperate voluntarily in withholding information valuable to the enemy. It is to the credit of the press that this system of voluntary compliance proved successful throughout the war.

There are, of course, many forms of censorship, in both peace and war. One form is the withholding of news to which the public is entitled by classifying it as secret, or by excluding the press from meetings of official bodies. The American press is continuing to wage an effective battle against this form of censorship at all levels of government. Under the leadership of the American Society of Newspaper Editors and Sigma Delta Chi, many states

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\* American Journalism. Frank Luther Mott. Page 147

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have been induced to enact Freedom of Information laws, defining what records and proceedings should by law be open to the press. There is a continuing fight to declassify many types of news of government in the national capital.

It is argued that the very fact that government activities are conducted under the close scrutiny of the press, is a serious disadvantage to a democracy in the struggle against Communism. For example, it is pointed out that all of America's attempts to put satellites into orbit are publicized, whereas Russia only makes public the attempts that succeed. Newsmen who are in a position to know, agree that there is no doubt that Russia has failed in many attempts and that the first successful man-guided orbit around the world was achieved after many failures and the loss of lives.

President Kennedy early in his administration raised this question of whether the press should voluntarily withhold information which might be construed as advantageous to the enemy. The reply from leading editors and editors' associations was prompt and positive. It would defeat the very purpose of democracy to withhold such information, they argued. Moreover, once such a precedent was set, who would determine the news to be withheld? The President agreed with the soundness of that position.

It is the conviction of American editors and publishers that self restraint and self regulation are the only solution which will preserve the basic freedom of the press. The evidence supports the conclusion that in the long run this position is sound. American editors are aware that the inevitable alternative is the demand for official restraint, which is neither in their own interest nor that of their readers.

There have been numerous attempts to write acceptable codes of ethics for the press. One of the first and certainly one of the best known is the "Journalist's Creed" written by Walter Williams, under whom it was the privilege of the author to study at the University of Missouri. Walter Williams was the founder and the first dean of the first school of journalism in the world, established at the University of Missouri in 1908. Mr. Williams was not only one of the foremost journalism educators in America, he was also the founder and first president of the World Press Congress and he had a sincere interest in journalism education in China.

The Journalist's Creed reads as follows:

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"I believe in the profession of journalism.

"I believe that the public journal is a public trust; that all connected with it are, to the full measure of their responsibility, trustees for the public; that acceptance of lesser service than the public service is betrayal of this trust.

"I believe that clear thinking and clear statement, accuracy and fairness, are fundamental to good journalism.

"I believe that a journalist should write only what he holds in his heart to be true.

"I believe that suppression of the news, for any consideration other than the defense of society, is indefensible.

"I believe that no one should write as a journalist what he would not say as a gentleman; that bribery by one's own pocketbook is as much to be avoided as bribery by the pocketbook of another; that individual responsibility may not be escaped by pleading another's instructions or another's dividends.

"I believe that advertising, news and editorial columns should alike serve the best interest of readers; that a single standard of helpful truth and cleanliness should prevail for all; that the supreme test of good journalism is the measure of its public service.

"I believe that the journalism which succeeds best and best deserves success fears God and honors man; is stoutly independent, unmoved by pride of opinion or greed of power, constructive, tolerant but never careless, self-controlled, patient, always respectful of its readers, but always unafraid; is quickly indignant at injustice; is unswayed by the appeal of privilege or the clamor of the mob; seeks to give every man a chance and, so far as law and honest wage and recognition of human brotherhood can make it, an equal chance; is profoundly patriotic while sincerely promoting international good will and cementing world-comradeship; is a journalism of humanity, of and for today's world."

Walter Williams' creed remains one of the most eloquent credos of a free and responsible press. It will be noted that he recognizes that journalism is a profession, as distinguished from a trade, or a business. The accepted definition of a profession is a calling which has a prescribed course of study, a code of ethics and a recognized obligation of public service. Certainly journalism must be accepted as a profession, just as are medicine and law.

Critics of the press in America may argue as to how effective codes of

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ethics can be without regulatory powers, despite the fact that they are effective in the canons of the bar associations and in the code of ethics of the medical profession. There is, however, considerable evidence to demonstrate their effectiveness in the field of journalism. We have seen in our time the passing from the scene in America of the old sensational journals which used to be described as "yellow journals". For the most part there is a genuine effort to keep out of the press stories which would offend good taste. There has been a noticeable reform in the reporting of crime news and the glorifying of criminals. There is a growing recognition by American editors of the need for better reporting, for interpretation of news, and for printing the news needed in a democracy rather than concentrating on the type of stories which sell newspapers.

One of the few times in which the American Society of Newspaper Editors has undertaken to censure a member because of violation of its code of ethics, was the case of the publishers of the Denver, Colorado Post and the Kansas City, Missouri, Journal-Post. In that case the publishers, Bonfils and Tammen, were accused of suppressing news about the Teapot Dome scandal and seeking payment from those involved in the attempt to defraud the government as a price for their silence. At that time the ASNE voted to recommend that the two men be expelled. As a result of the publicity, Bonfils resigned his membership and the charge against Tammen was later dropped. \*

In this case, as in others, there are several canons of the ASNE Code of Ethics which have been applied. They are worthy of note here. Canon I of the code deals with the question of responsibility. It reads: "The right of a newspaper to attract and hold readers is restricted by nothing except consideration of the public welfare. The use a newspaper makes of the share of public attention it gains, serves to determine its sense of responsibility, which it shares with members of its staff. A journalist who uses his power for any selfish or otherwise unworthy purpose is faithless to a high trust".

Canon IV entitled Sincerity, Truthfulness, Accuracy, reads as follows: "Good faith with the reader is the foundation of all journalism worthy of the name. By every consideration of good faith, a newspaper is constrained to

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\* American Journalism. Frank Luther Mott. Page 569.



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be truthful. Headlines should be fully warranted by the contents of the article."

In Canon VI, the meaning of "fair play" is explained. It reads: "A newspaper should not publish unofficial charges affecting the reputation or moral character without giving the accused the opportunity to be heard. Right practice demands the giving of such opportunity in all cases of serious accusations outside of judicial proceedings. A newspaper should not invade private rights or feelings without sure warrant of public right as distinguished from public curiosity. It is the duty of a newspaper to make prompt and complete correction of its own serious mistakes of fact or opinion."

One of the recent examples of self improvement by the press concerns the reporting of the news of national political campaigns. In this instance the author can speak with the knowledge of some personal participation in the Presidential campaign of 1952 there were widespread charges of unfair reporting on the part of the press. It was true that the great majority of the newspapers of the country supported General Eisenhower in their editorial pages. There was no objection to this support, and it was recognized that it is the right as well as the duty of a newspaper to express its honest opinions vigorously. The complaints concerned the charges of untrue and inaccurate reporting in the news columns and favoritism in the play of the news. It was charged that in the news columns of some papers, Eisenhower received more space and a more prominent position in the news columns than did Adlai Stevenson, his opponent.

Following the election, there was considerable public demand for an inquiry into these charges. That year I was national president of Sigma Delta Chi, a journalistic organization with approximately 25,000 members. In my address to the annual convention in November, 1952, I suggested that if such an inquiry was to be made, it would be far better for an organization within the profession to make it, than for the investigation to be made from the outside. The proposal that Sigma Delta Chi make such an inquiry was adopted at the convention and attracted considerable national attention. A committee was named by my successor to determine if a formula could be devised which would be fair to all concerned. The committee, after several meetings, reluctantly decided that such a formula could not be achieved.

It is significant, however, that the attention focused on the charge has

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resulted in a noticeable improvement in news coverage in the presidential campaigns of 1956 and 1960. This conclusion is not mine alone. Barry Bingham, editor and publisher of the Louisville, Kentucky, Courier Journal and the Louisville Times, has pointed out that the publicity given to the charges has had a wholesome effect. Irving Dilliard, former editor of the editorial page of the St. Louis Post-Dispatch concurs in that judgment, as do many others.

The problems of press responsibility and self regulation of the press are being raised by thoughtful editors and journalists in other parts of the world, including Taiwan. Their concern is based on the realization that unless the press sets up standards of proper conduct for its members, there will ultimately be a demand for regulation of press conduct by government, and perhaps with justification. This realization does not imply that the practices of the press are always to be criticized. On the contrary, there is a heritage of public service by the press in Taiwan, of which the Chinese people can be proud.

Unfortunately, the public judges the press, not so much by its best performance, but by the actions of a few who sometimes violate the standards which should govern the press. Irresponsible accusations against individuals, which have no basis in fact, the publication of unofficial charges, and headlines which do not reflect the accuracy of the stories, are instances of this kind of irresponsible journalism. They represent a selfish desire to win circulation and public attention at the expense of serious harm to an individual's reputation. Responsible journalism requires that both sides of every story be printed and, more important, that no story be published unless thorough investigation gives assurance that it is truthful.

Similarly, a newspaper has the right to express its opinions freely, but they should be honest opinions and not proposals intended for the advantage of the paper, regardless of what are known facts. In other words, the same adherence to accuracy and insistence of honesty and sincerity apply to the editorial columns as well as to the news columns.

Experience in America, and elsewhere, has demonstrated that the press can best fulfill its responsibilities to society, and to its readers, when it establishes accepted standards of conduct and adheres to them.