

ESSAY ON FREEDOM OF THE PRESS FOR THE MAINE CAMPUS

by James Russell Wiggins, September 14, 1987

A people who wish to secure the benefits that a free press can confer, for themselves and for their posterity, must provide the rights by which the press can operate; the right to get information; the right to print without prior restraint; the right to print without reprisal for printing the truth; the right to obtain the paper, ink, and other materials of publication, un-taxed and unobstructed; the right to distribute through the mails or otherwise.

Those who founded this country, I believe, intended to make these rights secure in the Constitution of the United States which they signed on September 17, 1787 and in the Bill of Rights that were added later.

These elements of a free press had been established in America by a protracted and bitter struggle before the Constitution and Bill of Rights were adopted.

American colonists brought with them from Europe the notion of government control of access to the proceedings of government. The Parliament in England did not relinquish this secrecy until the Wilkes case in 1771. The Massachusetts Council in 1725 ordered the Boston newspapers not to print anything of public affairs without the order of the Government. All the assemblies at first met in secret.

Slowly a different view took over the colonies. By 1747 the New York General Assembly had passed a declaration that "It is the undoubted right of the people of the Colony to know the proceedings of their representatives in General Assembly and that any attempt to prevent their proceedings being printed or published is a violation of the rights and liberties of the people of this Colony." Massachusetts opened its general court debates in 1766. After the Revolution state after state provided for

access to legislative proceedings. The first Congress met with the House open to the public and the Senate finally relinquished secret sessions in 1794.

Prior restraint was at first submitted to in the colonies as it had been in England. The Massachusetts General Court in October 1662 passed an act "For the Prevention of Irregularities and Abuse to the Authority of this Country by the Printing Press." After 1765 the colonists invoked William Blackstone and to many immunity to prior restraint became the essence of press freedom.

During and immediately after the American Revolution the newspapers freedoms were menaced by a scarcity of all the implements and devices and raw materials needed for publication. So scarce was paper that Washington's tents at Morristown were used to make paper after the Continental Army wintered there.

Reprisal for publication was a commonplace of the colonial experience and often resisted. The most notable example was the celebrated case of John Peter Zenger who was acquitted of libeling Governor William Cosby after Andrew Hamilton of Philadelphia made a brilliant defense and claimed for the jury the right to determine the innocence or guilt in libel cases. Printers were accustomed to this kind of intervention. It was a frequent event in their trade. Gradually as anti-British opinion swelled in the country, printers got the courage and the strength to resist the government and defy the reprisal for publication by appealing to jurors.

The right to distribute was very forcefully impressed in the country by another Revolutionary Period experience. The patriot press became increasingly annoyed by the British postal establishment. It interfered with the delivery of patriot newspapers. The Boston Gazette and the Massachusetts Spy both decried this interference. The New York Journal and the Pennsylvania Journal protested the refusal of the mail service to handle their papers.

William Goddard, the editor of the Maryland Journal and the Pennsylvania Chronicle, in February 1774 organized a colonial postal system. On July 26, 1775 the Continental Congress took over the system Goddard had set up and made Benjamin Franklin the Postmaster General. Thus the principle of unobstructed postal service to distribute newspapers was born before the country was born.

The colonial weekly press did not consciously and conspiratorially and deliberately establish a correlated doctrine of freedom of the press. They proceeded pragmatically to fight for its principles as successive challenges arose.

In our two hundred years of history the courts and Congress have made this meaning clearer and have filled in the specific provisions of law and court interpretation of the law to buttress these essential rights in modern times. Slowly and surely legislators, Congress and the courts have elaborated upon the broad provisions of the Constitution. Near v. Minnesota in 1938 brought the first Supreme Court exposition on prior restraint making more secure than hitherto it was in an eloquent rejection of the notion that government can proscribe publication in advance. The right to get information has been a long and continuing battle but it is buttressed by a succession of opinions supporting the right of access to the proceedings of the courts, the legislative bodies and the executive departments.

The freedom of the press was not sought by colonial rebels and American patriots as a boon to printers. It has not been upheld in our congress, our courts, and our legislatures for the comfort of reporters and editors. It has been protected so that the press can contribute to the democratic processes of the government of the United States.

The chief protection of all our freedoms including the freedom of the press is in the United States Constitution signed at Philadelphia on September 17, 1787 and in the Bill of Rights adopted three years later.