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# Press-Court Relations: Can They Be Improved?

*By* THE HONORABLE ALFRED T. GOODWIN*

The relationship between the press and the judiciary in this country is sometimes strained and often misunderstood. Yet, like a shotgun wedding, the connection is there. And it is a necessary one.

Consistently in American history the courts have acted to protect freedom of the press. Just as consistently, the press, as critic and conscience, has prompted responsible use of judicial power. Too often recently both jurists and journalists have forgotten this essential, symbiotic truth.

From the beginning of our national experience, protection of the media has been an essential task of the courts. The colonists who left Europe to escape royal and religious oppression encountered in the New World executive and legislative tyrannies that nearly equalled those they had left behind. Before 1776 royal governors and colonial legislatures regularly compelled the arrest and summary convictions of offensive writers and publishers.[1] The courts, which were subordinate to the executive and the legislature in the colonial balance of political power, rarely intervened. Still, what little freedom of expression that existed before the revolution, and it was precious little, was recognized in the common law courts.

John Peter Zenger became a household name—in journalistic households—during the early eighteenth century. His case, possibly the first in America vindicating press rights, resulted in a jury exonerating a publisher who had offended the royal governor.[2] Another half

* Circuit Judge for the United States Court of Appeals for the Ninth Circuit. The article excerpts remarks made by Judge Goodwin at the Associated Press Managing Editors Convention, Tulsa, Oklahoma, October 17, 1979. Prior to law school, Judge Goodwin was a news reporter for the Eugene Oregon *Register-Guard*. As a judge he has chaired the ABA Committee on Fair Trial and Free Press.

The author acknowledges the substantial editorial and documentary assistance of Mr. Rick T. Haselton, member of the Oregon Bar and formerly the author's law clerk.

1. *See* L. LEVY, LEGACY OF SUPRESSION (1960).

2. In the early 1730's, Zenger began publication of the *New York Weekly* in opposition to the *New York Gazette* controlled by the governor. At his trial for seditious libel in 1735, Zenger's lawyers James Alexander and William Smith were debarred when they challenged

century would pass before the First Amendment was even a working draft in James Madison's saddle bag. But the Zenger case set a precedent of immeasurable influence. It encouraged other aspiring political publicists like Benjamin Franklin and Andrew Hamilton to assert press rights.

In modern America, the history of the struggle for press freedom has been a story of reaction to executive or legislative attempts at oppression. The press has prevailed largely because of its success in the courts of law—and at the bar of public opinion where it tends to have the last word.

Perhaps because the press has historically come to trust the courts as, in Alexander Bickel's phrase, "the least dangerous branch,"[3] editorial reaction to some recent decisions of the United States Supreme Court has reflected a sense of outrage and betrayal. *Gannett Co., Inc. v. DePasquale*,[4] *Herbert v. Lando*,[5] and *Zurcher v. Stanford Daily*,[6] have all gone "against" the press. Contrary to some journalistic commentary, however, these decisions do not herald the advent of the totalitarian night. A careful reading of the Court's holdings demonstrates that, all too frequently, they have been misunderstood by the media and misapplied by the lower courts.

In *Gannett*, decided last term, the Supreme Court held that the Sixth Amendment's public trial guarantee, at least as applied to pretrial hearings, may be raised only by the accused and not by the public. The Court concluded that nothing in the Sixth Amendment barred exclusion of the public—and the press—from those proceedings.[7]

Editorial response to this decision was immediate, outraged, and

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the right of the governor's appointed justice. Andrew Hamilton assumed the defense, and, in spite of the chief justice's admonition that the question of falsehood was one of law to be decided by the court, he convinced the jury that it was for them to determine the truthfulness or falsity of the publication. The jury found Zenger not guilty. *See* J. ZENGER, A BRIEF NARRATIVE OF THE CASE AND TRYAL OF JOHN PETER ZENGER, PRINTER OF THE NEW-YORK WEEKLY JOURNAL, *reprinted in* L. RUTHERFORD, JOHN PETER ZENGER 173-247 (1904). Other reprints and materials may be found in V. BURANELLI, THE TRIAL OF PETER ZENGER (1957); L. RUTHERFORD, JOHN PETER ZENGER (1904).

3. Bickel, of course, borrowed this expression from Hamilton's Federalist No. 78, which discussed the role of judges as guardians of the Constitution. *See* A. BICKEL, THE LEAST DANGEROUS BRANCH at ix (1962).

4. 99 S. Ct. 2898 (1979).

5. 441 U.S. 153 (1979).

6. 436 U.S. 547, *rehearing denied*, 439 U.S. 885 (1978).

7. 99 S. Ct. at 2908-12. It is ironic that the *Gannett* holding was, in large part, premised on the Court's decision in Nebraska Press Ass'n v. Stuart, 427 U.S. 539 (1976), a decision widely regarded as a victory for the press. In *Nebraska Press* the Court invalidated a pretrial "gag order," noting that a number of less restrictive means of mitigating prejudice

perhaps instinctive: *Slamming the Courtroom Doors*,[8] *Private Justice, Public Injustice*,[9] *A Disastrous Assault*.[10] The chairman of the American Newspaper Publishers Association charged that the Court was "determined to unmake the Constitution."[11]

Judicial reaction to *Gannett* has been similarly injudicious. A number of judges have misread the opinion—indeed, one is tempted to believe that some judges around the country have been reading the editorials about *Gannett* instead of the opinion itself.[12] By February 1980 ninety-three judicial proceedings, including twenty-three trials, had been closed in *Gannett*'s wake.[13]

If journalists and judges had read the *Gannett* opinions more closely, most of the headlines and closures and much of the resultant misunderstanding between press and bench could have been avoided. Although there is some confusion over *Gannett*'s implications—even the Justices seem to disagree on its meaning—some things are clear. First, *Gannett* does not require court closures; rather, it permits them. Trial judges are free to deny closure motions, and many are doing so. Second, the *Gannett* majority expressly reserved (or avoided) the question of whether the public or the press enjoys a First Amendment right of access to judicial proceedings.[14] Justice Powell's concurrence recognized such a right.[15] Finally, as Chief Justice Burger's concurrence emphasized, *Gannett* involved pretrial hearings, not a trial.[16] This

from publicity were available. Among these alternatives was the closure of pretrial proceedings. 427 U.S. at 564 n.8.

In some ways, then, *Nebraska Press* was a pyrrhic victory. As Alexander Bickel commented in describing the effect of another press "victory," the *Pentagon Papers* decision, "[t]hose freedoms which are neither challenged nor defined are most secure." A. BICKEL, THE MORALITY OF CONSENT 60 (1975). *See* Schmidt, *Nebraska Press Association: An Expansion of Freedom and Contraction of Theory*, 29 STAN. L. REV. 431, 476 (1977).

8. TIME, July 16, 1979, at 66.

9. N.Y. Times, July 5, 1979, § A at 16, col. 1.

10. L.A. Times, July 4, 1979, § II at 7, col. 1.

11. *Media Opposes Secrecy, The News Media & The Law*, Aug./Sept. 1979, at 4.

12. Chief Justice Burger made a similar observation in an August 1979 interview with the Gannett News Service. *Justices Speak Out on Press, The News Media & The Law*, Nov./Dec. 1979, at 5.

13. Appellate courts have subsequently reversed 12 of these closures. Eighty-three other closure motions have been denied by trial judges or withdrawn by the moving party. *Court Watch Summary*, Reporters' Committee for Freedom of the Press, Feb. 15, 1980.

14. This reservation of the First Amendment question is somewhat surprising since Justice Stewart, author of *Gannett*'s lead opinion, has been a leading advocate of a special constitutional status for the institutional press. *See* Stewart, "*Or of the Press*," 26 HASTINGS L. J. 631 (1975).

15. 99 S. Ct. at 2913-17.

16. 99 S. Ct. at 2913-14.

distinction may be decisive in *Richmond Newspapers, Inc. v. Virginia*,[17] an appeal of a trial closure that the Supreme Court has agreed to review.

Besides the qualified nature of *Gannett*'s holding, there are several factors which further limit the sweep of that decision. Most significantly, many state constitutions and statutes require that judicial proceedings be open to the public. The constitution of Oregon, my home state, declares, for example, that "[n]o court shall be secret, but justice shall be administered, openly and without purchase . . . ."[18] Recently the New Hampshire Supreme Court interpreted that state's constitution as barring trial closures.[19] The supreme courts of Arkansas and Minnesota have reached similar results, based on "open court" statutes.[20]

The American Bar Association's Standards Relating to Fair Trial and Free Press present another potential limitation on *Gannett*. Those standards call for open judicial proceedings unless the premature release of courtroom information would present a clear and present danger to the fairness of a trial.[21] Although the Supreme Court has not

17. Richmond Newspapers, Inc. v. Virginia, *appeal dismissed*, Va. Supreme Ct., July 9, 1979, *appeal filed*, 48 U.S.L.W. 3178 (U.S. Sept. 25, 1979) (No. 79-243), *hearing granted*, 100 S. Ct. 204 (1979), *argued*, 48 U.S.L.W. 3549 (U.S. Feb. 26, 1980) (No. 79-243). Professor Laurence Tribe, counsel for Richmond Newspapers, emphasized this distinction in his oral argument before the court. *Id.*

18. OR. CONST. art. I, § 10. Recently a Portland newspaper relied on this provision in challenging the closure of a juvenile proceeding. *Juvenile Case Privacy in High Court*, Portland Oregonian, Mar. 22, 1980, § A, at 10.

19. Keene Publ. Corp. v. Cheshire County Superior Court, — N.H. —, 406 A.2d 137 (1979).

20. State v. Coston, No. 78-34 (Ark. Sup. Ct. November 13, 1979); State v. Coifman, No. 72573 (Minn. Sup. Ct. October 10, 1979).

21. ABA STANDARDS RELATING TO THE ADMINISTRATION OF CRIMINAL JUSTICE: FAIR TRIAL AND FREE PRESS (1978). Standard 8-3.2., *Pretrial proceedings: exclusion of public and sealing of records*, reads as follows: "Except as provided below, pretrial proceedings and their record shall be open to the public, including representatives of the news media. If at the pretrial proceeding testimony or evidence is adduced that is likely to threaten the fairness of a trial, the presiding officer shall advise those present of the danger and shall seek the voluntary cooperation of the news media in delaying dissemination of potentially prejudicial information by means of public communication until the impaneling of the jury or until an earlier time consistent with the fair administration of justice. The presiding officer may close a preliminary hearing, bail hearing, or any other pretrial proceeding, including a motion to suppress, and may seal the record only if: (i) the dissemination of information from the pretrial proceeding and its record would create a clear and present danger to the fairness of the trial, and (ii) the prejudicial effect of such information on trial fairness cannot be avoided by any reasonable alternative means.

The defendant may move that all or part of the proceeding be closed to the public (including representatives of the news media), or, with the consent of the defendant, the presiding officer may take such action sua sponte or at the suggestion of the prosecution. Whenever under this rule all or part of any pretrial proceeding is held in chambers or other-

endorsed the ABA guidelines, a number of state judicial systems have.[22] National adoption of these standards will reaffirm our 200-year-old commitment to open courts. Court closures will, once again, be uncommon.[23]

Like *Gannett*, *Herbert v. Lando*[24] was the object of passionate editorial criticism. But unlike *Gannett*, the *Herbert* case was unremarkable, and the reaction it provoked, unwarranted. After *New York Times Co. v. Sullivan*,[25] *Herbert* was not only predictable, it was inevitable.

In *Herbert* the Supreme Court held that a defendant in a libel action brought by a public figure must respond to deposition inquiries regarding the defendant's state of mind in editing and publishing the allegedly defamatory work. Had the Court reached the contrary result, it would have been virtually impossible for public-figure libel plaintiffs to satisfy *Sullivan*'s demanding actual malice standard. Irresponsible and unprofessional journalists would have enjoyed effective First Amendment immunity from libel actions, and public figures who had been unfairly maligned would have been left without remedies.

Still, the press reaction to this reasonable decision rivaled the response to *Gannett*. Television commentators had their viewers fantasizing about grand inquisitors searching the minds of film editors for all sorts of Freudian purposes. The nature of the "mind reading"

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wise closed to the public, a complete record shall be kept and made available to the public following the completion of trial or earlier if consistent with trial fairness."

The standard's adoption of the clear and present danger test is consistent with recent decisions concerning judicially imposed restraints on expression. *See, e.g.*, Chicago Council of Lawyers v. Bauer, 522 F.2d 242, 251 (7th Cir. 1975), *cert. denied* 427 U.S. 912 (1976) (court rules may not prohibit attorney comments unless particular statements pose a "serious and imminent threat of interference with a fair trial"); United States v. Dickinson, 465 F.2d 496, 507 (5th Cir. 1972) (holding, in part, that a press "gag" order did not meet the clear and present danger test). The clear and present danger test has been abandoned in many other areas. But, as Professor Emerson has observed, it is thriving in the judicial administration context. T. EMERSON, THE SYSTEM OF FREE EXPRESSION 456-57 (1970).

22. New Hampshire adopted these standards judicially before their ratification by the ABA's House of Delegates. Keene Publishing Corp. v. Keene District Court, 117 N.H. 959, 380 A.2d 261 (1977).

23. Court closures did not begin with *Gannett*. In the past, courts have been closed to shield rape victims from public embarrassment (Harris v. Stephens, 361 F.2d 888 (8th Cir.), *cert. denied*, 386 U.S. 964 (1966)), to protect the identities of undercover police agents (Lloyd v. Vincent, 520 F.2d 1272 (2d Cir.), *cert. denied*, 423 U.S. 937 (1975)) and to prevent the disclosure of confidential investigatory techniques (United States v. Ruiz-Estrella, 481 F.2d 723 (2nd Cir. 1973)). But the number of closures in the last few months is unprecedented.

24. 441 U.S. 153 (1979).

25. 376 U.S. 254 (1964).

was left mostly to the imagination of the viewer.[26]

The interests of the press, and of all who value the First Amendment, would have been better served by a more reasoned response. Journalists tend to view to the First Amendment's guarantees as absolute; any qualification of these guarantees, no matter how insignificant, to accommodate other values is unacceptable. As a former reporter, I appreciate these beliefs. But as a lawyer and a judge, I am convinced that law, even constitutional law, must accommodate competing values. Courts must enforce the rights of defamed plaintiffs just as much as they must protect the press from undeserved, ruinous libel judgments.[27] Some editorial recognition of this fact would greatly ease current tensions between judges and journalists.

The pitch and tone of editorial response to *Herbert* bore little relation to the constitutional implications of that decision. By responding so passionately, so inflexibly, to an apparently fair decision, the press loses credibility. This creates the risk that when the "wolf," the case that seriously threatens freedom of expression, appears, journalists' cries might be disregarded by the public and by the courts. And we all shall pay the price. *Zurcher v. Stanford Daily*[28] may have been such a case.

In *Stanford Daily*, a case with which I had some experience,[29] the Supreme Court held that prosecutors may obtain search warrants for information in office files, including those of newspapers or broadcasters which are not implicated in any crime. Justice Stewart's dissent persuasively argued that criminal justice and First Amendment interests would be better accommodated if, in most cases, prosecutors were compelled to seek information through subpoenas, which the press could challenge, rather than through warrants, which are usually issued

26. Despite the generally emotional tenor of editorial response to *Herbert*, some commentary was well-reasoned. *See, e.g.*, Reston, *Courts and the Press*, N.Y. Times, Apr. 20, 1979, § A, at 31, col. 1; *No License to Lie*, Chi. Tribune, Apr. 20, 1979, § 5, at 2.

27. "Good name in man and woman, dear my lord,
Is the immediate jewel of their souls:
Who steals my purse steals trash; 'tis something, nothing;
'Twas mine, 'tis his, and has been slave to thousands;
But he that filches from me my good name
Robs me of that which not enriches him,
And makes me poor indeed."

W. SHAKESPEARE, OTHELLO, act III, sc. 3.

28. 436 U.S. 547 (1978).

29. Judges Hufstedler, Goodwin and East comprised the Ninth Circuit panel that affirmed the district court's judgment for the *Stanford Daily*, Stanford Daily v. Zurcher, 550 F.2d 464 (9th Cir. 1977), *aff'g*, 353 F. Supp. 124 (N.D. Cal. 1972), a judgment which the Supreme Court reversed. 436 U.S. 547 (1978).

after a nonadversarial proceeding.[30]

The press is justifiably concerned by this holding. Even if warrants are carefully drawn, police officers may unintentionally discover materials compromising confidential press sources during newsroom searches. Because journalists are not able to promise secrecy, sources may be less willing to speak freely.[31] The ability of the press to perform an essential constitutional function, investigating and exposing corruption, may be seriously compromised.

Perhaps the most disturbing feature of *Stanford Daily* is the nature of its potential "victims." Of the fifteen search warrants issued for newsroom searches between 1971 and 1978, six involved "alternative" or "third world" papers or radio stations. None involved a big-city daily.[32] Few district attorneys are willing to incur the wrath of influential broadcasters or publishers. But small, unconventional and unpopular papers or stations cannot mobilize public opinion or afford lengthy court battles. They are more vulnerable, more likely to be silenced by fear of insolvency. The Founding Fathers appreciated the value of a vital minority press as an ideal, if not always as a reality.[33] The marketplace of ideas they envisioned will be less open because of this result.

It is ironic that the press, which historically has sought judicial-constitutional protection from legislative measures, is now turning to Congress and the state legislatures for statutes limiting the effect of *Stanford Daily*. The Senate Judiciary Committee is currently considering the "Bayh Amendment," which would bar police searches of newsrooms absent an affirmative showing that resort to subpoenas would endanger the orderly administration of justice.[34] Legislatures in California, Connecticut and Nebraska have enacted similar measures.[35]

30. 436 U.S. at 570-77.

31. *See* Branzburg v. Hayes, 408 U.S. 665, 727-36 (1972) (Stewart, J., dissenting). *Compare* Blasi, *The Newsman's Privilege: An Empirical Study*, 70 MICH. L. REV. 229 (1971) *with* Guest & Stanzler, *The Constitutional Argument for Newsmen Concealing Their Sources*, 64 NW. L. REV. 18 (1969).

32. *Journalists Fear Impact of Court Rulings*, L.A. Times, Jan. 1, 1979, § 1, at 1.

33. The ambiguity of the Framers' attitudes towards a free press was perhaps best expressed in statements by Thomas Jefferson, quoted by Justice Black in *Bridges v. California*: "I deplore . . . the putrid state into which our newspapers have passed, and the malignity, the vulgarity, and mendacious spirit of those who write them . . . . These ordures are rapidly depraving the public taste.

"It is however an evil for which there is no remedy, our liberty depends on the freedom of the press, and that cannot be limited without being lost." 314 U.S. 252, 270 n.16 (1941).

34. S. 855, 96th Cong., 1st Sess. (1979).

35. CAL. PENAL CODE § 1524 (West Supp. 1980); 1979 Conn. Pub. Acts No. 79-14; NEB. REV. STAT. § 29-813 (Supp. 1979). *See* 48 U.S.L.W. 2046-47 (July 17, 1979).

This resort to nonjudicial processes following *Stanford Daily* is most desirable. For too long, journalists have worn constitutional blinders, seeking their objectives almost exclusively in the courts while ignoring feasible legislative or executive alternatives.[36] This reliance, this closeness, has been unhealthy, for any judicial qualification of press freedom has been regarded as a betrayal. Recognition that the press can pursue its goals in several forums, that it can gain in the legislature what it cannot win in the courts, will ease the current tension between judges and journalists.

Bar-press relations can be further improved if journalists remember that, despite *Gannett* and *Stanford Daily*, the news is not all bad. Although the Supreme Court has consistently rejected claims of special press rights, including rights of access[37] and protection of confidential sources,[38] it has just as consistently recognized the right of the press to publish what it possesses. In the Seventies the Court overturned prior restraints[39] and gag orders,[40] reversed convictions for publishing the names of alleged juvenile offenders[41] and of judges who are subject to disciplinary proceedings[42] and denied recovery of civil damages for broadcasting the identity of a rape victim.[43] The Court's message has been clear: the press, as distinct from the public, enjoys no special rights; but the right to publish is virtually absolute. This position, which has been forcefully advanced by my colleague Hans Linde,[44] is reasonable and principled.

36. One notable exception to this tradition of reliance on judicial remedies has been the promotion of reporters' shield laws by media interest groups. The first of these statutes was enacted in Maryland in 1897. Current version at MD. CTS. & JUD. PROC. (1974) CODE ANN. § 9-112. By January 1, 1979, 25 other states had passed similar legislation. *See* note 29 *supra*.

37. Houchins v. KQED, Inc., 438 U.S. 1 (1978); Saxbe v. Washington Post Co., 417 U.S. 843 (1974); Pell v. Procunier, 417 U.S. 817 (1974).

38. Branzburg v. Hayes, 408 U.S. 665 (1972).

39. New York Times Co. v. United States, 403 U.S. 713 (1971).

40. Nebraska Press Ass'n v. Stuart, 427 U.S. 539 (1976).

41. Smith v. Daily Mail Publishing Co., 99 S. Ct. 2667 (1979); Oklahoma Publishing Co. v. District Court, 430 U.S. 308 (1977).

42. Landmark Communications, Inc. v. Virginia, 435 U.S. 829 (1978).

43. Cox Broadcasting Corp. v. Cohn, 420 U.S. 469 (1975).

44. Linde, *Fair Trials and Press Freedom—Two Rights Against the State*, 13 WILLAMETTE L.J. 211, 218 (1977). Alexander Bickel also espoused this adversarial, "gamesmanship" concept of the relationship between press and government. A. BICKEL, THE MORALITY OF CONSENT 80 (1975).

Some commentators have observed that recognizing special press rights would lead to the imposition of special duties on the press vis-à-vis the public's "right to know." *See* Bezanson, *The New Free Press Guarantee*, 63 VA. L. REV. 731 (1977); Lange, *The Speech and Press Clauses*, 23 U.C.L.A. L. REV. 77 (1976); Linde, *supra*. Another difficulty with according the press special rights is the problem of defining who or what is "the press." *See* State

The tension between judges and journalists may be relaxed by more careful reporting, interpretation and application of decisions; by recognition that First Amendment values are not absolute and that judicial process is just one of many means through which the press may achieve its ends; and by realizing that recent court holdings have not compromised, but reaffirmed, the core of the First Amendment, the right to publish. Bar-press seminars and educational programs like the Ford Foundation fellowships for journalists at Yale Law School can only increase understanding. But the most promising ways to improve bar-press relations are to lower our voices and to remember who we are and what, historically, we have meant to each other.

Judges tend to be wary of reporters. Most lawyers, by training and client preference, become accustomed to working discreetly. It is not surprising that many judges, as former lawyers, find it difficult to accept that their work is now public business, subject to media scrutiny and criticism.

But our work *is* public business. And we serve more responsibly because the press reviews our actions. Ideally—in a civics textbook world—judges decide cases in a vacuum, immune from external considerations. In reality, however, anyone, including a judge, will act more carefully if his or her decisions will be questioned in print. To paraphrase H.L. Mencken, the press is our "conscience, an inner voice that warns us that somebody is looking."[45] Although this accountability does not, and probably should not, affect the outcome of many cases, it results in better reasoned, more principled explanations of judicial decisions.

In a related sense, the press, by publicizing judicial decisions, gives those decisions added credibility and legitimacy. Alexander Hamilton recognized that the courts have no power but persuasion, no force but

v. Buchanan, 250 Or. 244, 436 P.2d 729, *cert. denied*, 392 U.S. 905 (1968) (denial of reporter's privilege claim based, in part, on equal protection implications of defining protected class).

It is notable that, in his oral argument in *Richmond Newspapers, Inc. v. Virginia*, Professor Tribe did not assert a special press right of access to trials but a general public right to attend such proceedings. 48 U.S.L.W. 3549-50 (U.S. Feb. 26, 1980).

45. Justice Frankfurter, if from a different perspective, expressed the same thought: "Judges as persons, or courts as institutions, are entitled to no greater immunity from criticism than other persons or institutions. Just because the holders of judicial office are identified with the interests of justice they may forget their common human frailties and fallibilities. There have sometimes been martinets upon the bench as there have also been pompous wielders of authority who have used the paraphernalia of power in support of what they called their dignity. Therefore judges must be kept mindful of their limitations and of their ultimate public responsibility by a vigorous stream of criticism expressed with candor however blunt." Bridges v. California, 314 U.S. 252, 289 (1941) (Frankfurter, J., dissenting) (footnote omitted).

moral authority.[46] The ultimate test of a court's persuasiveness is the degree to which the public accepts and follows its decisions. And the press is the instrument through which the courts communicate their reasoning to the public. Our authority, our persuasiveness, is linked to the vitality of the press.

Courts have benefited from the free press as conscience, as critic, as correspondent. Conversely, journalists have profited greatly from judges' steadfast, sometimes courageous, defense of the right to publish. At least until now, the great battles for press freedom have been waged and won in the courtroom.

Tension between judges and journalists is inevitable. But it need not be neurotic. We have gained much and learned much from each other. If we pause and remember our history, we will recognize that each needs the other strong and vital. From this recognition tolerance must grow.

46. "The Executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment. . . ." THE FEDERALIST No. 78, (A. Hamilton) at 504 (1976 ed.).