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Access to the Press . . .

IN LANGUAGE that was unmistakably clear, a unanimous Supreme Court has told the government and the states that they cannot regulate what editors choose to print in their newspapers. The Court found no quarter for the argument that a candidate for office can enforce a demand of equal space to rebut criticisms a newspaper may have leveled at him. It struck down a Florida law that provided candidates for public office with just such a right, and it said in the case, *Miami Herald v. Tornillo*, that:

A newspaper is more than a passive receptacle or conduit for news, comment and advertising. The choice of material to go into a newspaper, and the decisions made as to limitations on the size of the paper, and content, and treatment of public officials—whether fair or unfair—constitutes the exercise of editorial control and judgment. It has yet to be demonstrated how governmental regulation of this crucial process can be exercised consistent with First Amendment guarantees of a free press as they have evolved to this time.

Needless to say, we could hardly agree more with the Court in this decision, written by Chief Justice Warren Burger. It was right for the Florida law to be struck down, and it was reassuring that every member of the court agreed.

Having said that, it is important to say that editors should not jump with unrestrained glee at the sight of this opinion, and those who are fighting for greater accountability to the public by the press need not be plunged into utter despair. The argument the court settled on Tuesday is that those who seek greater access and accountability on the part of the press can gain no assistance from government regulation. With that argument settled, we recognize that many problems remain, problems for which we believe there is a genuine need of resolution. That the press has had its freedom reaffirmed is by no means an endorsement of its credibility or a guarantee that other ill-considered approaches to the issue of access might not gain acceptability in some other form. If the press misses the importance of that distinction, it will have missed a fundamental aspect of its obligation.

What the High Court affirmed was the principle that a people cannot remain free if the government can dictate to an editor what should be printed. The burden for "reasonable" judgment, as the Court put it, rests on the editors of the nation. It is they who must guarantee the *people's* First Amendment right by seeing to it as best they can that all sides of public issues are heard and by making certain that public officials who are attacked have the opportunity to tell their side. The Court rightly concluded that government cannot enforce fairness in the printed media. That has been left to the judgment of editors. We believe it should reside there, but we also believe that it can only reside there durably if editors make certain they exercise the trust of the First Amendment with a full appreciation for the magnitude of their responsibility. Otherwise, the time will come when some group or individual will attempt to legislate either fairness or restraint in some other form in the name of "access" or some other doctrine.

Because the issue of the power of the press has become a focal issue of American political debate, we believe these issues continue to be crucial to our understanding of how a free society should function. It is not enough for the press to be jubilant that the Court has kept government out of the editor's chair. It must continue to be concerned with how best to assure that the public's right to the best possible crack at all the available facts is never treated lightly.

. . . And Access to the Prisoners

JUST ABOUT a year and a half ago, Chief Justice Warren E. Burger, took the occasion of a speech in Philadelphia to address one of his favorite topics: the need for reform of the American prison system. He chided the society and its courts for ignoring the prisons and the fate of prisoners once they have been convicted and sentenced; these were his words:

We continue to brush under the rug the problems of those who are found guilty and subject to criminal sentence. In a very immature way, we seem to want to remove the problem from public consciousness. It is a melancholy truth that it has taken the tragic prison outbreaks of the past three years to focus widespread public attention on this problem.

We agree wholeheartedly with those sentiments. And that is why we disagree wholeheartedly with Chief Justice Burger and four of his colleagues in a decision the Supreme Court announced on Monday. The Court found, 5-4, that prison regulations barring interviews between reporters and inmates did not violate the constitutional guarantee of free speech and free press.

When Justice Burger pointed out that the prisons were far away from public consciousness, his observation coincided with that of several commissions, citizens groups and prison rights groups, all of whom have argued that one of the reasons for prison outbursts is the feeling among prisoners that they are locked away where no one can see what is happening to them. One of the reasons they riot is to forcibly call public attention to the shame of the prisons. It is one of the arguments of the prison reformers that great damage done to the prisoner is not only from society's inability to see in, as well as from the inmate's inability to see out.

It was against this background that a group of West Coast journalists and a Washington Post reporter, Ben H. Bagdikian, sued the California prison system and the U.S. Bureau of Prisons to end the practice of denying journalists the right to interview individual inmates with a specific story to tell. They argued that one of the best ways for the rest of the society to understand what was being done behind those walls in all our names would be for the press to be able to conduct face-to-face interviews. Furthermore, they argued, such interviews should be the First Amendment right of the inmate and the press alike.

The Supreme Court, however, found that prisoners were not cut off from the public because they could always write letters to reporters and others, if they so chose. It held that the rights of the prison administrators had to be balanced against the rights of the prisoners and the press. It noted the policies of the two prison systems permitting reporters to tour the facilities and talk to prisoners at random—but often in the company of guards and other officials. The key phrase is "at random." While the court recognized the value of the pre-arranged face-to-face interview arising out of some prior insights to a particular circumstance, it said this was not a value of overarching importance when balanced against the interests of the prison officials. And it said, finally, that the right of the press to scrutinize the prisons was no greater a right than that of the public, and that the public was not granted such access to the prisons.

An that is just the point. The public cannot regularly tour the prisons and interview inmates any more than the public could be expected to learn all it needs to know about Congress by attending all its hearings. It could not master the issues of the city council by going to all its deliberations. That is the role of the press—to obtain and convey that vital information required by a self-governing people if they are to make wise decisions.

Justice Lewis Powell, in a noteworthy dissent, reminded his colleagues of the vital issues at stake for the whole of the society in the prison decisions:

The people must depend on the press for information concerning public institutions. The . . . absolute prohibition of prisoner-press interviews negates the ability of the press to discharge that function and thereby substantially impairs the right of the people to a free flow of information and ideas on the conduct of their government. The underlying right is the right of the public generally. The press is the necessary representative of the public's interest . . . and the instrumentality which effects the public's right.

We can only add our hope that Justice Powell's moving and wise dissenting view will someday prevail.