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A Free and Responsible Press

The First Amendment guaranteed the press freedom at least from direct governmental control in the United States precisely because it was envisioned, in Thomas Jefferson's phrase, as "a censor of the government." It was explicitly recognized by the authors of the Constitution that a free press might become, at times, an irresponsible press; but a measure of irresponsibility was an inescapable price which they were willing to pay for the sake of the vital services an unfettered press was supposed to perform.

Governmental censorship is not, of course, the only peril to freedom of the press. Self-censorship may equally impair the services which a free press is supposed to render to a self-governing community. If publisher and broadcasters are excessively cautious and timorous—if a fear of private legal action keeps them from reporting what the public needs to know about public affairs—they may fail disastrously in their responsibility.

It is to this aspect of press freedom that the Supreme Court has turned its attention in recent years. Freedom from governmental regulation has been clearly established ever since the court decided *Near v. Minnesota* 40 years ago. In the last few years, however, the court has been dealing with harassment or intimidation of the press through private suits. In *New York Times Co. v. Sullivan*, decided in 1964, the court ruled that a public official could collect damages for libel from a newspaper only upon the presentation of clear and convincing proof that a defamatory falsehood alleged as libel was uttered with "knowledge that it was false or with reckless disregard of whether it was false or not." A few years later the same requirement was held to apply to "public figures." And this week the court went a step farther, holding that it must also be applied to a "private individual" bringing a libel action "for a defamatory falsehood . . . relating to his involvement in an event of public or general concern."

This ruling gives the press a very broad blanket of immunity, and we confess we find ourselves troubled by it. Mr. Justice Brennan's opinion for the court is a powerful and eloquent statement of the case for so broad a protection of the press. The essence of his argument is that the dangers

to the community growing out of injury to individuals through defamatory falsehoods are not so great as the dangers to the community that might grow out of inhibitions limiting publication or broadcasting.

But is protection of individuals really irreconcilable with protection of the press? We hope not. Felix Frankfurter once wrote:

"Freedom of the press . . . is not an end in itself but a means to the end of a free society . . . A free press is vital to a democratic society because its freedom gives it power. Power in a democracy implies responsibility in its exercise. No institution in a democracy can have absolute power. Nor can the limits of power which enforce responsibility be finally determined by the limited power itself."

With the development of monopoly ownership of newspapers and broadcasting stations in many American cities, publishers and broadcasters have become immensely powerful. Powerless individuals who are wronged by them not through malice but as a result of inadvertence or carelessness must have some effective remedy; and if a fear of this remedy imposes a measure of self-censorship—a pejorative term for self-control or responsibility—we cannot see the result as necessarily ruinous. A free press can find the resources to rise above this threat. The community, after all, has a vital interest in fairness as well as in freedom.

There are two ways in which the threat of vindictive libel suits can be modified. One way is through a suggestion put forward in two or three of the diverse concurring and dissenting opinions brought forth by the case decided this week: that damages be limited to compensation for real losses or suffering experienced by an injured individual. As Mr. Justice Marshall put it in his dissent, "The threats to society's interest in freedom of the press that are involved in punitive and presumed damages can largely be eliminated by restricting the award of damages to proven, actual injuries."

Another modifying condition not mentioned in the court opinions but in our view appropriate to this problem is a good faith effort by a newspaper or broadcasting station to correct injurious error when it is discovered. Such an effort is an obligation of freedom. When it is made candidly and generously, it can go far toward undoing and healing an injury. We think, therefore, that it ought to serve as an earnest of good faith and as a shield against legal action.