

Black's conception of an absolute First Amendment emerged from his experiences in the McCarthy era. He usually avoided writing scholarly articles or giving formal lectures, but he agreed to present his views at New York University early in 1960. In his presentation, he went through the Bill of Rights in reverse order, citing an absolute, irreducible core in each amendment. Of the First Amendment he declared that it was "composed of plain words, easily understood," and was in its entirety nothing "less than absolute," hence essentially beyond the reach of government action.

Commenting on the lecture, Newman views it in retrospect as having been basically tactical — that is, a way of placing First Amendment debate on a ground where he, Black, was strongest. Later justices never agreed that the First Amendment is absolute, but Black's formulation remained to a degree the measurement against which First Amendment cases had to be decided. Even Black himself placed limits on the absolute. Although he sympathized with the civil rights movement and abhorred the Vietnam War, he could not bring himself to view as free speech the disruptive or symbolic protests associated with these crises. He was in the minority in the *Tinker* case, which upheld the right of Des Moines schoolchildren to wear armbands to protest the war.

Through his years on the Court, Black inevitably dealt with cases involving the press. One of his earliest such opinions was *Bridges v. California* (1941), which upheld the constitutional right of newspapers to criticize judges and courts. Equally significant from the journalistic perspective (although it is given only glancing attention by Newman) was *Associated Press v. United States* (1945), in which he wrote the opinion that struck down the AP's monopolistic membership practices; he observed that "a free press is a condition of a free society" and added: "Freedom to publish is guaranteed by the Constitu-

tion, but freedom to combine to keep others from publishing is not."

In the two great press cases of his final years, Black staked out the absolute position for himself. In *New York Times v. Sullivan*, William J. Brennan, Jr., who succeeded Black as the Court's leading First Amendment theorist, devised the "actual malice" standard of liability, which ultimately opened the way to the convoluted libel trials of subsequent decades. Although concurring, Black insisted that public officials should be utterly unable to sue for libel, for the Constitution granted the press "an absolute immunity for criticism of the way public officials do their public duty." Similarly, near the end of his career, in the Pentagon Papers case, he declared that the federal government's injunctions against the newspapers publishing secret government documents amounted to "a flagrant, indefensible, and continuing violation of the First Amendment."

By the time he retired, seriously ill, less than three months after the Pentagon Papers case, Black had served more than thirty-four years, twenty-six of them as the senior justice, the longest such seniority in the Court's history. He died eight days after his retirement.

One of the many strengths of Newman's biography is its emphasis not only on Black's jurisprudence but on his heritage — the infallible courtesy that kept him free of personal feuds, his enormous industry rising from his hardscrabble beginnings, his representation of the often forgotten southern strains of liberalism, individualism, and concern for equal justice.

Newman points out the felicity — and southernness — of one key sentence in his Pentagon Papers opinion: "And paramount among the responsibilities of a free press is the duty to prevent any part of the government from deceiving the people and sending them off to distant lands to die of foreign fevers and foreign shot and shell." The phrasing was adapted from a song he had known since childhood, "I Am a Good Old Rebel."