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Guarding the First Amendment-for and from the Press

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Guarding the First Amendment—for and from the Press

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> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.
>
> AMENDMENT I to the Constitution

> I'm down here to take an island. I don't need you running around and getting in the way. [And to anyone who tries:] We'll stop you. We've got the means to do that.
>
> Vice Admiral Joseph Metcalf III

When the press were not granted immediate and unlimited access to Grenada, then their righteous indignation struck like a hurricane. From the snarls of the cub reporters on nearby Barbados to David Brinkley's stately protestations in Congressional testimony, across the spectrum of the news media we saw our journalists behaving like caged tigers, smelling blood and waiting to pounce: to probe and paw and interview and interrogate and investigate and, yes, bring war back into the family room.

But lo, the American public who "have a right to know" the atrocities of the US Armed Forces and inanities of their generals did not join in the hue and cry. The people seemed content, even glad, to have their government succeed, and to accept that soldiers make mistakes, too, and that war is a bloody business.

This revelation to the press took several weeks to sink in. But by mid-December the proud watchdogs were humbled, and journalism's deepest and most introspective self-examination in my memory was underway. The nature of this chastisement of the press by the people is a subject to which we shall turn in a moment.

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The first press suspicion was along lines that Government had learned the value of censorship-by-exclusion from the British experience in the Falklands. Nearer to the truth was that this Administration had taken its lesson from the Vietnam war and determined that the press would not enjoy the uninhibited freedom of reporting that characterized that war. It was a lesson the leaders of government and the armed forces learned too well, and that is the second subject to which we will return.

But first, we have to settle what the argument is about: the freedom of access by the press guaranteed by the First Amendment. The purpose of the amendment is to serve as a check on tyranny, most notably by Government, but also by business, landholders, anyone or any group that abuses its power by purveying false or self-serving information—including the press itself. The argument is about safeguarding this access so that when the wolf is truly in the flock then people who may do something about it (not entirely the same as "The People who have a right to know . . .") will know and not be numb to the danger, sated by day-to-day media hyperbole. Two hundred years of legal interpretations of the First Amendment aside, this is the essence of what is to be preserved.

"Thus my fellow citizens if an imprudent writer attacks your reputation, dearer to you than perhaps your life . . . you may go to him openly and break his head."

As to Grenada, access by the press to the scene of action and its participants is a right which we all should wish to see guaranteed. Access for anyone with a press card who wished to be anywhere he wanted any time he wanted is another matter and not a necessary safeguard against depotism. On the contrary unconstrained freedom of access comes closer to creating a tyranny *by* the press. There are two reasons for this. One is that the reporting by some "journalists" will be sensational, slanted, imperceptive, commercialized, or all of the above, and at the least will inundate, obfuscate and desensitize the public perception. George Orwell, whose year 1984 seems to be concentrated on tyranny of the mind as the greater evil, and it is percisely this that is the peculiar threat of an undisciplined as well as on overdisciplined press corps.

The second hazard is that of self-fulfilling prophesy, in its least harmful form through the creation of media events, and in its worst the danger of reporters who become advocates, and then themselves participants who would steer events. To him who sighs and says, no one can observe without forming opinions, I say, ah, just so. The opinions held, not to say roles played, by reporters concerning the overthrow and assassination of Ngo Dinh Diem—which were brought to light with the help of *The Wall Street Journal*—go a long way toward explaining the hostility of those men subsequently toward the war. As the *Journal* editorized (2 November 1983):

"The anti-Diem faction dominated by press through the efforts of three young men in Saigon—David Halberstam of *The New York Times,* Neil Sheehan of UPI and Malcomb Browne of AP. The pro-Diem faction was represented by Marguerite Higgins of *The New York Herald Tribune,* who had already covered two other wars. The significance of this is that those who championed the coup have written the popular history of its aftermath. Mr. Halberstam's writings are best understood as an attempt to blame the outcome in Vietnam on everything but the coup. Mr. Sheehan, by then with the *Times,* was the recipient of the Pentagon Papers leak . . . . He used the papers, an enormous and ambiguous record from which nearly any lesson could be drawn, to advance the preposterous notion that we had entered the war by stealth, without anyone in the public or Congress noticing."

I still have a letter from Mrs. M. Tregaskis dated 19 July 1977, commenting on a footnote to an essay published in the Naval Institute *Proceedings,* in which I said:

"The most extraordinary thing about the reporting of the war was that responsible individuals in the news media thought they were reporting it objectively . . . . To prepare for the next war, some ground rules had better be established in advance defining the proper degree of journalistic freedom."

She wrote:

"As an experienced reporter of wars in Asia I wish to . . . agree with you.

"The most extraordinary thing about the reporting of the Vietnam war, however, is quite different: No one, anywhere, seems to have questioned why it was reported in the manner you describe. I will tell you why . . . .

"There would be no authorized press corps whatsoever. No member of the press would be authorized to receive the basic military assistance granted to the press in every other war . . . . No member of the press would be authorized military travel orders . . . [or] in-country medical care . . . . For the first time when Americans have fought in war, billets, status and mobility were denied . . . . There would be no censorship of whatever press were available in-country.

"The decisions caused havoc in the mechanics of war reportage . . . in practical terms, this meant that anybody could go to Vietnam. And anybody did. All one had to do was to talk an editor into a letter, buy his own commercial ticket to Saigon, present the letter to MACV and RVN Information, and immediately receive press cards, no questions asked. Letterheads came from small publications. Some of the newspeople were recent journalism graduates, some had never seen a bloody nose, some sought sensationalism, some had no background in the writings of Lenin, Stalin, Mao, Ho Chi Minh, or General Giap. Most had no experience in war.

"A few responsible newspeople did go to Vietnam. They were voices in the wilderness . . . . From experience I know that no war can be objectively covered without orders and censorship . . . it is the temper of the time to shrink from the idea of censorship. That is unfortunate."

And then she writes a sentence for all of us to ponder: "Censorship in war is valid, and necessary to preserve objectivity."

At Grenada the press were, in the attempt, excluded for about forty-eight hours.* Looking back we may believe that nothing, literally nothing, was concealed that the First Amendment was framed to uncover. Is a "forty-eight hour exclusion" as exercised at Grenada a good model to adopt for the future? It depends, as for instance, on questions of the security of future operations. But in general, I think not. Obviously Metcalf did not decide on the policy for handling the press at Grenada. It was the style of implementation that was his own. Considering that some elephants have to be hit on the head with a 4x4, Metcalf was probably the perfect officer to get their attention. After the dust settled I wonder whether he did not win more respect than less by his unequivocal stand in the heat of the moment. We may believe that the real Metcalf spoke some weeks later when he was addressing his fellow officers in San Diego. "If I had somebody come to me and say 'OK, here is a group of eight press people . . . how would you feel about taking them with you?' I would have taken them along." On the other side of the coin as he also said, he would have worried about the influence of a large number of reporters on his mission. This is a better model to adopt for the future than a total exclusion, no matter how temporary. Why, then, can't we adopt it?

We probably can, but to do so we must first recognize the Archilles heel of the press, its secret sorrow in exercising its freedom protected by the First Amendment. It is the irony of the press that, like our elected officials, it also is not independent of the people. The press serves the people, but on the darker side it is beholden to them. Thrilling though it was to see the press battered by public opinion, which as John Chancellor reported, ran 5 to 1 in support of the press ban in Grenada, it was an ominous turn of events. First, because we saw the public suspicion that results when press reporting is believed to be laced with sensationalism. Second, and more subtly with the recollection that the early days of Mussolini, Hitler, and the Russian Revolutionaries were also popular with the people, it is a mixed blessing to see a chastened press reorienting itself to the attitudes of its customer.

A totalitarian government finds a free press intolerable, and so controls or manipulates it. But under any government someone will control the press—that is to say, direct its operations and policy. The advantage of a "free" press is the diversity of that control. Nevertheless, there is a touch of irony in that while we

*Time was pleased to report some agents in place. There may have been other reporters on the island, but their reporting was stifled by lack of means of transmission.

are proud to have a press that is the Voice of The People, in a democracy the people collectively can be a great tyrant, short of vision, and interested in personal comfort, self-satisfaction, tangible goods, and entertainment, as well as knowledge, open discussion, and the preservation of life and liberty. In our democracy, governments—federal, state, and local—along with interest groups and businesses, all cater to these public interests. While I wouldn't change this, we must appreciate one consequence of the power of the people as it effects our "free" press.

The news media are businesses. Most of them are very big businesses. The greatest of them are components of gigantic entertainment businesses: CBS, NBC, ABC, and CNN. The least among them have components of the entertainment business: even a little independent newspaper carries Miss Manners, Goren on Bridge and the comics, and my wife knows I do not submit to my morning addiction of gathering up the *Monterey Peninsula Herald* merely to see whether the Marines have been bombed again.

In the truly big businesses, the Dan Rathers and Roger Mudds command salaries that define them as celebrities, and their networks function under a veneer of social responsibility so thin that it is transparent to all, in a cynical atmosphere of scoops, ratings, personal prestige, and power reminiscent of Hollywood's Sammy Glick. No wonder that the controversial, the confrontational, the self-proclaimed crisis, the ninety-second interview, and the predatory search for venality in eminent men have become not merely a part, but very nearly the whole part, of television journalism. Since nearly 10 minutes of every 30 minute newcast is now given over to advertising, which will go to any extreme to capture the viewer's attention, the television audience can never be sure whether they are being enticed, entertained, or informed.

As many mourned, when Walter Cronkite retired the last of the career journalists—Eric Severeid, Edward R. Murrow, Huntley and Brinkley—passed from the scene, replaced by anchormen who earned their reputations as personalities like Ted Koppel and Tom Brokaw, or as demon-hounds like Mike Wallace, Barbara Walters, and Rather. We may know as we know the spirit of J.P. Morgan and Leland Stanford that television news wanted to be on the scene in Grenada for blood in proportion to public interest as 100 is to one.

Newspapers and magazines are better guardians. How to make them better still as the watchdogs of democracy ought to be a question of the most fundamental nature. Op-Ed pundits are flagrant pamphleteers. Investigative reporters at their worst become as scandalous in their distortion of truth in the name of sensation as the scandals they portray (H.L. Mencken said never aim lower than the mayor; a crooked alderman cannot win you a Pulitzer Prize). And who will sit in judgment of the long-term consequences of Hearst's role in fomenting the Spanish-American War, McCormick's grandiose Anglophobia, or the direction of Luce's China policies, as

compared with the modern editorial policies of *The New York Times, The Washington Post,* or *U.S. News and World Report*? For better and worse, newspapers mold events as well as report them.

Still, newspaper journalists are steeped with good intentions. *Time* ran a cover story so professionally self-critical that I thought until near the end of it that there would be nothing else to say. More than a year ago in "A Newspaper Editor Looks at the Press," Michael J. O'Neill of the *New York Daily News* wrote: "No code of chivalry requires us to challenge every official action. Our assignment is to report and explain issues, not decide them. We are supposed to be the observers, not the participants—the neutral party, not the permanent political opposition. We should cure ourselves of our adversarial mindset." And he went on to say much more that needed to be said and heard by his fellow journalists. Last December *The Wall Street Journal* reprinted from Benjamin Franklin in "Notable and Quotable":

"My proposal then is to leave the liberty of the press untouched, to be exercised to its full extent, force and vigor; but to permit the *liberty of the cudgel* to go with it *pari passu.* Thus my fellow citizens if an imprudent writer attacks your reputation, dearer to you perhaps than your life . . . you may go to him openly and break his head . . . . If however it should be thought that this proposal of mine may disturb the public peace I would then humbly recommend to our legislators to take up the consideration of both liberties, that of the press and that of the cudgel, and by an explicit law mark their exent and limits and, at the same time they secure the person of a citizen from *assaults,* they would likewise provide for the security of his *reputation.*"

When the press looks itself in the eye with such wit and wisdom then we may give a cheer for it as a worthy medium of both entertainment and enlightenment. The American press has, on the face of it, no peer in the rest of the world. Television news at its graphic best is an unparalleled medium of communication and it is a deep frustration to watch it sink into the bondage of show business. It remains in the interest of all of us to continue to sanction the news media in their watchdog role and to be charitable of the occasional bully of the language or the video tape. For what are journalists but policemen and who carries more derision on his shoulders than a policeman on his beat? Still, there are "Georgia cops" of the news business, too, and we may ask for standards of comparable propriety from the guardians of our minds as of our persons.

If press freedom is, as it were, too important to be left to the journalists, who will watch the watchdogs? That is the harder question, even after setting aside questions of constitutionality. A government organ? *Another* instrumentality of government!? No matter how independent, as with lifetime appointments of judges or the freedom of maneuver of the Federal Reserve Board, this solution is not for me. The history of both these

examples speaks for itself. A self-appointed body, then, like the American Bar Association, the Motion Picture Association of America, the National Safety Council, the Consumers Union, or the General Assembly of the Presbyterian Church? Better. But the press already has its Society of Professional Journalists and other associations, and I doubt that they could or should act in a self-governing capacity.* Free the press from the profit motive, then, with a BBC or PBS on the grand scale? Not in my game plan. I still cling to the hope that competition will engender and not stifle quality, creativity, originality and acumen in journalism as in other forms of business.

So I do not encourage an instrumentality of press restraint in peacetime. But there can and must be delimitations in time of war. The press, which after Grenada were quick to point out a tradition of front line coverage in all prior wars, omitted to mention that on most of those occasions restraints had been imposed by the government.

That these days the mechanism of restraint will be hard to come by illustrates as well as anything the nature of the First Amendment problem in war. Equitability is difficult when big entertainment businesses are the target. But once the dollar values and egos are recognized for what they are—threats to, not defenders of, a free press—then good men could agree on a plan, under the Metcalf model, in about thirty minutes.

I had a dream. It was that Admiral Metcalf asked me which eight of the press to take with him, and that this was my list:

1. *Time* or *Newsweek* (by flip of the coin; for guarding the public interest there was not enough difference to matter).
2. *The Los Angeles Times* or *The New York Times* (by similar lot).
3. *The Wall Street Journal* or *The Christian Science Monitor* (by lot again, but I hoped the *Journal* would get the nod).
4. AP or UPI.
5. *USA Today* or the *Armed Forces Journal* (not exactly symmetrical, but on balance should average out).
6. *The Louisville Courier-Journal* (besides being competent, employed one of my best friends. A little cronyism was inevitable).
7. A Wild Card (some allusion to sports had to be brought in).
8. *Izvestia* (for many reasons, all having to do with keeping the role of the press—ours and theirs—in perspective).

No paper from Washington DC was invited: too close to the seat of government.** No photographers were allowed, and only two polaroid

*After the Grenada backlash the society's solution was to launch a program to explain First Amendment freedoms and conduct a public survey.

**At a panel discussion on "Communications Media," reprinted in the *Naval War College Review* in February 1971, Neil Sheehan made an assertion that I took to heart. He said the American press are not too critical but not nearly critical enough of Government. The press is too ready to serve as the mouthpiece of Government and mindless partner of it. My tongue-in-cheek solution is to leave the Washington press

cameras, which were enough to reproduce any vital evidence the Armed Forces photographers had covered up.

No TV networks were represented at the outset for the reasons aforementioned. I conceded that eventually coverage would have to include the networks, who after all have among the most powerful lobbies in Washington. But I held out against those grating closing lines, *ala* "This is Sam Donaldson, CBS News, Grenada," which tell so much about the rise of the cult of personal reporting on television. There was a time when the sense of personal reputation in the by-line outweighed the cloak of anonymity of the AP dispatch. But the rush to status by thunder and lightning seems to have overtaken the temperance of individual accountability.

Of course daydreaming and whimsy do not solve the problem. If we are serious then eight journalists is not enough to cover a war, and there really are vital questions: of mobility around the scene of combat and I know not what else. In addition there is the issue of censorship. We have, recall, that curious statement of Mrs. Tregaskis, "Censorship in war is valid, and necessary to preserve objectivity." What did she mean? I venture this: that the specter of an outside check is worth more in raising the level of accuracy, restraint, and self-discipline among the biased, the ignorant, and the innocent than the cost perchance of suppressing, for the moment, facts that belong in the record. I do not know how to establish all the rules of press restraint to balance the threats of ideological tyranny by the Government off against that of the press. But on the evidence from Vietnam, both the Government and the press are capable of twisting the facts, and the sickly atmosphere of confrontation and distrust that occurred then is not one that serves the public interest to repeat. The time to work out the balance, with the interests of press, government, and public all represented, is before the war begins. Establishing a *modus vivendi* in time of peace will hardly reduce the trauma of it. Nothing involving government, big business, and press censorship would or should be decided quickly. But if we can manage it, almost any plan with these three interests all represented will offer more hope of safeguarding the First Amendment for and from our free press than doing nothing and risking either overweaning censorship or overwrought war reporting. Besides, the process may afford us, the people, some titillating headlines and—what else is important?—some more entertainment.

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corps at home. My serious advice for anyone who would understand the role of the press in wartime is to read Sheehan and then S.L.A. Marshall's rebuttal in the April issue. Marshall also advanced wartime censorship as necessary and urgently so.