



2000

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Recommended Citation

Sandra F. Chance, *The First Amendment in the New Millennium: How a Shifting Paradigm Threatens the First Amendment and Free Speech*, 23 U. ARK. LITTLE ROCK L. REV. 169 (2000).

Available at: <https://lawrepository.ualr.edu/lawreview/vol23/iss1/10>

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THE FIRST AMENDMENT IN THE NEW MILLENNIUM: HOW A SHIFTING PARADIGM THREATENS THE FIRST AMENDMENT AND FREE SPEECH

*Sandra F. Chance**

The First Amendment provides that "Congress shall make no law . . . abridging freedom of speech, or of the press."¹ Studies show that Americans have historically appreciated, understood, and endorsed broad First Amendment principles.² As a result, the press enjoyed a golden age of protection for gathering and reporting the news.

During the past ten years, there has been a distinct and alarming shift in the theoretical and philosophical framework fundamental to the First Amendment protections that ensure freedom of the press. The media face a backlash of unprecedented proportions, new anti-media legislation, and a rise in court decisions that chip away at traditional First Amendment protections for the news media and threaten our very freedom.

While court decisions, legislative initiatives, and public opinion surveys demonstrate this phenomenon in a fairly abstract way, I experience this backlash and hostility almost daily. When people hear that I teach in a journalism and communications college, they cannot wait to tell me how the media violates basic standards of fairness, accuracy, objectivity, and respect for privacy in the rush to profit from sensationalizing sex, scandal, and violence.

Some of the bashing is deserved; much of it is not. The entire industry is often blamed for the excesses of a few. It has become almost *de rigueur* to blame the media for all of society's ills.

Clearly, the press has a crisis of credibility, which ultimately threatens First Amendment protections. The paradigm of powerful protections guaranteeing freedom of the press is shifting, shaking the First Amendment foundation so essential to our democracy.

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1. U.S. CONST. amend. I.

2. See, e.g., Paul McMasters, *State of the First Amendment: A Survey of Public Attitudes* (visited Sept. 1, 1999) <<http://www.freedomforum.org/first/sofa/1999/analysis.asp>>; THE AMERICAN SOCIETY OF NEWSPAPER EDITORS, *NEWSPAPER CREDIBILITY: BUILDING READER TRUST* (1995); TIMES MIRROR CENTER FOR THE PEOPLE & THE PRESS, *THE PEOPLE, THE PRESS, AND THEIR LEADERS* (1995); Norman J. Ornstein & Michael J. Robinson, *Why Press Credibility is Going Down*, WASH. JOURNALISM REV., Jan./Feb. 1990, at 34; Michael J. Robinson & Andrew Kohut, *Believability & the Press*, 52 PUB. OPINION Q. 174 (1988); TIMES MIRROR, *THE PEOPLE & THE PRESS: A TIMES MIRROR INVESTIGATION OF PUBLIC ATTITUDES TOWARD THE MEDIA* (1986); *The Press and the People—A Survey*, FORTUNE, Aug. 1939.

The Freedom Forum, an international foundation dedicated to free press and free speech issues, established under the direction of Allen Neuharth and the Gannett Foundation, has documented an amazing decline in the public's support for the media. The news media is in deep trouble with the American public, according to the survey report. The report states that a variety of studies, surveys, and focus groups document a real resentment of the press among Americans.³ Americans characterize the news media as "arrogant, inaccurate, superficial, sensational, biased and bent."⁴

In fact, the latest Freedom Forum State of the First Amendment Survey of Public Attitudes, completed in 1999, revealed that more than half of the respondents felt that the press has too much freedom.⁵ That represents a fifteen percent increase from 1997.⁶

"In disturbing numbers, Americans said newspapers should not be allowed to publish freely without government approval."⁷ One-third of the respondents said newspapers "should not be allowed to endorse or criticize political candidates."⁸ Almost three-fourths of those surveyed felt that "journalists should not be able to use hidden cameras for newsgathering . . ." and half believed that "the news media should not be able to publish government secrets."⁹

And, while the public generally favors freedom of expression more than it supports freedom of the press, more than half of the respondents said they believe that Congress should amend the Constitution to override First Amendment protections for flag-burning as a political protest, and one-third felt that the First Amendment "goes too far in the rights it guarantees."¹⁰

I. COURT DECISIONS RESTRICT TRADITIONAL FIRST AMENDMENT PROTECTIONS AND REFLECT JUDICIAL DISAPPROVAL OF MEDIA ACTIVITIES

The media's crumbling credibility with the public is also reflected in recent court decisions. Dismayed by the media's newsgathering practices, judges are cutting back on constitutional protections for the press. The "breathing space" Justice William Brennan viewed as

3. See *McMasters*, *supra* note 2.

4. *Id.*

5. *Id.*

6. See *id.*

7. *Id.*

8. *Id.*

9. *McMasters*, *supra* note 2.

10. *Id.*

fundamental to protecting freedom of expression and to reporting on public issues is evaporating, according to one prominent First Amendment lawyer.¹¹

The public's frustration with the media is reflected in courtrooms across the nation as judge after judge limits the media's ability to report. Take Judge Susan Webber Wright, for example. When the media asked for access to discovery materials in the Paula Jones case, Judge Wright called the media "often inaccurate,"¹² and "driven by profit and intense competition."¹³

According to journalists around the country, courts are banning cameras and other electronic coverage of courtrooms, restricting press access to courtroom proceedings, forcing journalists to reveal confidential sources of information, sealing records, and placing gag orders on trial participants.

Investigative reporting is being discouraged with huge punitive damages. And plaintiffs, unhappy with how their stories are reported, are filing weak libel cases, which take a further toll on journalists in terms of time and money.

Too often, judges are more concerned with the *process* of journalism rather than the *product*. Distressed over certain newsgathering practices, they focus on how the reporter got the information instead of focusing on the First Amendment protections for aggressive, even intrusive newsgathering.

As a result, courts are increasingly hostile to the media. One federal court judge even equated CBS with thieves after the government gave permission for the network cameras to follow them into an apartment to film a segment for its real-life drama show *Street Stories*.¹⁴

This decision and denigration of the media is in stark contrast to an earlier Florida case, decided in 1976, where the court not only protected the media's right to enter private property where there was a disaster of great public interest, but also recognized the important public interest role the media play in these situations.¹⁵

11. BRUCE W. SANFORD, *DON'T SHOOT THE MESSENGER: HOW OUR GROWING HATRED OF THE MEDIA THREATENS FREE SPEECH FOR ALL OF US* 8 (1999).

12. See *Jones v. Clinton*, 12 F. Supp. 2d 931, 932 (E.D. Ark. 1998).

13. See *id.* at 935.

14. See *Ayeni v. CBS, Inc.*, 848 F. Supp. 362, 368 (E.D.N.Y. 1994), *aff'd sub nom. Ayeni v. Mottola*, 35 F.3d 680 (2d Cir. 1994), *cert. denied*, 514 U.S. 1062 (1995).

15. See *Florida Publ'g Co. v. Fletcher*, 340 So. 2d 914 (Fla. 1976) (holding that an official invitation to take pictures when fire marshal ran out of film and report on the fire overcame claims of trespass.), *cert. denied*, 431 U.S. 930 (1977).

In the twenty years following the United States Supreme Court's decision in *Branzburg v. Hayes*,¹⁶ federal and state courts built up substantial protection for reporters' confidential sources. In addition, courts determined that the news media ought to be independent from the government's law enforcement activities.¹⁷

Despite these protections, the Reporters Committee for Freedom of the Press discovered that fifty-two percent of surveyed news organizations had been subpoenaed during 1993.¹⁸ Another study, which focused on the burgeoning number of subpoenas being served on the media in Florida, revealed that the rate of reporters subpoenaed in Florida increased seventy percent between 1990 and 1992.¹⁹

During the past ten years, two Florida reporters were jailed for refusing to testify in court proceedings. Tim Roche, a reporter for the *Stuart News*, spent eighteen days in jail for refusing to reveal a confidential source.²⁰ A Florida court found David Kidwell, a *Miami Herald* reporter, in criminal contempt and sentenced him to seventy days in jail for refusing to testify for the prosecution about a jailhouse interview.²¹ Kidwell served fifteen days before he was released pending an appeal.²²

In addition, according to the Reporters Committee, federal officials are searching newsrooms for evidence of crimes,²³ despite the Privacy Protection Act of 1980, which prevents government officials from searching newsrooms for "work product" or "documentary materials."²⁴

Judges are also restricting media access to courts and to trial participants. Judges are issuing gag orders, which limit comments to and reports by the press, at a record pace. Fearing news coverage that will unfairly influence the outcome of proceedings, especially in high-

16. 498 U.S. 655 (1972).

17. SANFORD, *supra* note 11, at 166.

18. See Reporters Committee for Freedom of the Press, *Confidential Sources & Information* (visited June 9, 2000) <<http://www.rcfp.org/csi/intro.html>>.

19. See Laurence B. Alexander et al., *Branzburg v. Hayes Revisited: A Survey of Journalists Who Become Subpoena Targets*, 15 NEWSPAPER RES. J. 83, 89 (1994).

20. See *Protecting Journalists and Sources*, ST. PETERSBURG TIMES, Apr. 29, 1998, at A10.

21. *See id.*

22. *See id.*

23. See DONNA DEMAC, STATE OF THE FIRST AMENDMENT 40 (1997). See also Reporters Committee for Freedom of the Press, *supra* note 18.

24. 42 U.S.C. § 2000aa. (1994). Power to search newsrooms was reinstated by a 1996 amendment to the Privacy Protection Act that allowed government officials to search newsrooms if they were searching for alleged child pornography and child exploitation offenses. See Child Sexual Abuse and Pornography Act of 1986, 18 U.S.C. § 2251 (1994 & Supp. IV 1998).

profile proceedings, judges are increasingly willing to restrict trial participants' speech.²⁵ Many First Amendment scholars, media professionals, and lawyers believe the use of gag orders has increased dramatically.²⁶ Gagging the speech of trial participants, a form of prior restraint, affects First Amendment rights by silencing trial participants. In addition, these gag orders also frustrate the media's ability to gather information about a trial. As such, these orders can infringe on the rights of a free press.

Florida judges surveyed in 1995, however, did not believe that gag orders are being issued more frequently.²⁷ These contradictory viewpoints are indicative of the extent and seriousness of the problem between the judiciary and the press.

While the right of the accused to a public trial dates to English common law, many judges, appalled at the O.J. Simpson spectacle, are increasingly inclined to close their courtrooms to television coverage.²⁸ Without a First Amendment right to televise court proceedings, television coverage remains up to the discretion of the presiding judge.

As a result, judges in many high-profile cases are denying what had been routine media access. In the O.J. Simpson trial, for example, Judge Hiroshi Fujisaki issued an order forbidding cameras and other electronic recording devices and imposed a broad gag order on trial participants.²⁹ The federal judge in Denver who presided over the trial of Oklahoma City bomber Timothy McVeigh erected a wall to shield the jurors from the public, but was forced by a special congressional law to ease restrictions on access to the trial for bombing victims and their families.³⁰

Finally, the highest court in the land, the United States Supreme Court, refuses to allow cameras into the courtroom. Justice Souter may have best summed up how other judges feel about cameras: "The day

25. See Sandra F. Chance & Susan D. Ross, *Gag Orders: Shields or Swords in the Constitutional Conflict Between Fair Trial and Free Press?*, 1 COMM. L. & POL'Y 271 (1996).

26. See *id.* at 274.

27. See *id.* at 294.

28. See DEMAC, *supra* note 23, at 37.

29. See B.J. Palermo, *A Rush to Reform: Critics Fear Some Simpson-Inspired Changes are Misguided*, A.B.A. J., Apr. 1997, at 20; William Claiborne, *For Simpson Civil Trial, New Players and New Rules: Away from TV Cameras, Defendant to be Compelled to Testify Before Santa Monica Jury*, WASH. POST, Sept. 16, 1996, at A1.

30. See *Media Group Seeks to Overturn Judge's Gag Order in Bomb Trial*, DENVER ROCKY MOUNTAIN NEWS, Apr. 19, 1997, at A12; Chance Conner, *Legal Challenge of Bomb-Victim Law Predicted*, DENVER POST, Mar. 22, 1997, at A15; *Editorial*, DENVER POST, Mar. 30, 1997, at E4.

you see a camera coming into our courtroom, it's going to roll over my dead body."³¹

II. LEGISLATIVE INITIATIVES REFLECT DESIRE TO CONTROL THE MEDIA AND LIMIT FIRST AMENDMENT PROTECTIONS

The United States Congress and state legislatures across the country have also passed new restrictions, further chipping away at fundamental First Amendment protections for the media and the public. In 1994, Congress passed the Driver's Privacy Protection Act ("DPPA"),³² a complex federal statute mostly preventing public access to personal information in the state drivers records. The Act is filled with irony. Congress passed the DPPA following the 1989 death of Rebecca Schaeffer, who was killed by an obsessed fan. The fan hired a private investigator, who obtained the actress' address by accessing her California motor vehicle record.³³ The irony is that private investigators continue to have access to this information under the new federal law.

In *Reno v. Condon*,³⁴ the United States Supreme Court upheld the DPPA. Proponents of the measure argue that the DPPA enhanced individual privacy protection by limiting state's abilities to release personal information contained in motor vehicle records.³⁵

Access advocates claim that a valuable source of public information has been eliminated and bemoan the stories that can no longer be reported. Without access to information that was accessed from driving records, a Minnesota television station's investigation into car title laundering would never have reached the public.³⁶ Other stories that would have never received publicity without this information include a *Miami Herald* investigation into how Florida failed to keep drunk drivers off the road, a Minnesota newspaper's report on airline pilots who flew drunk, a newspaper's story on the names of Ku Klux Klan members who marched down the streets of Florida's capitol, and

31. Tim O'Brien, *High Court TV*, N.Y. TIMES, Jan. 6, 1997, at A17.

32. 18 U.S.C. §§ 2721-2725 (1994 & Supp. IV 1998).

33. See Robert Welkos, *Public Records Led Suspect to Actress-Victim*, L.A. TIMES, July 22, 1989, at 1.

34. 120 S. Ct. 666 (1999).

35. See Linda Greenhouse, *Justices Uphold Ban on States' Sales of Drivers' License Information*, N.Y. TIMES, Jan. 13, 2000, at A1.

36. See Lucy Daghlish, *Coming Soon: More Closure*, NEWS MEDIA & THE LAW, Winter 2000, at 2.

NASA employee accounts of the cause of the space shuttle Challenger explosion.³⁷

In recent years, Congress has considered three separate bills that would offer "protection from intrusion for commercial purposes."³⁸ These pending bills, two of which were introduced following the 1997 death of Princess Diana, are part of a legislative movement to punish newsgathering techniques in the name of privacy.³⁹

In addition to anti-paparazzi legislation and restrictions on access to information from driver's record, privacy advocates appear to be setting their sights on legislation to close voter registration records, property tax records, and land transaction records.⁴⁰ State legislatures have jumped on the anti-media bandwagon, as well. For example, California passed a new law that holds people liable for physical invasion of privacy.⁴¹ The law creates a civil cause of action against photographers who trespass on private property in order to obtain photographs or even who "technologically trespass" by employing enhancement devices, including telephoto lenses or high powered microphones.⁴²

III. STOPPING THE SHIFT AND PROTECTING FIRST AMENDMENT LIBERTIES

Clearly, the future of the First Amendment as we know it is at risk. Do we want a First Amendment that protects freedom of the press or do we want an interpretation of the First Amendment that allows government intrusion, intervention, and control of the media? For those interested in protecting the philosophical and theoretical framework that effectively protected the media's right to gather and publish news for more than fifty years, I have three suggestions, which I will call "keys to survival" as an indication of how strongly I feel about them.

37. *See id.* at 2.

38. Anne Hawke & Kevin Donnelly, *Paparazzi*, *QUILL*, Sept. 1998, at 19; *see also* Rosalind C. Truitt, *Proposed Laws and Recent Court Rulings Force a Delineation Between Privacy and the Public's Right to Know*, *PRESSTIME*, Nov. 1998, at 33.

39. *See* Personal Privacy Protection Act, S. 2103, 105th Cong. (1998); Privacy Protection Act of 1998, H.R. 3224, 105th Cong. (1998); Protection from Personal Intrusion Act, H.R. 2448, 105th Cong. (1997).

40. *See* Daghli, *supra* note 36, at 2.

41. *See* CAL. CIV. CODE § 1708.8 (West Supp. 2000).

42. *See id.* § 1708.8(b).

A. The First Key Is Education

If an informed citizenry is the key to maintaining a strong democracy, then we are in trouble. A 1997 survey of 1000 United States citizens, commissioned by the National Constitution Center, revealed that only six percent of those polled could name all the freedoms protected by the First Amendment.⁴³ Nearly twenty-five percent couldn't name even one First Amendment freedom.⁴⁴ Another poll, conducted that same year by the Freedom Forum, showed that only fifteen percent of Americans knew that the First Amendment guarantees freedom of the press.⁴⁵

Education, therefore, is key. Those of you who care about protecting freedom of the press and freedom of speech, learn all you can about it. Educate yourself. Then tell others about the importance of the First Amendment and its role in protecting our democracy and in staving off a tyrannical government.

In fact, the Freedom Forum's study revealed that over half of the survey respondents recalled having a class that discussed the First Amendment in grade school, high school, or college.⁴⁶ Only four percent rated their education about the First Amendment as "excellent;" more than sixty percent said it was "either poor or only fair."⁴⁷

Historically, the press has been reluctant to talk about themselves and their decisionmaking process. That is a mistake, and it is changing. The American public can surely benefit from learning more about the editorial process, understanding the ethical decisionmaking process used in the newsroom, and hearing the reasons why certain stories were covered. Therefore, we need to educate others.

Education is a key area where we can make a real and dramatic impact on the state of the First Amendment. Here are some suggestions for how to make this happen: Help develop programs for elementary, middle, and high schools that inform students about the First Amendment and its values and principles. Students need to hear this message at an early age. These principles should then be reinforced as young people begin to understand how the world works and

43. See First Amendment Center, *Survey on Constitutional Issues Reveal Uninformed Citizenry* (visited June 21, 2000) <<http://www.fac.org/news/970916a-s.asp>>.

44. See *id.*

45. See *id.*; see also U.S. CONST. amend. I.

46. See McMasters, *supra* note 2.

47. See *id.*

why freedom of expression and freedom of the press enjoy special protection in our society.

Offer to be a guest teacher. Develop moot court programs, even for very young children, that highlight the importance of the First Amendment. Sponsor essay contests that focus on the importance of the First Amendment in the lives of children and as budding American citizens. For those who believe journalists are the problem, work with young journalists in high schools and colleges. Discuss ethics and the importance of ethical decisionmaking.

Enter into a partnership with your community's newspaper. Piggyback onto their programs to encourage young readers by supplying free or reduced-cost newspapers to local schools. Get local newspapers to help publicize your First Amendment efforts by running stories about how the articles the students are reading could not be published without freedom of the press.

We also need to educate the general public. Encourage discussion on these thorny issues. Host debates or forums where the public, journalists, media lawyers, and scholars all talk about these issues.

We also need to educate journalism and mass communications students about the First Amendment early in their programs. I teach at one of the few universities that requires all our graduates to take a media law class. Many colleges and universities offer it as an elective. This is absurd. How can we trust the First Amendment to future generations, many of whom have not spent any time learning to appreciate the importance of the First Amendment?

Unbelievable as it may seem, I had two semesters of constitutional law when I was in law school, totaling five credit hours. Our professor spent six weeks on the Commerce Clause and not one day on the First Amendment. Clearly, we need to be teaching First Amendment principles in law schools as well.

A number of scholars are currently attacking the First Amendment in the classroom. Mainstream scholarship is moving away from the marketplace-of-ideas theory of the First Amendment toward a belief that voicing certain ideas should be prohibited because their very expression threatens our concept of a civilized society.⁴⁸ Hate speech codes, restrictions on access to certain information on the Internet, and campaign finance restrictions all find support in scholarship, promoting a restrictive view of freedom of expression.

48. See FRED J. COOK, *THE MUCKRAKERS: CRUSADING JOURNALISTS WHO CHANGED AMERICA* 120 (1972).

Educators are "telling students that the First Amendment is 'the problem, not the solution' to society's ills, and that students should work to change the press," according to one prominent First Amendment advocate.⁴⁹ Teachers should "get inspired to take the time to develop intelligent arguments needed to combat these so-called heroes of academia," declared Paul McMasters, Freedom Forum's ombudsman.⁵⁰

We need to educate judges. While some jurisdictions have active bench-bar-media committees, most do not. As a result, many judges do not have a full understanding of significant First Amendment issues. As a faculty member at two judicial college training sessions, I have been privy to numerous discussions focused on the struggle jurists experience when balancing First Amendment and Sixth Amendment rights.⁵¹

In my experience, many judges are unhappy with the media. In fact, a number of judges are downright hostile. Some judges appear less concerned about the need for journalists to be independent than they are with newsgathering practices or with the efficient administration of justice.

Finally, we need to educate journalists. Before I joined the academy, I practiced media law with what has become one of the country's largest law firms, Holland & Knight. The firm represents *The Tampa Tribune*, *The Orlando Sentinel*, *The Miami Herald*, and *The New York Times* regional newspapers. The reporters I worked with were well-trained, both by newsroom staff and by the law firm at regular training sessions. They understood their First Amendment rights and the basics of newsgathering, libel, access, and privacy.

On the other hand, one of the things I do as Director of the Brechner Center for Freedom of Information at the University of Florida is answer telephone queries. I get about 400 a year, and am astounded at the lack of knowledge about First Amendment fundamentals that journalists who call our hotline display. They really need to be educated.

49. Christy Mumford Jerding, *Some Professors Trash First Amendment, Ombudsman Says* (visited June 21, 2000) <<http://www.freedomforum.org/education/1998/8/6ombudsman.asp>>.

50. *Id.*

51. See Chance & Ross, *supra* note 25.

B. The Second Key Is Understanding

The public has decidedly mixed feelings about the news media and the way it covers news. Many people believe reporters are intrusive and insensitive. They applaud hard-hitting investigative reporting, but they bristle at the reporter who asks too many questions. In short, they want a vigorous watchdog press, but they do not like the noisy barking that often accompanies it.

Investigative journalism enjoys a long and rich tradition. For example, more than a hundred years ago, Nellie Bly, a young reporter, faked insanity to get inside a Manhattan insane asylum.⁵² Following her hospital stay, she wrote a series of articles that exposed the horrendous treatment of the mentally ill.⁵³ Ida Tarbell tumbled Standard Oil's monopoly by using court documents and other public records in her stories.⁵⁴ Social reformer Upton Sinclair wrote his novel, *The Jungle*, to dramatize his investigative reporting of the nation's disgraceful meat processing plants.⁵⁵ The book, published in 1902, shocked the middle class and led to the first federal laws regulating the food and drug industries.⁵⁶

More recently, investigative journalism played a critical role in momentous events in America's modern history: the civil rights struggle in the South; the Vietnam War; and the Watergate scandal, which eventually toppled a president of the United States. Often in the face of intense public disapproval, reporters labored long and hard to get the real story behind the story. The American people certainly benefitted from the unremitting press coverage that was essential to understanding those events. For the press, however, it was an uphill battle and evidence that public unpopularity is often the price for responsible journalism.

Sometimes journalists must be allowed to use somewhat offensive investigative methods. Where matters of public interest are at stake, they must be allowed a greater degree of offensiveness. The First Amendment must protect journalists, especially in these situations.

52. See MITCHELL STEPHENS, A HISTORY OF NEWS 240 (1997).

53. See *id.*

54. See COOK, *supra* note 48, at 65-96.

55. See *id.* at 97-121.

56. See *id.* at 120.

C. The Third Key Is Acceptance

It may shock some to know that the press has a First Amendment right to be irresponsible and bother people. During oral arguments before the United States Supreme Court, Justice Anthony Kennedy reinforced this position when he said, "That's what the First Amendment is for, is to bother people."⁵⁷

Those who support more restrictive interpretations of the First Amendment are convinced that the very fabric of our society will be irreparably torn apart if the prevailing First Amendment framework that protects the media, even when it behaves irresponsibly, prevails. However, the Constitution protects the freedom to make choices about expression, including the freedom to be revolutionary, irreverent, irresponsible, rebellious, audacious, and pugnacious—even when those choices are wrong, offensive, or hurtful. Historically, our society has been strong enough to withstand the hurt and willing to pay the price to protect our fundamental First Amendment liberties.

IV. CONCLUSION

The price we pay for free speech and a free press is tolerance for speech that is obnoxious, offensive, stupid, insulting, or just plain wrong. The best way to counter obnoxious speech is with more speech. The Supreme Court supported this interpretation when it extended First Amendment protection to encourage "robust, wide open" discussions.⁵⁸

Finally, when the founding fathers wrote the Bill of Rights, they did it in the midst of a wild, freewheeling atmosphere of pamphleteering and slanderous attacks on individuals. Yet, they preferred the cacophony of voices and the frenzied assaults on reputations and personal dignity to the alternative—the deafening silence of controlled thought and speech.

In the words of the French writer, Albert Camus: "A free press can, of course, be good or bad, but most certainly, without freedom, it will never be anything but bad."⁵⁹

57. Transcript of Oral Argument at *29, No. 91-155, 1992 WL 687817 (Int'l Soc'y for Krishna Consciousness, Inc. v. Lee, 505 U.S. 672 (1992)).

58. *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

59. ALBERT CAMUS, *RESISTANCE, REBELLION, AND DEATH* 102 (1961).