9/4/81

GEORGE BOONE
SEPT. 4, 1981
FREEDOM OF THE PRESS

FELLOW ATHENIANS:

OF THE REVOLUTIONARY IDEAS NONE THAT EMERGED FROM THE AMERICAN REVOLUTION HAS PROVED MORE REVOLUTIONARY THAN THE CONCEPT OF FREEDOM OF THE PRESS. NONE HAS EVOKED MORE CONTROVERSY AND NONE HAS BEEN MORE DURABLE.

IT HAS BEEN ARGUED THAT A FREE PRESS IS THE CORNER STONE OF THE DEMOCRATIC PROCESS AND THAT WITHOUT IT OUR NOBLE EXPERIMENT IN DEMOCRACY WOULD HAVE FAILED. OTHERS MAINTAIN THAT EDUCATION IS THAT CORNER STONE BUT IT SEEMS UNLIKELY THAT EITHER A FREE PRESS OR AN INFORMED CITIZENRY COULD LONG ENDURE WITHOUT THE OTHER.

FOR CENTURIES BEFORE OUR REVOLUTION, THE PRESS IN ENGLAND HAD BEEN LICENSED, CENSORED AND PROSECUTED FOR SEDITIOUS LIBEL. AS JUSTICE POTTER STEWART OBSERVED IN A REMARKABLE ADDRESS TO THE YALE LAW SCHOOL IN 1974: "THE BRITISH CROWN KNEW THAT A FREE PRESS WAS NOT JUST A NEUTRAL VEHICLE FOR THE BALANCED DISCUSSION OF ADVERSE IDEAS. INSTEAD, THE FREE PRESS MEANT ORGANIZED EXPERT SCRUTINY OF GOVERNMENT ....THIS FORMIDABLE CHECK ON OFFICIAL POWER WAS WHAT THE BRITISH CROWN HAD FEARED -- AND WHAT THE AMERICAN FOUNDERS DECIDED TO RISK."

THE FEDERAL CONSTITUTION DRAFTED IN PHILADELPHIA HAD NO BILL OF

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THE FEDERAL CONSTITUTION DRAFTED IN PHILADELPHIA HAD NO BILL OF RIGHTS. THIS WAS ADDED TO MAKE CERTAIN THE ACCEPTANCE OF THE DOCUMENT. LEONARD TERRY IN HIS BOOK, LEGACY OF SUPPRESSION EVEN CONTENDS THAT THE FIRST AMENDMENT AND THE BILL OF RIGHTS WERE CHANCE PRODUCTS OF POLITICAL

EXPEDIENCY CREATED TO ANSWER THE OBJECTIONS OF ANTIFEDERALISTS WHO WERE SEEKING ANOTHER CONSTITUTIONAL CONVENTION TO UNDO THE STEPS TOWARD A CENTRALIZED, TRULY NATIONAL GOVERNMENT WHICH HAD BEEN TAKEN BY THE NOW SEVERED CONSTITUTIONAL CONVENTION AND MAY NOT HAVE REPRESENTED A SEASONED COMMITMENT TO CIVIL LIBERTIES. REMEMBER, IT WAS SLAVE-OWNING THOMAS JEFFERSON WHO WROTE THAT ALL MEN ARE CREATED EQUAL AND MANY OF THE INDIVIDUALS WHO WERE INVOLVED IN SECURING THE ACCEPTANCE OF THE CONSTITUTION AND THE BILL OF RIGHTS WERE PART OF THE FEDERALIST MAJORITY WHICH PASSED THE ALIEN AND SEDITION ACTS.

ELEVEN OF THE ORIGINAL COLONIES HAD WRITTEN CONSTITUTIONS; OF THESE, NINE HAD CLAUSES IN THEIR CONSTITUTIONS PROTECTING THE LIBERTY OF THE PRESS. THE CONSTITUTIONS OF NEW YORK AND NEW JERSEY DID NOT EXPLICITLY REFER TO FREEDOM OF THE PRESS AND OF THE ELEVEN ONLY THE CONSTITUTION OF PENNSYLVANIA MADE ANY REFERENCE TO FREEDOM OF SPEECH.

WHOSE COMPANION RIGHTS OF FREEDOM OF SPEECH AND OF THE PRESS MAY WELL BE THAT CONTINUING REVOLUTIONARY ELEMENT THAT HAS PERMITTED OUR SYSTEM TO CONTINUE, TO EXPAND AND TO ADAPT TO THE CHANGING CIRCUMSTANCES.

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THE AMERICAN REVOLUTION IS NOT OVER BUT IT CONTINUES TODAY, TOWARDS OTHER GOALS. IN OUR SOCIETY, STRUGGLING THOUGH IT IS WITH STULTIFYING BUREAUCRACIES AND MASSIVE GOVERNMENT UNITS OFTEN WORKING AT CROSS PURPOSES, PERHAPS HOPE CAN BE FOUND. IS NOT OUR SOCIETY MOVING TOWARD A TIME WHEN ALL PEOPLE ARE EQUAL, REGARDLESS OF RACE, SEX, COLOR, CREED, ETHNIC ORIGIN OR AGE?

THE UNITED STATES WAS, AFTER ITS SECESSION FROM ENGLAND, A PARIAH AMONG NATIONS BECAUSE IT WAS ESPOUSING A HERETICAL THEORY OF SELF-GOVERNMENT NEVER BEFORE TRIED ON SUCH A SCALE. WE MUST HAVE BEEN MORE DEEPLY AND PROFOUNDLY FEARED AS THE COMMUNIST REVOLUTION HAS BEEN IN OUR OWN CENTURY BECAUSE WE WERE MORE SUCCESSFUL.

THE FIRST AMENDMENT PROVIDES THAT "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."

THE AMENDMENT IS UNIQUE AND WITHOUT EXACT COUNTERPART TO ITS RINGING DECLARATION OF INDIVIDUAL FREEDOMS IN THE CONSTITUTION OF ANY OTHER NATION, EITHER NOW OR IN THE HISTORY OF MANKIND. IT WAS BORN OF A QUEST FOR FREEDOM BEGUN IN THE BRITISH MAGNA CARTA WHICH THE BARONS WRESTED FROM CROOK-BACK KNING JOHN AT RUNNYMEADE BUT WHILE THE WORDS HAVE BEEN AROUND FOR A LONG TIME, THE MEANING FOR THE KIND OF FREEDOM WE NOW READ INTO IT SCARCELY BEGAN UNTIL WORLD WAR I.

THE ESPIONAGE ACT OF 1917 AND ITS SEDITION AMENDMENT WERE THE FIRST TIME THOSE ISSUES CAME BEFORE THE SUPREME COURT. THE FIRST AMENDMENT WAS

NOT SPOKEN OF AS APPLYING TO THE STATES UNTIL THE GITLOW CASE IN 1925. THINK OF THE THOUSANDS OF JAPENESE ROUNDED UP IN CALIFORNIA IN WW II OR EARLIER THE PALMER RAIDS OF THE 20's WHEN ALIENS WERE ROUNDED UP AND HELD INCOM-

MUNICADO UNDER TERRIBLE CONDITIONS.

THE EPIC TRANSITION OF THE NATION FROM AN AGRARIAN, HANDICRAFT SOCIETY TO THE URBAN, INDUSTRIALIZED CIVILIZATION OF THE PRESENT CENTURY HAS RESULTED IN A SET OF QUESTIONS QUITE DIFFERENT IN SCOPE FROM THOSE OF THE LONELY PAMPHETEERS AND PRINTERS OF THE EIGHTEENTH CENTURY.

WHEN THE FRAMERS OF THE CONSTITUTION APPENDED AN AMENDMENT FOR THE PROTECTION OF THE LIBERTY OF THE PRESS, THEY HAD NO INTENTION OF BINDING THE PUBLISHERS TO CERTAIN RESPONSIBILITIES IN EXCHANGE FOR THEIR FREEDOM. CHARLES BEARD, A RESPECTED HISTORIAN EARLY IN THIS CENTURY OBSERVED, :THAT IN ITS ORIGIN, FREEDOM OF THE PRESS HAD LITTLE OR NOTHING TO DO WITH TRUTH TELLING . . . . FREEDOM OF THE PRESS MEANS THE RIGHT TO BE JUST OR UNJUST, PARTISAN OR NON-PARTISAN, TRUE OR FALSE, IN NEWS COLUMN OR EDITORIAL COLUMN.

TO A MARKED DEGREE, THE VICE OF THE MASS MEDIA HAS TRANSFORMED THE PRESS FROM AN AGENCY FOR THE EXPRESSION OF INDIVIDUAL WILL INTO A REFLECTION OF THE CULTURAL ORDER OR THE COLLECTIVE WILL. THE PRESS IN EARLY ENGLAND AND AMERICA WAS, FROM THE STANDPOINT OF ITS IMPACT ON THE SOCIAL ORDER, MAINLY AN EXPRESSION OF THE INDIVIDUAL WILLS OF PRINTERS AND PUBLISHERS, OF REVOLUTIONARY AGITATORS, OF POLITICAL PARTIES AND OF SPECIAL RELIGIOUS AND ECONOMIC INTERESTS. THE RIGHT TO PUBLISH WAS REGARDED AS A

ERS, OF REVOLUTIONARY AGITATORS, OF POLITICAL PARTIES AND OF SPECIAL RELIGIOUS AND ECONOMIC INTERESTS. THE RIGHT TO PUBLISH WAS REGARDED AS A UNIVERSAL, PERSONAL AND NATURAL RIGHT BELONGING TO ANYONE WHO CARED OR HAD THE RESOURCES TO ESTABLISH A NEWSPAPER OR MAGAZINE.

THE DEVELOPMENT OF THE MASS MEDIA HAS BEEN SHAPED AND ORDERED MAINLY

BY THE RISE OF MASS DEMOCRACY, THE INDUSTRIAL REVOLUTION AND THE URBANIZATION OF AMERICAN LIFE. THE FEAR HAS BEEN EXPRESSED THAT FREEDOM OF THE PRESS, FAR FROM BEING A VEHICLE FOR THE EXPOSITION OF INDIVUDUAL WILL AND INTEREST, FOR THE IMPOSITION OF INDIVIDUAL VALUES AND PRESCRIPTIONS UPON THE CULTURAL ORDER, WILL INCREASINGLY BECOME A MEANS FOR IMPLEMENTING THE SOPHISTRIES OF MODERN POLITICAL MANAGEMENT, THE MANIPULATION OF ELECTORATES, THE CYNICAL PROCURING OF POLLS AND REFERENDA, AND THE DESTRUCTION OF VIABLE PUBLIC OPINION.

THE PROLIFERATION OF SINGLE INTEREST CONSTITUENCIES AND THE DECLINE IN EFFECTIVENESS OF POLITICAL PARTIES, SEEMS TO BE THRUSTING THE SELECTION OF PRESIDENTIAL CANDIDATES UPON THE MASS MEDIA, WHETHER THEY WANT THE RESPONSIBILITY OR NOT. CANDIDATES SUCH AS HOWARD BAKER AND JOHN CONNOLLY, WHOSE RECORDS ENTITLE THEM TO SERIOUS CONSIDERATION, ARE BLOWN OUT OF COMPETITION BY THEIR RECORDS IN THE PRIMARY IN A SMALL STATE OR TWO. A CANDIDATE WHO COMMITS A GAFFE SUCH AS WEEPING ON THE hustings AS MUSKIE DID OR DECLARING HE HAS BEEN BRAIN-WASHED AS ROMNEY STATED MAY FIND HIMSELF DISMISSED BY THE COMMENTATORS NO MATTER WHAT HIS QUALIFICATIONS OR PAST RECORD.

THE PAST FOUR OR FIVE DECADES HAVE SEEN GREAT EXPANSIONS AND SOME

THE PAST FOUR OR FIVE DECADES HAVE SEEN GREAT EXPANSIONS AND SOME CONTRACTIONS IN FIRST AMENDMENT RIGHTS OF FREEDOM OF EXPRESSION. IT CAN BE ARGUED THAT THE CONCEPT OF FREEDOM OF SPEECH AND OF THE PRESS HAVE ACTUALLY FLOWERED IN THE PAST FIFTY YEARS, RATHER THAN BEING WELL-DEVELOPED CONCEPTS IN THE MINDS OF THE DELEGATES TO THE PHILADELPHIA CONVENTION.

MANY OF THE ISSUES DID NOT SURFACE BEFORE THE SUPREME COURT UNTIL THE CRUCIBLE OF WORLD WAR I. REMEMBER THE CLEAR AND PRESENT DANGER TEST CREATED BY JUSTICE OLIVER WENDAL HOLMES, JR., DID NOT PREVENT MORE THAN A THOUSAND PERSONS FROM GOING TO JAIL, MANY FOR PUBLICATIONS OF THE SORT WHICH WERE IGNORED BY PROSECUTORS DURING WORLD WAR II.

THE FIRST AMENDMENT WAS NOT SPOKEN OF AS APPLYING TO THE STATES UNTIL GITLOW V. UNITED STATES IN 1925 AND THE SUPREME COURT DID NOT RULE AGAINST PRIOR RESTRAINT UNTIL 1931, IN NEAR V. MINNESOTA, AND THEN ONLY BY A 5 - 4 MARGIN. ALSO, NEAR DID NOT SAY "NO PRIOR RESTRAINT" IT SAID THERE COULD BE NO PRIOR RESTRAINT UNLESS THE EXPRESSION COMPLAINED OF INVOLVED WARTIME MATTERS SUCH AS TROOP MOVEMENT, OR OBSENITY OR INCITEMENT TO VIOLENCE.

IF FREEDOM OF THE PRESS AS WE NOW SPEAK OF IT, SEEMS TO BE A MODERN CONSTRUCTION IT SEEMS TO REFUTE ONE OF OUR MOST DANGEROUS MYTHS ABROAD TODAY: THAT THE REVOLUTIONARY GENERATION OF THE LATE 18th CENTURY WAS MADE UP OF GIANTS, AND, BY COMPARISON, THAT OUR 20th CENTURY IS INHABITED PRIMARILY BY PYGMIES. PERHAPS THIS DEMONSTRATES THAT THE GENIUS OF OUR NATION MAY BE ITS POLITICAL PROCESS.

IT IS ESPECIALLY IMPORTANT THAT WE BE REALISTIC IN OUR ASSESSMENT OF OUR OWN TIMES AND WE APPEAR NOW TO BE IN THE PROCESS OF DEVELOPING CON-

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CEPTS OF PRESS FREEDOM THAT GO FAR BEYOND THE CONCEPTS OF THE 18th CENTURY

CONCEPT.

THE SUPREME COURT HAS ALWAYS BEEN MORE A POLICY MAKING BODY THAN A

COURT OF LAW. THIS ASPECT HAS BEEN ACCENTUATED SINCE THE CONFRONTATIONS

BETWEEN PRESIDENT ROOSEVELT AND THE NINE OLD MEN WHEN THE PRESIDENT TRIED UNSUCCESSFULLY TO ENLARGE THE COURT. HE DID CHANGE THE COMPLECTION OF THE COURT BY THE APPOINTMENT OF SUCH FIGURES AS WILLIAM O. DOUGLAS, HUGO BLACK AND FELIX FRANKFURTER BUT IT REMAINED FOR DWIGHT D. EISENHOWER TO APPOINT EARL WARREN AS THE CHIEF JUSTICE AND MANY CONSIDERED THIS INUGURATED A PERIOD OF UNPRECEDENTED JUDICIAL ACTIVISM WITH SUCH DECISIONS AS BROWN VS. BOARD OF EDUCATION WHICH MANDATED THE INTEGRATION OF SCHOOLS.

IN THE PAST DECADE THE COURT HAS DIRECTED UNPRECEDENTED ATTENTION TO ISSUES OF PRESS FREEDOM AND ONE OF THE LANDMARK CASSES IS THE BRANZBURG CASE INVOLVING A REPORTER FOR THE COURIER JOIURNAL. PAUL BRANZBURG SECURED THE CONFIDENCE OF SOME PEOPLE ENGAGED IN THE DRUG BUSINESS IN LOUISVILLE. THEY DEMONSTRATED FOR HIM HOW THEY CONVERTED MARIJUANA TO HASHISH. BRANZBURG WROTE A DETAILED STORY FOR THE COURIER AND WAS QUICKLY SUBPOENAED BEFORE A GRAND JURY FOR QUESTIONING. HE PLED THE KENTUCKY SHIELD LAW WHICH PROVIDES THAT A REPORTER CANNOT BE REQUIRED TO GIVE THE SOURCE OF HIS STORIES. THE PROSECUTION REPLIED HE WAS NOT ASKING FOR SOURCES: THAT BRANZBURG HAD BEEN PRESENT AT THE COMMISSION OF A CRIME AND ALL THE PROSECUTION WANTED WAS TESTIMONY ABOUT THE CRIME HE HAD WITNESSED. BRANZBURG REFUSED TO ANSWER AND THE CASE WENT TO THE U. S. SUPREME COURT WHICH SAID IN

A 5 - 4 DECISION THAT BRANZBURG HAD TO ANSWER. THIS WAS A CASE IN WHICH THE PROSECUTION SOUGHT TO USE A REPORTER'S INFORMATION.

MORE RECENTLY, THE FARBER CASE HAS REVERSED THE SITUATION WHEN A REPORTER FOR THE NEW YORK TIMES WAS SUBPOENAED TO GIVE EVIDENCE FOR THE

DEFENDANT WHEN A PHYSICIAN IN NEW JERSEY WAS CHARGED IN FIVE SUSPICIOUS DEATHS IN A HOSPITAL. FARBER CLAIMED THE PROTECTION OF A NEW JERSEY SHIELD LAW WHICH SAID A REPORTER DID NOT HAVE TO GIVE HIS SOURCES. THIS LAW WAS HELD UNCONSITUTIONAL IN SO FAR AS IT WAS IN CONFLICT WITH THE DEFENDANT'S CONSTITUTIONAL RIGHT TO SUMMON ANY PERSON WHO COULD GIVE EVIDENCE FOR HIM IN A CRIMINAL MATTER. WHEN RIGHTS ARE IN CONFLICT THE PAPER AND THE REPORTER ARGUED WITHOUT SUCCESS THAT FARBER SHOULD NOT BE REQUIRED TO ANSWER UNLESS THE MATTERS ASKED ABOUT WERE RELEVANT, MATERIAL AND UNAVAILABLE ELSEWHERE.

SUCH CONFLICTS AS THESE BETWEEN A FREE PRESS AND THE RIGHT TO A FAIR TRIAL HAVE TROUBLED THE COURT AND LED TO HARD CASES.

JUSTICE POTTER STEWART IN A MEMORABLE ADDRESS IN 1974 AT THE YALE LAW SCHOOL POINTED OUT THAT MOST PARTS OF THE BILL OF RIGHTS PROTECTS LIBERTIES WHOEVER EXERCISES THEM BUT THE PRESS CLAUSE OF THE FIRST AMENDMENT IS "A STRUCTURAL PROVISION" PROTECTING A PARTICULAR INSTITUTION: THE ORGANIZED PRESS. JOURNALISM: IN SHORT, HAS A SPECIAL CONSTITUTIONAL STATUS, WITH RIGHTS NOT AVAILABLE TO OTHERS. THE YALE SPEECH BROKE IMPORTANT NEW GROUND. THE SUPREME COURT HAD NEVER REALLY ADDRESSED THE QUESTION POSED BY JUSTICE STEWART. THE PRESS CLAUSE, HE SAID, DID NOT MERELY JOIN WITH THE

SPEECH CLAUSE TO GUARANTEE FREEDOM OF EXPRESSEION TO ALL: THAT WOULD MAKE IT A CONSTITUTIONAL REDUNDANCY. RATHER, THE "PRIMARY PURPOSE" OF THOSE WHO FRAMED IT WAS "TO CREATE A FOURTH INSTITUTION OUTSIDE THE GOVERNMENT AS AN ADDITIONAL CHECK ON THE THREE OFFICIAL BRANCHES." THE EXECUTIVE, THE JUDICIAL

THE LEGISLATIVE.

MANY FIRST AMENDMENT PROBLEMS ARE COMMON TO BOTH PRINT AND BROADCAST JOURNALISM BUT SOME ARE PECULIAR TO RADIO AND TELEVISION NEWSROOMS BECAUSE BROADCASTERS MAY OPERATE ONLY WITH FEDERAL LICENSES WHICH RUN FOR A RELATIVELY SHORT PERIOD AND MAY BE RENEWED ONLY WITH THE APPROVAL OF A FEDERAL REGULATORY AGENCY WHICH CONSTANTLY MONITORS THE PERFORMANCE OF BROADCAST LICENSEES. THE WASHINGTON POST OWNS BROADCAST FACILITIES IN ST. PETERSBURG FLORIDA AND THESE LICENSES WERE CHALLENGED BY THE FEDERAL GOVERNMENT WHILE THE WATERGATE SERIES WAS BEING PUBLISHED.

IF ATTENTION IS FOCUSED ON THE RIGHTS OF THE ORGANIZED PRESS, DAMAGE TO THE OTHER VITAL FIRST AMENDMENT INTEREST MAY OCCUR WITHOUT ADEQUATE AWARENESS OR RESISTANCE. RELATIVELY LITTLE OUTCRY WAS HEARD WHEN THE FOURTH CIRCUIT DEVELOPED THE DOCTRINE OF SECRECY BY CONTRACT. THIS WAS IN THE CASE OF UNITED STATES VS. MARCHETTI. BECAUSE HE HAD SIGNED A SECRECY AGREEMENT UPON JOINING THE AGENCY, A FORMER OFFICIAL OF THE C.I.A. WAS ENJOINED FROM PUBLISHING A BOOK ON C.I.A. ACTIVITIES WITHOUT THE AGENCY'S PRIOR CENSORSHIP. WHEN THE AGENCY MADE MASSIVE DELETIONS AND THE AUTHOR SOUGHT JUDICIAL REVIEW, THE COURT GAVE THE C.I.A. VIRTUALLY UNREVIEWABLE

DISCRETION TO DELETE ANY PASSAGE THAT IT SAID CONTAINED INFORMATION DURING THE AUTHOR'S EMPLOYMENT. HE WAS ALSO ENJOINED FOR THE REST OF HIS LIFE FROM DISCLOSING SUCH INFORMATION. IN A SUBSEQUENT CASE, UNITED STATES VS. SNEPP, THE U. S. SUED ANOTHER FORMER GOVERNMENT EMPLOYEE WHO HAD PUBLISHED A ROMANTIC NOVEL FEATURING A C.I.A. EMPLOYEE AND A FRENCH WOMAN, THE SCENE

OF WHICH WAS IN THE FAR EAST WHERE SNEPP HAD SERVED. THE GOVERNMENT DID NOT ALLEGE THAT THE FORMER EMPLOYEE HAD DISCLOSED ANY CLASSIFIED MATTER BUT IT CLAIMED AND WAS AWAREDED DAMAGES BECAUSE HE HAD FAILED TO SUBMIT THE MANUSCRIPT TO THE AGENCY FOR CLEARANCE. THE SUPREME COURT EVEN WENT SO FAR AS TO CONFISCATE ALL PROFITS THE AUTHOR MIGHT REALIZE FROM THE BOOK.

THESE CASES PRESENT A DIRECT AND PROFOUND THREAT TO THE CORE PURPOSE OF THE FIRST AMENDMENT; KEEPING THE PUBLIC AWARE OF WHAT ITS GOVERNMENT DOES.

ONE WONDERS WHETHER THE CONTRACT NOT TO WRITE MAY NOT BE BEYOND THE CONSTITUTIONAL POWERS OF THE C.I.A. THE DANGER IS OF THIS BEING EXTENDED TO OTHER AGENCIES.

ONE HAS BUT TO READ A BOOK SUCH AS SIDESHOW BY WILLIAM SHAWCROSS, A YOUNG BRITISH JOURNALIST, WHO SPENT FOUR YEARS RESEARCHING AND WRITING A HISTORY OF KISSINGER, NIXON AND THE DESTRUCTION OF CAMBODIA. HE MADE EXTENSIVE USE OF THE FREEDOM OF INFORMATION ACT WHICH WAS PASSED IN 1965 IN AN ATTEMPT TO ANSWER THE GOVERNMENT'S STONE-WALLING REQUESTS FOR INFORMATION.

EVEN NOW THE C.I.A. AND CONSERVATIVE FORCES ARE SEEKING TO RESTORE THE VEIL OF SECRECY TO THE C.I.A. ON THE GROUNDS THAT IT IS NECESSARY FOR

OUR PROTECTION.

IT MUST ALWAYS BE REMEMBERED THAT THE PURPOSE OF THE FREEDOM OF THE PRESS IS TO PROTECT US FROM THE GOVERNMENT.

IT IS NOT THAT CENSORSHIP IS PER SE BAD, IT IS THAT THE ONE PLACE IT

CANNOT BE PLACED IS IN GOVERNMENT HANDS IF WE ARE TO HAVE GOVERNMENT OF, BY AND FOR THE PEOPLE.

IN THE LONG RUN, RIGHTS DEPEND ON PUBLIC UNDERSTANDING AND SUPPORT. THE BILL OF RIGHTS IS NOT SOME IMMUTABLE RIGHT HANDED DOWN TO MOSES ON MT. SINAI. IT IS A POLITICAL RIGHT GRANTED BY THE PEOPLE IN A POLITICAL DOCUMENT, AND WHAT THE PEOPLE GRANTED THEY CAN, IF THEY CHOSE, TAKE AWAY. THERE IS NO LIBERTY THAT CANNOT BE ABUSED AND NONE THAT CANNOT BE LOST.

NO ONE EVER PROMISED THAT SELF-GOVERNMENT WOULD BE EASY OR SELF-EXECUTING. WE NEED MATURE CONSIDERATION OF THESE PROBLEMS AND SOMETIMES THE COURTS SEEM UNNECESSARILY ARROGANT AS DOES THE PRESS.

IN OUR LOUISVILLE BRANZBURG CASE, WHERE PAUL BRANZBURG WAS ORDERED TO IDENTIFY HIS SOURCE OF INFORMATION, IS THE COMMUNITY BETTER OFF TO CONVICT ONE SMALL PURCHASEROR TO HAVE THE PARENTS IN LOUISVILLE UNDERSTAND HOW THE DRUG SCENE FUNCTIONS? IT IS NOT THE OBLIGATION OF THE PRESS TO DO THE INVESTIGATORY WORK FOR THE LAW ENFORCEMENT AGENCIES BUT IN MOST INSTANCES THE PRESS IS CO-OPERATIVE IF IT CAN DO SO WITHOUT JEOPARDIZING ITS SOURCES OF INFORMATION.

IN THE FARBER CASE IN NEW JERSEY, THE COURT REFUSED TO CONSIDER THE

BALANCING INTERESTS OF THE REPORTER AND THE ACCUSED. THE JUDGE ORDERED THE PRODUCTION OF ALL NOTES, RECORDS AND INFORMATION WITHOUT CONSIDERATION OF ITS RELEVANCE OR MATERIALITY. ONE PERCEPTIVE REPORTER EVEN SUGGESTED THAT THE DEFENSE ATTORNEY SOUGHT THE SUBPEOENA AGAINST MYRON FARBER BECAUSE

HE THOUGHT FARBER WOULD MAKE NO DISCLOSURE AND THE DEFENSE COULD ASK FOR A DISMISSAL BECAUSE THE EVIDENCE WAS NOT AVAILABLE.

IT IS TRUE THAT IN THE PAST DECADE THE JOURNALISTS HAVE RECEIVED SOME BAD DECISSIONS BUT BY AND LARGE THEY HAVE MADE CONSIDERABLE PROGRESS.

WE MUST UNDERSTAND THE PROCESS AND THE RELATIVE RESPONSIBILITIES IF WE ARE TO SUPPORT THE FUNCTIONING OF THE PROCESS. IT IS THE RESPONSIBILITY OF THE PRESS TO ACT FOR THE PUBLIC IN KEEPING THE GOVERNMENT ACCOUNTABLE TO THE COUNTRY.

IN OUR COMPLEX DEMOCRACY, NEWSPAPERS AND MAGAZINES AND BROADCASTERS USUALLY VINDICATE THE SOCIAL INTEREST IN THE ATTAINMENT OF TRUTH. THEY ARE AT THE CUTTING EDGE. OTHERS ALSO PLAY THEIR PART; SCHOLARS AND CONSCIENCE-STRICKEN OFFICIALS AND CITIZEN CRITICS. THE FIRST AMENDMENT WAS WRITTEN FOR THEM, TOO, AND FREEDOM IS INDIVISIBLE.