

event which had not happened when it was written: Mr. Lionel Trilling's *The Middle of the Journey* (1947), one of the few truly contemporary novels produced in this age when fiction lags half a century behind life. We must look forward to the last unveiling of the mystery, on a factual plane, to some political writer of the future, who will be able to see in perspective our world where men break their hearts and minds in trying to realize their fantasies through politics, as previous generations (also breaking their hearts and minds) have tried to realize them in their personal lives or in religion, although in no medium can fantasies become reality. In the meantime we would all be grateful for some specialist studies on various aspects of the case: on the abortiveness of elaborate and expensive procedure suggested by the failure of the repeated interrogations of Mr. Chambers by the FBI to diminish the gulf between the time when Mr. Hiss ought to have been tried (if he and the community were to have a fair deal) and the time when he was tried; on the part played by the press, and how it aided, and how it frustrated, its own mission and the mission of the law; and, above all, a refutation of those who seek to use the case as an excuse to limit the liberties of citizens as they are at present defined. There is not a single point in the story at which it could be said that here, had the state possessed some right to interfere with its citizens which is now lacking, the theft of the documents could have been brought to light earlier than it was; and it is such facts that liberals should publish to the community.

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*Legal Control of the Press*, 2d Edition. By Frank Thayer. Brooklyn: The Foundation Press, 1950. Pp. xiii, 654.

Professor Frank Thayer, in his second edition of *Legal Control of the Press* has brought up to date his comprehensive yet handy guide to "those potential or actual controls that affect the press, particularly libel, privacy, contempt, copyright, etc." The author, who is a professor of journalism and lecturer on the law of the press at the University of Wisconsin and a member of the Illinois Bar, has used his practical knowledge of newspapers and his legal training effectively in order to produce an orderly presentation of the law affecting newspapers.

Throughout his book the author expresses a tempered and reasonable view of the rights and duties of the press in our country.<sup>1</sup> He states categorically that in his opinion the two real tests for freedom of the press are first, whether the press is restricted unreasonably by governmental action both prior to and subsequent

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<sup>1</sup> For example, in his chapter on so-called "Trial By Newspaper," at 489, he remarks that "[T]he term 'freedom of the press,' is equally general in its concept; clearly, it does not mean unbridled expression of either 'alleged' fact or opinion. As previously explained, freedom of the press is not absolute. . . ."

to<sup>2</sup> publication, and second, whether the press is at liberty to cover governmental activities and comment fairly and accurately thereon.<sup>3</sup>

It has been indicated by many scholars that the rationale behind the clearly-stated First Amendment was the recognition by the constitutional fathers that the most effective restraint on government is free speech. Even then, it was recognized that the most effective "free speech" was a free press.<sup>4</sup> Today, the press is relied upon more and more as the public's champion in its battle against encroachment upon individual liberty. The titles of the sections in *Legal Control of the Press* indicate the methods by which reasonable freedom of the press has been effectively limited. The immediate question is: Does the press have sufficient freedom to cover governmental activities, comment fairly and accurately thereon, and thus provide the average citizen with the material without which he cannot make a judgment regarding the activities of his government?<sup>5</sup>

Elsewhere in this Law Review is a discussion of the role of the press in making congressional investigations effective as a function of government. At the outset it should be recognized that a newspaper's ability to make effective such investigations is not dependent ultimately upon the emphasis given to one view or another, but rather upon the fact that the investigation is reported. To place a premium on the position of the report in the newspaper, for example, might logically result in such reports being wedged in between Dick Tracy and Blondie. The reviewer wishes to call attention to two special problems not discussed elsewhere in this issue in connection with the press *vis a vis* congressional investigations: first, the problem of newspapermen called to testify in investigations; and, second, the limitations imposed on the press in reporting the ideas and the activities of the congressmen conducting the investigations.

The press, in its own investigational activities, frequently discloses information that is significant to, and at times instrumental in the inception of, congressional investigations. Congress may well feel it necessary that the sources of

<sup>2</sup> This concept—that the press may be as effectively restrained in its activities by threat of action after publication as well as by the prior restraint held illegal by the Supreme Court of the United States in *Near v. Minnesota*, 283 U.S. 697 (1931)—is a concept the importance of which is well recognized by scholars in the field of newspaper law.

<sup>3</sup> This position is stated at 2.

<sup>4</sup> For example, Jefferson said: "[W]ere it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter. . . ." Contrast this approach with the fear by some of the French in France's revolutionary days, as expressed later in Carlyle's *French Revolution, A History*: "Great is Journalism. Is not every Able Editor a Ruler of the World, being a persuader of it; though self-elected, yet sanctioned, by the sale of his Numbers?" To which Carlyle answered: "Whom indeed the world has the readiest method of deposing, should need be: that of merely doing *nothing* to him; which ends in starvation."

<sup>5</sup> It is assumed for purposes herein that the concept of "the people as the ultimate authority" is extant as a necessary and desirable principle of government. "There is authority beyond the authority of government. There is a greater consensus without which the fundamental order of the community would fall apart." MacIver, *Web of Government* 85 (1947).

such information be revealed to it. Possessing the power to punish for contempt,<sup>6</sup> Congress may cite newspaper employees who refuse to divulge requested information. Yet, in order to maintain news sources which are often assured only if held in confidence, the newspaper employee finds himself impaled on the horns of a dilemma.<sup>7</sup> The solution of this problem involves important rights for both the legislature and the press and can only be posed here for the reader's reflection.

It should be noted, in terms of the second problem, that a newspaper has the right to report and criticize the government in its various functions and activities.<sup>8</sup> Yet Congress may exclude the press from its hearings, and the press finds itself limited in its reports of investigations to the official information given out by the committee involved, that is, information considered by the legislators as "fit" for the public. And there is placed another restriction on the amount and kind of news which is available to the public; for an attempt by a newspaper to publish reports based on "inside information" is often thwarted in its incipient stages by the threat that such news will not be considered "privileged" in the event the newspaper is involved in a libel action based on such information.<sup>9</sup> The placing of such obstacles in the way of newspapers' endeavors to report congressional investigations doubtless affords a primary reason for the failure of the press to attach great significance to such hearings.

The ultimate question, always, is whether the legal control of the press has grown to such proportions as to constitute a denial of the freedom of the press. It is unfortunate for us that Professor Thayer did not devote at least one chapter to determining whether, under his tests, the press remains sufficiently free to fulfill its *raison d'état*—acting as the people's watch-dog over government.

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**National Security and Individual Freedom.** By Harold Lasswell. New York: McGraw-Hill, 1950. Pp. xiii, 259. \$3.50.

But vain the Sword and vain the Bow;  
They never can work War's overthrow.  
The Hermit's Prayer & the Widow's tear  
Alone can free the World from fear.  
For a Tear is an intellectual thing  
And a Sigh is the Sword of an Angel King  
And the bitter groan of the Martyr's woe  
Is an Arrow from the Almighty's bow.

<sup>6</sup> Consult Thayer, *Legal Control of the Press* § 73 (2d ed., 1950).

<sup>7</sup> See a summary of the law making communications between reporters and their news sources privileged communications. *Ibid.*, at 328.

<sup>8</sup> A discussion of the extension of this principle in *City of Chicago v. Tribune Co.*, 307 Ill. 595, 139 N. E. 86 (1923), is found in *ibid.*, at 324.

<sup>9</sup> For an excellent discussion of the concept of privilege, consult *ibid.*, at 328.

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