

Bridges

vs.

California

No. 1

08.12.1941

BLACK, J.

MR. JUSTICE BLACK delivered the opinion of the Court.

These two cases, while growing out of different circumstances and concerning different parties, both relate to the scope of our national constitutional policy safeguarding free speech and a free press. All of the petitioners were adjudged guilty and fined for contempt of court by the Superior Court of Los Angeles County. Their conviction rested upon comments pertaining to pending litigation which were published in newspapers. In the Superior Court, and later in the California Supreme Court, petitioners challenged the state's action as an abridgment, prohibited by the Federal Constitution, of freedom of [314 U.S. 259] speech and of the press; but the Superior Court overruled this contention, and the Supreme Court affirmed. The importance of the constitutional question prompted us to grant certiorari. 309 U.S. 649; 310 U.S. 623.

In brief, the state courts asserted and exercised a power to punish petitioners for publishing their views concerning cases, not in all respects finally determined, upon the following chain of reasoning: California is invested with the power and duty to provide an adequate administration of justice; by virtue of this power and duty, it can take appropriate measures for providing fair judicial trials free from coercion or intimidation; included among such appropriate measures is the common law procedure of punishing certain interferences and obstructions through contempt proceedings; this particular measure, devolving upon the courts of California by reason of their creation as courts, includes the power to punish for publications made outside the courtroom if they tend to interfere with the fair and orderly administration of justice in a pending case; the trial court having found that the publications had such a tendency, and there being substantial evidence to support the finding, the punishments here imposed were an appropriate exercise of the state's power; insofar as these punishments constitute a restriction on liberty of expression, the public interest in that liberty was properly subordinated to the public interest in judicial impartiality and decorum. [314 U.S. 260]

If the inference of conflict raised by the last clause be correct, the issue before us is of the very gravest moment. For free speech and fair trials are two of the most cherished policies of our civilization, and it would be a trying task to choose between them. But even if such a conflict is not actually raised by the question before us, we are still confronted with the delicate problems entailed in passing upon the deliberations of the highest court of a state. This is not, however, solely an issue between state and nation, as it would be if we were called upon to mediate in one of those troublous situations where each claims to be the repository of a particular sovereign power. To be sure, the exercise of power here in question was by a state judge. But in deciding whether or not the sweeping constitutional mandate against any law "abridging the freedom of speech or of the press" forbids it, we are necessarily measuring a power of all American courts, both state and federal, including this one.

It is to be noted at once that we have no direction by the legislature of California that publications

outside the courtroom which comment upon a pending case in a specified manner should be punishable. As we said in *Cantwell v. Connecticut*, 310 U.S. 296, 307-308, such a "declaration of the State's policy would weigh heavily in any challenge of the law as infringing constitutional limitations." But, as we also said there, the problem is different where "the judgment is based on a common law concept of the most general and undefined nature." *Id.* 308. *Cf. Herndon v. Lowry*, 301 U.S. 242, 261-264. For here, the legislature of California has not appraised a particular kind of situation and found a specific danger sufficiently [314 U.S. 261] imminent to justify a restriction on a particular kind of utterance. The judgments below, therefore, do not come to us encased in the armor wrought by prior legislative deliberation. Under such circumstances, this Court has said that "it must necessarily be found, as an original question," that the specified publications involved created "such likelihood of bringing about the substantive evil as to deprive [them] of the constitutional protection." *Gitlow v. New York*, 268 U.S. 652, 671.

How much "likelihood" is another question, "a question of proximity and degree" that cannot be completely captured in a formula. In *Schenck v. United States*, however, this Court said that there must be a determination of whether or not

the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils.

We recognize that this statement, however helpful, does not comprehend the whole problem. As Mr. Justice Brandeis said in his concurring opinion in *Whitney v. California*, 274 U.S. 357.

This Court has not yet fixed the standard by which to determine when a danger shall be deemed clear; how remote the danger may be and yet be deemed present. [314 U.S. 262]

Nevertheless, the "clear and present danger" language of the *Schenck* case has afforded practical guidance in a great variety of cases in which the scope of constitutional protections of freedom of expression was in issue. It has been utilized by either a majority or minority of this Court in passing upon the constitutionality of convictions under espionage acts, *Schenck v. United States*, *supra*; *Abrams v. United States*, 250 U.S. 616; under a criminal syndicalism act, *Whitney v. California*, *supra*; under an "anti-insurrection" act, *Herndon v. Lowry*, *supra*, and for breach of the peace at common law, *Cantwell v. Connecticut*, *supra*. And, very recently, we have also suggested that "clear and present danger" is an appropriate guide in determining the constitutionality of restrictions upon expression where the substantive evil sought to be prevented by the restriction is "destruction of life or property, or invasion of the right of privacy." *Thornhill v. Alabama*, 310 U.S. 88, .

Moreover, the likelihood, however great, that a substantive evil will result cannot alone justify a restriction upon freedom of speech or the press. The evil itself must be "substantial," Brandeis, J., concurring in *Whitney v. California*, *supra*; it must be "serious," *id.*...And [314 U.S. 263] even the expression of "legislative preferences or beliefs" cannot transform minor matters of public inconvenience or annoyance into substantive evils of sufficient weight to warrant the curtailment of liberty of expression. *Schneider v. State*, 308 U.S. 147, GO>161.

\What finally emerges from the "clear and present danger" cases is a working principle that the substantive evil must be extremely serious, and the degree of imminence extremely high, before

utterances can be punished. Those cases do not purport to mark the furthestmost constitutional boundaries of protected expression, nor do we here. They do no more than recognize a minimum compulsion of the Bill of Rights. For the First Amendment does not speak equivocally. It prohibits any law "abridging the freedom of speech, or of the press." It must be taken as a command of the broadest scope that explicit language, read in the context of a liberty-loving society, will allow.

II

Before analyzing the punished utterances and the circumstances surrounding their publication, we must consider an argument which, if valid, would destroy the relevance of the foregoing discussion to this case. In brief, this argument is that the publications here in question belong to a special category marked off by history -- a category to which the criteria of constitutional immunity from punishment used where other types of utterances are concerned are not applicable. For, the argument runs, the power of judges to punish by contempt out-of-court publications tending to obstruct the orderly and fair administration of justice in a pending case was deeply [314 U.S. 264] rooted in English common law at the time the Constitution was adopted. That this historical contention is dubious has been persuasively argued elsewhere. Fox, Contempt of Court, *passim*, e.g., 207. See also Stansbury, Trial of James H. Peck, 430. In any event, it need not detain us, for to assume that English common law in this field became ours is to deny the generally accepted historical belief that "one of the objects of the Revolution was to get rid of the English common law on liberty of speech and of the press." Schofield, Freedom of the Press in the United States, 9 Publications Amer.Sociol.Soc., 67, 76.

More specifically, it is to forget the environment in which the First Amendment was ratified. In presenting the proposals which were later embodied in the Bill of Rights, James Madison, the leader in the preparation of the First Amendment, said:

Although I know whenever the great rights, the trial by jury, freedom of the press, or liberty of conscience, come in question in that body [Parliament], the invasion of them is resisted by able advocates, yet their Magna Charta does not contain any one provision for the security of those rights respecting which the people of America are most alarmed. The freedom of the press and rights of conscience, those choicest privileges of the people, are unguarded in the British Constitution.

1 Annals of Congress 1789-1790, 434. And Madison elsewhere wrote that "the state of the press . . . under the common law cannot . . . be the standard of its freedom in the United States." VI Writings of James Madison 1790-1802, 387. [314 U.S. 265]

There are no contrary implications in any part of the history of the period in which the First Amendment was framed and adopted. No purpose in ratifying the Bill of Rights was clearer than that of securing for the people of the United States much greater freedom of religion, expression, assembly, and petition than the people of Great Britain had ever enjoyed. It cannot be denied, for example, that the religious test oath or the restrictions upon assembly then prevalent in England would have been regarded as measures which the Constitution prohibited the American Congress from passing. And since the same unequivocal language is used with respect to freedom of the press, it signifies a similar enlargement of that concept as well. Ratified as it was while the memory of many oppressive English restrictions on the enumerated liberties was still fresh, the First

Amendment cannot reasonably be taken as approving prevalent English practices. On the contrary, the only conclusion supported by history is that the unqualified prohibitions laid down by the framers were intended to give to liberty of the press, as to the other liberties, the broadest scope that could be countenanced in an orderly society. [314 U.S. 266]

The implications of subsequent American history confirm such a construction of the First Amendment. To be sure, it occurred no more to the people who lived in the decades following Ratification than it would to us now that the power of courts to protect themselves from disturbances and disorder in the courtroom by use of contempt proceedings could seriously be challenged as conflicting with constitutionally secured guarantees of liberty. In both state and federal courts, this power has been universally recognized. *Anderson v. Dunn*, 6 Wheat. 204, 227. But attempts to expand it in the post-ratification years evoked popular reactions that bespeak a feeling of jealous solicitude for freedom of the press. In Pennsylvania and New York, for example, heated controversies arose over alleged abuses in the exercise of the contempt power, which in both places culminated in legislation practically forbidding summary punishment for publications. *See Nelles and King, Contempt by Publication*, 28 Col.L.Rev. 401, 409-422.

In the federal courts, there was the celebrated case of Judge Peck, recently referred to by this Court in *Nye v. United States*, 313 U.S. 33, 45. The impeachment proceedings against him, it should be noted, and the strong feelings they engendered, were set in motion by his summary punishment of a lawyer for publishing comment on a case which was on appeal at the time of publication, [314 U.S. 267] and which raised the identical issue of several other cases then pending before him. Here again, legislation was the outcome, Congress proclaiming, in a statute expressly captioned "An Act *declaratory* of the law concerning contempts of court," that the power of federal courts to inflict summary punishment for contempt

shall not be construed to extend to any cases except the misbehaviour of . . . persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice . . .

When recently called upon to interpret this statute, we overruled the earlier decision of this Court in *Toledo Newspaper Co. v. United States*, 247 U.S. 402, in the belief that it improperly enlarged the stated area of summary punishment. *Nye v. United States, supra*. Here, as in the *Nye* case, we need not determine whether the statute was intended to demarcate the full power permissible under the Constitution to punish by contempt proceedings. But we do find in the enactment, viewed in its historical context, a respect for the prohibitions of the First Amendment, not as mere guides to the formulation of policy, but as commands the breach of which cannot be tolerated.

We are aware that, although some states have, by statute or decision, expressly repudiated the power of judges to punish publications as contempts on a finding of mere tendency to interfere with the orderly administration of justice in a pending case, other states have sanctioned the exercise of such a power. (*See Nelles and King, loc. cit. supra*, 536-562, for a collection and discussion of state cases.) But state power in this field was not tested in this Court for more than a century. Not until 1925, with the [314 U.S. 268] decision in *Gitlow v. New York, supra*, 268 U.S. 652, did this Court recognize in the Fourteenth Amendment the application to the states of the same standards of freedom of expression as, under the First Amendment, are applicable to the federal government. And this is the first time since 1925 that we have been called upon to determine the constitutionality of a state's exercise of the contempt power in this kind of situation. Now that such a case is before us, we cannot allow the mere existence of other untested state decisions to destroy the historic

constitutional meaning of freedom of speech and of the press.

History affords no support for the contention that the criteria applicable under the Constitution to other types of utterances are not applicable, in contempt proceedings, to out-of-court publications pertaining to a pending case.

III

We may appropriately begin our discussion of the judgments below by considering how much, as a practical matter, they would affect liberty of expression. It must be recognized that public interest is much more likely to be kindled by a controversial event of the day than by a generalization, however penetrating, of the historian or scientist. Since they punish utterances made during the pendency of a case, the judgments below therefore produce their restrictive results at the precise time when public interest in the matters discussed would naturally be at its height. Moreover, the ban is likely to fall not only at a crucial time, but upon the most important topics of discussion. Here, for example, labor controversies were the topics of some of the publications. Experience shows that, the more acute labor controversies are, the more likely [314 U.S. 269] it is that, in some aspect, they will get into court. It is therefore the controversies that command most interest that the decisions below would remove from the arena of public discussion.

No suggestion can be found in the Constitution that the freedom there guaranteed for speech and the press bears an inverse ratio to the timeliness and importance of the ideas seeking expression. Yet it would follow as a practical result of the decisions below that anyone who might wish to give public expression to his views on a pending case involving no matter what problem of public interest, just at the time his audience would be most receptive, would be as effectively discouraged as if a deliberate statutory scheme of censorship had been adopted. Indeed, perhaps more so, because, under a legislative specification of the particular kinds of expressions prohibited and the circumstances under which the prohibitions are to operate, the speaker or publisher might at least have an authoritative guide to the permissible scope of comment, instead of being compelled to act at the peril that judges might find in the utterance a "reasonable tendency" to obstruct justice in a pending case.

This unfocused threat is, to be sure, limited in time, terminating, as it does, upon final disposition of the case. But this does not change its censorial quality. An endless series of moratoria on public discussion, even if each were very short, could hardly be dismissed as an insignificant abridgment of freedom of expression. And to assume that each would be short is to overlook the fact that the "pendency" of a case is frequently a matter of months, or even years, rather than days or weeks. [314 U.S. 270]

For these reasons, we are convinced that the judgments below result in a curtailment of expression that cannot be dismissed as insignificant. If they can be justified at all, it must be in terms of some serious substantive evil which they are designed to avert. The substantive evil here sought to be averted has been variously described below. It appears to be double: disrespect for the judiciary, and disorderly and unfair administration of justice. The assumption that respect for the judiciary can be won by shielding judges from published criticism wrongly appraises the character of American public opinion. For it is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions. And an enforced silence, however limited, [314 U.S. 271] solely in the name of preserving the dignity of the bench would probably engender resentment, suspicion, and contempt much more than it would enhance respect.

The other evil feared, disorderly and unfair administration of justice, is more plausibly associated with restricting publications which touch upon pending litigation. The very word "trial" connotes decisions on the evidence and arguments properly advanced in open court. Legal trials are not like elections, to be won through the use of the meeting hall, the radio, and the newspaper. But we cannot start with the assumption that publications of the kind here involved actually do threaten to change the nature of legal trials, and that, to preserve judicial impartiality, it is necessary for judges to have a contempt power by which they can close all channels of public expression to all matters which touch upon pending cases. We must therefore turn to the particular utterances here in question, and the circumstances of their publication, to determine to what extent the substantive evil of unfair administration of justice was a likely consequence and whether the degree of likelihood was sufficient to justify summary punishment.

The Los Angeles Times Editorials. The Times-Mirror Company, publisher of the Los Angeles Times, and L.D. Hotchkiss, its managing editor, were cited for contempt for the publication of three editorials. Both found by the trial court to be responsible for one of the editorials, the company and Hotchkiss were each fined \$100. The company alone was held responsible for the other two, and was fined \$100 more on account of one, and \$300 more on account of the other.

The \$300 fine presumably marks the most serious offense. The editorial thus distinguished was entitled "Probation for Gorillas?" After vigorously denouncing two members of a labor union who had previously been [314 U.S. 272] found guilty of assaulting nonunion truck drivers, it closes with the observation:

Judge A. A. Scott will make a serious mistake if he grants probation to Matthew Shannon and Kennan Holmes. This community needs the example of their assignment to the jute mill.¹⁷

Judge Scott had previously set a day (about a month after the publication) for passing upon the application of Shannon and Holmes for probation and for pronouncing sentence.

The basis for punishing the publication as contempt was, by the trial court, said to be its "inherent tendency," and, by the Supreme Court, its "reasonable tendency," to interfere with the orderly administration of justice in an [314 U.S. 273] action then before a court for consideration. In accordance with what we have said on the "clear and present danger" cases, neither "inherent tendency" nor "reasonable tendency" is enough to justify a restriction of free expression. But even if they were appropriate measures, we should find exaggeration in the use of those phrases to describe the facts here.

From the indications in the record of the position taken by the Los Angeles Times on labor controversies in the past, there could have been little doubt of its attitude toward the probation of Shannon and Holmes. In view of the paper's long-continued militancy in this field, it is inconceivable that any judge in Los Angeles would expect anything but adverse criticism from it in the event probation were granted. Yet such criticism after final disposition of the proceedings would clearly have been privileged. Hence, this editorial, given the most intimidating construction it will bear, did no more than threaten future adverse criticism which was reasonably to be expected anyway in the event of a lenient disposition of the pending case. To regard it, therefore, as, in itself, of substantial influence upon the course of justice would be to impute to judges a lack of firmness, wisdom, or honor -- which we cannot accept as a major premise. *Cf.* Holmes, J., dissenting in *Toledo Newspaper Co. v. United States*, 247 U.S. 402, 424. [314 U.S. 274]

The other two editorials publication of which was fined below are set out in the lower margin. With respect to these two editorials, there is no divergence of conclusions among the members of this Court. We are all of the opinion that, upon any fair construction, their possible influence on the course of justice can be dismissed as negligible, [314 U.S. 275] and that the Constitution compels us to set aside the convictions as unpermissible exercises of the state's power. In view of the foregoing discussion of "Probation for Gorillas?", analysis of these editorials and their setting is deemed unnecessary.

The Bridges Telegram. While a motion for a new trial was pending in a case involving a dispute between an [314 U.S. 276] AFL union and a CIO union of which Bridges was an officer, he either caused to be published or acquiesced in the publication of a telegram which he had sent to the Secretary of Labor. The telegram referred to the judge's decision as "outrageous"; said that attempted enforcement of it would tie up the port of Los Angeles and involve the entire Pacific Coast, and concluded with the announcement that the CIO union, representing some twelve thousand members, did not intend to allow state courts to override the majority vote of members in choosing its officers and representatives and to override the National Labor Relations Board. [314 U.S. 277]

Apparently, Bridges' conviction is not rested at all upon his use of the word "outrageous." The remainder of the telegram, fairly construed, appears to be a statement that, if the court's decree should be enforced, there would be a strike. It is not claimed that such a strike would have been in violation of the terms of the decree, nor that, in any other way it would have run afoul of the law of California. On no construction, therefore, can the telegram be taken as a threat either by Bridges or the union to follow an illegal course of action.

Moreover, this statement of Bridges was made to the Secretary of Labor, who is charged with official duties in connection with the prevention of strikes. Whatever the cause might be if a strike was threatened or possible, the Secretary was entitled to receive all available information. Indeed, the Supreme Court of California recognized that, publication in the newspapers aside, in sending the message to the Secretary, Bridges was exercising the right of petition to a duly accredited representative of the United States Government, a right protected by the First Amendment.

It must be recognized that Bridges was a prominent labor leader speaking at a time when public interest in the particular labor controversy was at its height. The observations we have previously made here upon the timeliness [314 U.S. 278] and importance of utterances as emphasizing, rather than diminishing, the value of constitutional protection, and upon the breadth and seriousness of the censorial effects of punishing publications in the manner followed below, are certainly no less applicable to a leading spokesman for labor than to a powerful newspaper taking another point of view.

In looking at the reason advanced in support of the judgment of contempt, we find that here, too, the possibility of causing unfair disposition of a pending case is the major justification asserted. And here again, the gist of the offense, according to the court below, is intimidation.

Let us assume that the telegram could be construed as an announcement of Bridges' intention to call a strike, something which, it is admitted, neither the general law of California nor the court's decree prohibited. With an eye on the realities of the situation, we cannot assume that Judge Schmidt was unaware of the possibility of a strike as a consequence of his decision. If he was not intimidated by the facts themselves, we do not believe that the most explicit statement of them could have

sidetracked the course of justice. Again, we find exaggeration in the conclusion that the utterance even "tended" to interfere with justice. If there was electricity in the atmosphere, it was generated by the facts; the charge added by the Bridges telegram can be dismissed as negligible. The words of Mr. Justice Holmes, spoken in reference to very different facts, seem entirely applicable here:

I confess that I cannot find in all this, or in the evidence in the case, anything that would have affected a mind of reasonable fortitude, and still less can I find there anything that obstructed the administration of justice in any sense that I possibly can give to those words.

Toledo Newspaper Co. v. United States, supra, 247 U.S. at 425.

Reversed. [314 U.S. 279]

FRANKFURTER, J., dissenting

MR. JUSTICE FRANKFURTER, with whom concurred the CHIEF JUSTICE, MR. JUSTICE ROBERTS and MR. JUSTICE BYRNES, dissenting.

Our whole history repels the view that it is an exercise of one of the civil liberties secured by the Bill of Rights for a leader of a large following, or for a powerful metropolitan newspaper, to attempt to overawe a judge in a matter immediately pending before him. The view of the majority deprives California of means for securing to its citizens justice according to law -- means which, since the Union was founded, have been the possession, hitherto unchallenged, of all the states. This sudden break with the uninterrupted course of constitutional history has no constitutional warrant. To find justification for such deprivation of the historic powers of the states is to misconceive the idea of freedom of thought and speech as guaranteed by the Constitution.

Deeming it more important than ever before to enforce civil liberties with a generous outlook, but deeming it no less essential for the assurance of civil liberties that the federal system founded upon the Constitution be maintained, we believe that the careful ambiguities and silences of the majority opinion call for a full exposition of the issues in these cases.

While the immediate question is that of determining the power of the courts of California to deal with attempts to coerce their judgments in litigation immediately before them, the consequence of the Court's ruling today is a denial to the people of the forty-eight states of a right which they have always regarded as essential for the effective exercise of the judicial process, as well as a denial to the Congress of powers which were exercised from the very beginning even by the framers of the Constitution themselves. To be sure, the majority do not, in so many words, hold that trial by newspapers has constitutional [314 U.S. 280] sanctity. But the atmosphere of their opinion and several of its phrases mean that, or they mean nothing. Certainly the opinion is devoid of any frank recognition of the right of courts to deal with utterances calculated to intimidate the fair course of justice a right which hitherto all the states have, from time to time, seen fit to confer upon their courts, and which Congress conferred upon the federal courts in the Judiciary Act of 1789. If all that is decided today is that the majority deem the specific interferences with the administration of justice in California so tenuously related to the right of California to keep its courts free from coercion as to constitute a check upon free speech, rather than upon impartial justice, it would be well to say so. Matters that involve so deeply the powers of the states, and that put to the test the professions by this Court of self-restraint in nullifying the political powers of state and nation,

should not be left clouded.

We are not even vouchsafed reference to the specific provision of the Constitution which renders states powerless to insist upon trial by courts, rather than trial by newspapers. So far as the Congress of the United States is concerned, we are referred to the First Amendment. That is specific. But we are here dealing with limitations upon California -- with restraints upon the states. To say that the protection of freedom of speech of the First Amendment is absorbed by the Fourteenth does not say enough. Which one of the various limitations upon state power introduced by the Fourteenth Amendment absorbs the First? Some provisions of the Fourteenth Amendment apply only to citizens, and one of the petitioners here is an alien; some of its provisions apply only to natural persons, and another petitioner here is a corporation. *See Hague v. CIO*, 307 U.S. 496, 514, and cases cited. Only the Due Process Clause assures constitutional protection of civil liberties to aliens and corporations. Corporations [314 U.S. 281] cannot claim for themselves the "liberty" which the Due Process Clause guarantees. That clause protects only their property. *Pierce v. Society of Sisters*, 268 U.S. 510, 535. The majority opinion is strangely silent in failing to avow the specific constitutional provision upon which its decision rests.

These are not academic debating points or technical niceties. Those who have gone before us have admonished us

Twining v. New Jersey, 211 U.S. 78, In a series of opinions as uncompromising as any in its history, this Court has settled that the fullest opportunities for free discussion are "implicit in the concept of ordered liberty, and thus, through the Fourteenth Amendment," protected against attempted invasion by [314 U.S. 282] the states. *Palko v. Connecticut*, 302 U.S. 319, 3225. The channels of inquiry and thought must be kept open to new conquests of reason, however odious their expression may be to the prevailing climate of opinion. But liberty, "in each of its phases, has its history and connotation." Whether a particular state action violates "the essential attributes of that liberty" must be judged in the light of the liberty that is invoked and the curtailment that is challenged. *Near v. Minnesota*, 283 U.S. 697, 708. For the recognition of a privilege does not mean that it is without conditions or exceptions. The social policy that will prevail in many situations may run foul in others of a different social policy, competing for supremacy. It is then the function of a court to mediate between them, assigning, so far as possible, a proper value to each, and summoning to it aid all the distinctions and analogies that are the tools of the judicial process.

Clark v. United States, 289 U.S. 1, 13.

Free speech is not so absolute or irrational a conception as to imply paralysis of the means for effective protection of all the freedoms secured by the Bill of Rights. *Compare* Lincoln's Message to Congress in Special Session, July 4, 1861, 7 Richardson, Messages and Papers of the Presidents, pp. 3221-3232. In the cases before us, the claims on behalf of freedom of speech and of the press encounter claims on behalf of liberties no less precious. California asserts her right to do what she has done as a means of safeguarding her system of justice.

The administration of justice by an impartial judiciary has been basic to our conception of freedom ever since Magna Carta. It is the concern not merely of the immediate litigants. Its assurance is everyone's concern, and it is protected by the liberty guaranteed by the Fourteenth Amendment. That is why this Court has outlawed mob domination of a courtroom, *Moore v. Dempsey*, 261 U.S. 86, mental coercion of a defendant, *Chambers v. [314 U.S. 283] Florida*, 309 U.S. 227, a judicial system which does not provide disinterested judges, *Tumey v. Ohio*, 273 U.S. 510, and

discriminatory selection of jurors, *Pierre v. Louisiana*, 306 U.S. 354; *Smith v. Texas*, 311 U.S. 128.

A trial is not a "free trade in ideas," nor is the best test of truth in a courtroom "the power of the thought to get itself accepted in the competition of the market." *Compare* Mr. Justice Holmes in *Abrams v. United States*, 250 U.S. 616, 630. A court is a forum with strictly defined limits for discussion. It is circumscribed in the range of its inquiry and in its methods by the Constitution, by laws, and by age-old traditions. Its judges are restrained in their freedom of expression by historic compulsions resting on no other officials of government. They are so circumscribed precisely because judges have in their keeping the enforcement of rights and the protection of liberties which, according to the wisdom of the ages, can only be enforced and protected by observing such methods and traditions.

The dependence of society upon an unswerved judiciary is such a commonplace in the history of freedom that the means by which it is maintained are too frequently taken for granted, without heed to the conditions which alone make it possible. The role of courts of justice in our society has been the theme of statesmen and historians and constitution makers. It is perhaps best expressed in the Massachusetts Declaration of Rights:

It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit.

The Constitution was not conceived as a doctrinaire document, nor was the Bill of Rights intended as a collection of popular slogans. We are dealing with instruments [314 U.S. 284] of government. We cannot read into the Fourteenth Amendment the freedom of speech and of the press protected by the First Amendment, and, at the same time, read out age-old means employed by states for securing the calm course of justice. The Fourteenth Amendment does not forbid a state to continue the historic process of prohibiting expressions calculated to subvert a specific exercise of judicial power. So to assure the impartial accomplishment of justice is not an abridgment of freedom of speech or freedom of the press, as these phases of liberty have heretofore been conceived even by the stoutest libertarians. In fact, these liberties themselves depend upon an untrammelled judiciary whose passions are not even unconsciously aroused and whose minds are not distorted by extrajudicial considerations.

Of course, freedom of speech and of the press are essential to the enlightenment of a free people and in restraining those who wield power. Particularly should this freedom be employed in comment upon the work of courts, who are without many influences ordinarily making for humor and humility, twin antidotes to the corrosion of power. But the Bill of Rights is not self-destructive. Freedom of expression can hardly carry implications that nullify the guarantees of impartial trials. And, since courts are the ultimate resorts for vindicating the Bill of Rights, a state may surely authorize appropriate historic means to assure that the process for such vindication be not wrenched from its rational tracks into the more primitive melee of passion and pressure. The need is great that courts be criticized, but just as great that they be allowed to do their duty

The "liberty" secured by the Fourteenth Amendment summarizes the experience of history. And the power exerted by the courts of California is deeply rooted in the system of administering justice evolved by liberty-loving English-speaking peoples. From the earliest days of the [314 U.S. 285]

English courts, they have encountered obstructions to doing that for which they exist, namely, to administer justice impartially and solely with reference to what comes before them. These interferences were of diverse kinds. But they were all covered by the infelicitous phrase "contempt of court," and the means for dealing with them is historically known as the power of courts to punish for contempt. As is true of many aspects of our legal institutions, the settled doctrines concerning the mode of procedure for exercising the power of contempt became established on dubious historical authority. Exact legal scholarship has controverted much pertaining to the origin of summary proceedings for contempt. *See* Sir John Fox, *The History of Contempt of Court, passim*. But there is no doubt that, since the early eighteenth century, the power to punish for contempt for intrusions into the living process of adjudication has been an unquestioned characteristic of English courts and of the courts of this country.

The judicatures of the English-speaking world, including the courts of the United States and of the forty-eight states, have from time to time recognized and exercised the power now challenged. (For partial lists of cases, *see* Nelles and King, *Contempt by Publication in the United States*, 28 Col.L.Rev. 401, 525, 554; Sullivan, *Contempts by Publication*, pp. 185 *et seq.*) A declaratory formulation of the common law was written into the Judiciary Act of 1789 (17, 1 Stat. 73, 83) by Oliver Ellsworth, one of the framers of the Constitution, later to become Chief Justice; the power was early recognized as incidental to the very existence of courts in a succession of opinions in this Court *United States v. Hudson*, 7 Cranch 32; *Anderson v. Dunn*, 6 Wheat. 204, 227; *Ex parte Kearney*, 7 Wheat. 38); it was expounded and supported by the great Commentaries that so largely influenced the shaping of our law in the late eighteenth and early nineteenth centuries, [314 U.S. 286] those of Blackstone, Kent and Story; it historic continuity withstood attack against state action under the Due Process Clause, now again invoked, *Eilenbecker v. Plymouth County*, 134 U.S. 31, *and see Ex parte Robinson*, 19 Wall. 505; *Ex parte Terry*, 128 U.S. 289; *Savin, Petitioner*, 131 U.S. 267. [314 U.S. 287]

As in the exercise of all power, it was abused. Some English judges extended their authority for checking interferences with judicial business actually in hand to "lay by the heel" those responsible for "scandalizing the court," that is, bringing it into general disrepute. Such foolishness has long since been disavowed in England, and has never found lodgment here. But even the technical power of punishing interference with the court's business is susceptible of abuse. As early as 1809, Pennsylvania restricted the power to inflict summary punishment for contempts to a closely defined class of misconduct, and provided the ordinary criminal procedure for other forms of interferences with a pending cause. 1808-09 Pa.Acts, c. 78, p. 146. The flagrant case of Judge Peckled Congress [314 U.S. 288] to pass the Act of March 2, 1831, 4 Stat. 487, 28 U.S.C. § 385, the scope of which we recently considered. *Nye v. United States*, 313 U.S. 33. A number of states copied the federal statute. It would be pedantic to trace the course of legislation and of adjudication on this subject in our half-hundred jurisdictions. Suffice it to say that the hitherto unchallenged power of American states to clothe their courts with authority to punish for contempt was thus summarized only recently by Mr. Chief Justice Hughes in the leading case vindicating the liberty of the press against state action:

here is also the conceded authority of courts to punish for contempt when publications directly tend to prevent the proper discharge of Judicial functions.

Near v. Minnesota, 283 U.S. 697,715. [314 U.S. 289]

It is trifling with great issues to suggest that the question before us is whether eighteenth-century restraints upon the freedom of the press should now be revived. The question is, rather, whether nineteenth- and twentieth-century American institutions should be abrogated by judicial fiat.

That a state may, under appropriate circumstances, prevent interference with specific exercises of the process of impartial adjudication does not mean that its people lose the right to condemn decisions or the judges who render them. Judges as persons, or courts, as institutions, are entitled to no greater immunity from criticism than other persons or institutions. Just because the holders of judicial office are identified with the interests of justice they may forget their common human frailties and fallibilities. There have sometimes been martinets upon the bench, as there have also been pompous wielders of authority who have used the paraphernalia of power in support of what they called their dignity. Therefore, judges must be kept mindful of their limitations, and of their ultimate public responsibility by a vigorous stream of criticism expressed with candor, however blunt.

A [314 U.S. 290] man cannot be summarily laid by the heels because his words may make public feeling more unfavorable in case the judge should be asked to act at some later date, any more than he can for exciting public feeling against the judge for what he already has done.

Mr. Justice Holmes, in *Craig v. Hecht*, 263 U.S. 255, 281-82. But the Constitution does not bar a state from acting on the theory of our system of justice, that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print.

Patterson v. Colorado, 205 U.S. 454, 462. The theory of our system of justice, as thus stated for the Court by Mr. Justice Holmes, has never been questioned by any member of the Court. It was questioned neither by Mr. Justice Harlan nor by Mr. Justice Brewer in their dissents in the *Patterson* case. The differences in that case concerned the question whether "there is to be found in the Fourteenth Amendment a prohibition . . . similar to that, in the First," and, if so, what the scope of that protection is. The first question was settled in the affirmative by a series of cases beginning with *Gitlow v. New York*, 268 U.S. 652. And that the scope of the First Amendment was broader than was intimated in the opinion in the *Patterson* case was later recognized by Mr. Justice Holmes, speaking for the Court, in *Schenck v. United States*, 249 U.S. 47. But that the conventional power to punish for contempt is not a censorship in advance, but a punishment for past conduct, and, as such, like prosecution for a criminal libel, is not offensive either to the First or to the Fourteenth Amendments, has never been doubted throughout this Court's history.

This conception of justice, the product of a long and arduous effort in the history of freedom, is one of the greatest achievements of civilization, and is not less to be cherished at a time when it is repudiated and derided by [314 U.S. 291] powerful regimes.

The right to sue and defend in the courts is the alternative of force. In an organized society, it is the right conservative of all other rights, and lies at the foundation of orderly government.

Chambers v. Baltimore & Ohio R. Co., 207 U.S. 142, 148. This has nothing to do with curtailing expression of opinion, be it political, economic, or religious, that may be offensive to orthodox views. It has to do with the power of the state to discharge an indispensable function of civilized

society, that of adjudicating controversies between its citizens and between citizens and the state through legal tribunals in accordance with their historic procedures. Courts and judges must take their share of the gains and pains of discussion which is unfettered except by laws of libel, by self-restraint, and by good taste. Winds of doctrine should freely blow for the promotion of good and the correction of evil. Nor should restrictions be permitted that cramp the feeling of freedom in the use of tongue or pen regardless of the temper or the truth of what may be uttered.

Comment however forthright is one thing. Intimidation with respect to specific matters still in judicial suspense, quite another. *See* Laski, Procedure for Constructive Contempt in England, 41 Harv.L.Rev. 1031, 1034; Goodhart, Newspapers and Contempt in English Law, 48 Harv.L.Rev. 885. A publication intended to teach the judge a lesson, or to vent spleen, or to discredit him, or to influence him in his future conduct, would not justify exercise of the contempt power. *Compare* Judge Learned Hand in *Ex parte Craig*, 282 F. 138, 160-61. It must refer to a matter under consideration, and constitute, in effect, a threat to its impartial disposition. It must be calculated to create an atmospheric pressure incompatible with rational, impartial adjudication. But, to interfere with justice, it need not succeed. As with other offenses, the state should be able to proscribe attempts that fail because of the danger that attempts may succeed. The purpose, [314 U.S. 292] it will do no harm to repeat, is not to protect the court as a mystical entity, or the judges as individuals or as anointed priests set apart from the community and spared the criticism to which in a democracy other public servants are exposed. The purpose is to protect immediate litigants and the public from the mischievous danger of an unfree or coerced tribunal. The power should be invoked only where the adjudicatory process may be hampered or hindered in its calm, detached, and fearless discharge of its duty on the basis of what has been submitted in court. The belief that decisions are so reached is the source of the confidence on which law ultimately rests.

It will not do to argue that a state cannot permit its judges to resist coercive interference with their work in hand because other officials of government must endure such obstructions. In such matters, "a page of history is worth a volume of logic." *New York Trust Co. v. Eisner*, 256 U.S. 345, 349. Presidents and governors and legislators are political officials traditionally subject to political influence and the rough and tumble of the hustings, who have open to them traditional means of self-defense. In a very immediate sense, legislators and executives express the popular will. But judges do not express the popular will in any ordinary meaning of the term. The limited power to punish for contempt which is here involved wholly rejects any assumption that judges are superior to other officials. They merely exercise a function historically and intrinsically different. From that difference is drawn the power which has behind it the authority and the wisdom of our whole history. Because the function of judges and that of other officials in special situations may approach similarity, hard cases can be put which logically may contradict the special quality of the judicial process.

But the provisions of the Constitution are not mathematical formulas having their essence in their form; [314 U.S. 293] they are organic living institutions transplanted from English soil. Their significance is vital, not formal; it is to be gathered not simply by taking the words and a dictionary, but by considering their origin, and the line of their growth.

Gompers v. United States, 233 U.S. 604, 610.

We are charged here with the duty, always delicate, of sitting in judgment on state power. We must

be fastidiously careful not to make our private views the measure of constitutional authority. To be sure, we are here concerned with an appeal to the great liberties which the Constitution assures to all our people, even against state denial. When a substantial claim of an abridgment of these liberties is advanced, the presumption of validity that belongs to an exercise of state power must not be allowed to impair such a liberty, or to check our close examination of the merits of the controversy. But the utmost protection to be accorded to freedom of speech and of the press cannot displace our duty to give due regard also to the state's power to deal with what may essentially be local situations.

Because freedom of public expression alone assures the unfolding of truth, it is indispensable to the democratic process. But even that freedom is not an absolute, and is not predetermined. By a doctrinaire overstatement of its scope, and by giving it an illusory absolute appearance, there is danger of thwarting the free choice and the responsibility of exercising it which are basic to a democratic society. While we are reviewing a judgment of the California Supreme Court, and not an act of its legislature or the voice of the people of California formally expressed in its constitution, we are, in fact, passing judgment on "the power of the State as a whole." *Rippey v. Texas*, 193 U.S. 504, 509; *Skiriotos v. Florida*, 313 U.S. 69, 79; *United Gas Co. v. Texas*, 303 U.S. 123, 142; *Missouri v. Dockery*, 191 U.S. 165, 171; *Iowa-Des Moines Bank v. Bennett*, 284 U.S. 239, 244. [314 U.S. 294]

By the constitution of California, as authoritatively construed by its Supreme Court, and therefore as binding upon this Court as though ratified by all the voters of California, the citizens of that state have chosen to place in its courts the power, as we have defined it, to insure impartial justice. If the citizens of California have other desires, if they want to permit the free play of modern publicity in connection with pending litigation, it is within their easy power to say so, and to have their way. They have ready means of amending their constitution, and they have frequently made use of them. We are, after all, sitting over three thousand miles away from a great state, without intimate knowledge of its habits and its needs, in a matter which does not cut across the affirmative powers of the national government. Some play of policy must be left to the states in the task of accommodating individual rights and the overriding public wellbeing which makes those rights possible. How are we to know whether an easy-going or stiffer view of what affects the actual administration of justice is appropriate to local circumstances? How are we to say that California has no right to model its judiciary upon the qualities and standards attained by the English administration of justice, and to use means deemed appropriate to that end by English courts. It is surely an arbitrary judgment to say that the [314 U.S. 295] Due Process Clause denies California that right. For respect for "the liberty of the subject," though not explicitly written into a constitution, is so deeply embedded in the very texture of English feeling and conscience that it survives, as the pages of Hansard abundantly prove, the exigencies of the life and death struggle of the British people. *See, e.g.*, Carr, Concerning English Administrative Law, c. 3 ("Crisis Legislation").

The rule of law applied in these cases by the California court forbade publications having "a reasonable tendency to interfere with the orderly administration of justice in pending actions." To deny that this age-old formulation of the prohibition against interference with dispassionate adjudication is properly confined to the substantive evil is not only to turn one's back on history, but also to indulge in an idle play on words, unworthy of constitutional adjudication. It was urged before us that the words "reasonable tendency" had a fatal pervasiveness, and that their replacement by "clear and present danger" was required to state a constitutionally permissible rule of law. The Constitution, as we have recently had occasion to remark, is not a formulary. *Wisconsin v. J. C. Penney Co.*, 311 U.S. 435,444. Nor does it require displacement of an historic test by a phrase

which first gained currency on March 3, 1919. *Schenck v. United States*, 249 U.S. 47. Our duty is not ended with the recitation [314 U.S. 296] of phrases that are the shorthand of a complicated historic process. The phrase "clear and present danger" is merely a justification for curbing utterance where that is warranted by the substantive evil to be prevented. The phrase itself is an expression of tendency, and not of accomplishment, and the literary difference between it and "reasonable tendency" is not of constitutional dimension.

Here, the substantive evil to be eliminated is interference with impartial adjudication. To determine what interferences may be made the basis for contempt tenders precisely the same kind of issues as that to which the "clear and present danger" test gives rise. "It is a question of proximity and degree." *Schenck v. United States, supra*, at 52. And this, according to Mr. Justice Brandeis "is a rule of reason . . . Like many other rules for human conduct, it can be applied correctly only by the exercise of good judgment." *Schaefer v. United States*, 251 U.S. 466, 482-483. Has California's judgment here undermined liberties protected by the Constitution? In common with other questions of degree, this is to be solved not by shorthand phrases, but by consideration of the circumstances of the particular case. One cannot yell "Fire" in a crowded theater; police officers cannot turn their questioning into an instrument of mental oppression. *Chambers v. Florida*, 309 U.S. 227.

If a rule of state law is not confined to the evil which may be dealt with but places an indiscriminate ban on public expression that operates as an overhanging threat to free discussion, it must fall without regard to the facts of the particular case. This is true whether the rule of law be declared in a statute or in a decision of a court. *Thornhill v. Alabama*, 310 U.S. 88; *Cantwell v. Connecticut*, 310 U.S. 296. In the cases before us, there was no blanket or dragnet prohibition of utterance affecting courts. Freedom to criticize their work, to assail generally [314 U.S. 297] the institution of courts, to report and comment on matters in litigation but not to subvert the process of deciding -- all this freedom was respected. Only the state's interest in calm and orderly decisions, which represented also the constitutional right of the parties, led it to condemn coercive utterances directed towards a pending proceeding. California, speaking through its courts, acted because of their conclusion that such utterances undermined the conditions necessary for fair adjudication.

It is suggested that threats, by discussion, to untrammelled decisions by courts are the most natural expressions when public feeling runs highest. But it does not follow that states are left powerless to prevent their courts from being subverted by outside pressure when the need for impartiality and fair proceeding is greatest. To say that the framers of the Constitution sanctified veiled violence through coercive speech directed against those charged with adjudication is not merely to make violence an ingredient of justice; it mocks the very ideal of justice by respecting its forms while stultifying its uncontaminated exercise.

We turn to the specific cases before us:

The earliest editorial involved in No. 3, "Sit-strikers Convicted," commented upon a case the day after a jury had returned a verdict and the day before the trial judge was to pronounce sentence and hear motions for a new trial and applications for probation. On its face, the editorial merely expressed exulting approval of the verdict, a completed action of the court, and there is nothing in the record to give it additional significance. The same is true of the second editorial, "Fall of an Ex-Queen," which luridly draws a moral from a verdict of guilty in a sordid trial and which was published eight days prior to the day set for imposing sentence. In both instances, imposition of sentences was immediately pending at the time of publication, but in neither case was there any declaration, [314 U.S. 298] direct or sly, in regard to this. As the special guardian of the Bill of

Rights, this Court is under the heaviest responsibility to safeguard the liberties guaranteed from any encroachment, however astutely disguised. The Due Process Clause of the Fourteenth Amendment protects the right to comment on a judicial proceeding so long as this is not done in a manner interfering with the impartial disposition of a litigation. There is no indication that more was done in these editorials; they were not close threats to the judicial function which a state should be able to restrain. We agree that the judgment of the state court in this regard should not stand.

"Probation for Gorillas?", the third editorial, is a different matter. On April 22, 1938, a Los Angeles jury found two defendants guilty of assault with a deadly weapon and of a conspiracy to violate another section of the penal code. On May 2nd, the defendants applied for probation, and the trial judge, on the same day, set June 7th as the day for disposing of this application and for sentencing the defendants. In the Los Angeles Times for May 5th appeared the following editorial entitled "Probation for Gorillas?":

Two members of Dave Beck's wrecking crew, entertainment committee, goon squad or gorillas, having been convicted in Superior Court of assaulting nonunion truck drivers, have asked for probation. Presumably, they will say they are "first offenders," or plead that they were merely indulging a playful exuberance when, with slingshots, they fired steel missiles at men whose only offense was wishing to work for a living without paying tribute to the erstwhile boss of Seattle.

Sluggers for pay, like murderers for profit, are in a slightly different category from ordinary criminals. Men who commit mayhem for wages are not merely violators of the peace and dignity of the State; they are also conspirators against it. The man who burgles because his [314 U.S. 299] children are hungry may have some claim on public sympathy. He whose crime is one of impulse may be entitled to lenity. But he who hires out his muscles for the creation of disorder and in aid of a racket is a deliberate foe of organized society, and should be penalized accordingly.

It will teach no lesson to other thugs to put these men on good behavior for a limited time. Their "duty" would simply be taken over by others like them. If Beck's thugs, however, are made to realize that they face San Quentin when they are caught, it will tend to make their disreputable occupation unpopular. Judge A. A. Scott will make a serious mistake if he grants probation to Matthew Shannon and Kennan Holmes. This community needs the example of their assignment to the jute mill.

This editorial was published three days after the trial judge had fixed the time for sentencing and for passing on an application for probation, and a month prior to the date set. It consisted of a sustained attack on the defendants, with an explicit demand of the judge that they be denied probation and be sent "to the jute mill." This meant, in California idiom, that, in the exercise of his discretion the judge should treat the offense as a felony, with all its dire consequences, and not as a misdemeanor. Under the California Penal Code, the trial judge had wide discretion in sentencing the defendants: he could sentence them to the county jail for one year or less, or to the state penitentiary

for two years. The editorial demanded that he take the latter alternative, and send the defendants to the "jute mill" of the state penitentiary. A powerful newspaper admonished a judge, who within a year would have to secure popular approval if he desired continuance in office, that failure to comply with its demands would be "a serious mistake." Clearly, the state court was justified in treating this as a threat to impartial adjudication. It is [314 U.S. 300] too naive to suggest that the editorial was written with feeling of impotence and an intention to utter idle words. The publication of the editorial was hardly an exercise in futility. If it is true of juries, it is not wholly untrue of judges that they too may be "impregnated by the environing atmosphere." Mr. Justice Holmes in *Frank v. Mangum*, 237 U.S. 309, 349. California should not be denied the right to free its courts from such coercive, extraneous influences; it can thus assure its citizens of their constitutional right of a fair trial. Here, there was a real and substantial manifestation of an endeavor to exert outside influence. A powerful newspaper brought its full coercive power to bear in demanding a particular sentence. If such sentence had been imposed, readers might assume that the court had been influenced in its action; if lesser punishment had been imposed, at least a portion of the community might be stirred to resentment. It cannot be denied that even a judge may be affected by such a quandary. We cannot say that the state court was out of bounds in concluding that such conduct offends the free course of justice. Comment after the imposition of sentence -- criticism, however unrestrained, of its severity or lenience or disparity, *cf. Ambard v. Attorney General for Trinidad and Tobago*, [1936] A.C. 322 -- is an exercise of the right of free discussion. But to deny the states power to check a serious attempt at dictating, from without, the sentence to be imposed in a pending case is to deny the right to impartial justice as it was cherished by the founders of the Republic and by the framers of the Fourteenth Amendment. It would erect into a constitutional right opportunities for abuse of utterance interfering with the dispassionate exercise of the judicial function. *See Rex v. Daily Mail*, [1921] 2 K.B. 733, 749; *Attorney General v. Tonks*, [1939] N.Z.L.R. 533.

In *No. 1*, Harry R. Bridges challenges a judgment by the Superior Court of California fining him \$125 for contempt. [314 U.S. 301] He was president of the International Longshoremen's and Warehousemen's Union, an affiliate of the Committee for Industrial Organization, and also West Coast director for the CIO. The ILWU was largely composed of men who had withdrawn from the International Longshoremen's Association, an affiliate of the American Federation of Labor. In the fall of 1937, the rival longshoremen's unions were struggling for control of a local in San Pedro Harbor. The officers of this local, carrying most of its members with them, sought to transfer the allegiance of the local to ILWU. Thereupon, longshoremen remaining in ILA brought suit in the Superior Court of Los Angeles county against the local and its officers. On January 21, 1938, Judge Schmidt, sitting in the Superior Court, enjoined the officers from working on behalf of ILWU and appointed a receiver to conduct the affairs of the local as an affiliate of the AFL by taking charge of the outstanding bargaining agreements of the local and of its hiring hall, which is the physical mainstay of such a union. Judge Schmidt promptly stayed enforcement of his decree, and, on January 24th, the defendants in the injunction suit moved for a new trial and for vacation of the judgment. In view of its local setting, the case aroused great public interest. The waterfront situation on the Pacific Coast was also watched by the United States Department of Labor, and Bridges had been in communication with the Secretary of Labor concerning the difficulties. On the same day that the motion for new trial was filed, Bridges sent the Secretary the following wire concerning Judge Schmidt's decree:

This decision is outrageous considering ILA has 15 members (in San Pedro) and the International Longshoremen-Warehousemen's Union has 3,000. International Longshoremen-Warehousemen Union has petitioned the Labor Board for certification to represent San [314

U.S. 302] Pedro longshoremen with International Longshoremen Association denied representation because it represents only 15 men. Board hearing held; decision now pending. Attempted enforcement of Schmidt decision will tie up port of Los Angeles and involve entire Pacific Coast. International Longshoremen-Warehousemen Union, representing over 11,000 of the 12,000 longshoremen on the Pacific Coast, does not intend to allow state courts to override the majority vote of members in choosing its officers and representatives and to override the National Labor Relations Board.

This telegram duly found its way into the metropolitan newspapers of California. Bridges' responsibility for its publication is clear. His publication of the telegram in the Los Angeles and San Francisco papers is the basis of Bridges' conviction for contempt.

The publication of the telegram was regarded by the state supreme court as "a threat that, if an attempt was made to enforce the decision, the ports of the entire Pacific Coast would be tied up," and "a direct challenge to the court that 11,000 longshoremen on the Pacific Coast would not abide by its decision." This occurred immediately after counsel had moved to set aside the judgment which was criticized, so unquestionably there was a threat to litigation obviously alive. It would be inadmissible dogmatism for us to say that, in the context of the immediate case -- the issues at stake, the environment in which the judge, the petitioner and the community were moving, the publication here made, at the time and in the manner it was made -- this could not have dominated the mind of the judge before whom the matter was pending. Here too, the state court's judgment should not be overturned.

The fact that the communication to the Secretary of Labor may have been privileged does not constitutionally protect whatever extraneous use may have been made **[314 U.S. 303]** of the communication. It is said that the possibility of a strike, in case of an adverse ruling, must, in any event, have suggested itself to the private thoughts of a sophisticated judge. Therefore the publication of the Bridges telegram, we are told, merely gave that possibility public expression. To afford constitutional shelter for a definite attempt at coercing a court into a favorable decision because of the contingencies of frustration to which all judicial action is subject is to hold, in effect, that the Constitution subordinates the judicial settlement of conflicts to the unfettered indulgence of violent speech. The mere fact that, after an unfavorable decision, men may, upon full consideration of their responsibilities as well as their rights, engage in a strike or a lockout is a poor reason for denying a state the power to protect its courts from being bludgeoned by serious threats while a decision is hanging in the judicial balance. A vague, undetermined possibility that a decision of a court may lead to a serious manifestation of protest is one thing. The impact of a definite threat of action to prevent a decision is a wholly different matter. To deny such realities is to stultify law. Rights must be judged in their context, and not *in vacuo*. Compare *Aikens v. Wisconsin*, 195 U.S. 194, 205; *Badders v. United States*, 240 U.S. 391, 393-94; *American Bank & Trust Co. v. Federal Bank*, 256 U.S. 350, 358. "All rights are derived from the purposes of the society in which they exist; above all rights rises duty to the community." Mr. Justice Brandeis in *Duplex Co. v. Deering*, 254 U.S. 443, 488.

The question concerning the narrow power we recognize always is -- was there a real and substantial threat to the impartial decision by a court of a case actively pending before it? The threat must be close and direct; it must be directed towards a particular litigation. The litigation must be immediately pending. When a case is pending is **[314 U.S. 304]** not a technical, lawyer's problem,

but is to be determined by the substantial realities of the specific situation.⁸ Danger of unbridled exercise of judicial power because of immunity from speech which is coercing is a figment of groundless fears. In addition to the internal censor of conscience, professional standards, the judgment of fellow judges and the bar, the popular judgment exercised in elections, the power of appellate courts, including this Court, there is the corrective power of the press and of public comment free to assert itself fully immediately upon completion of judicial conduct. Because courts, like other agencies, may at times exercise power arbitrarily and have done so, resort to this Court is open to determine whether, under the guise of protecting impartiality in specific litigation, encroachments have been made upon the liberties of speech and press. But instances of past arbitrariness afford no justification for reversing the course of history and denying the states power to continue to use time-honored safeguards to assure unbullied adjudications. All experience justifies the states in acting upon the conviction that a wrong decision in a particular case may best be forestalled or corrected by more rational means than coercive intrusion from outside the judicial process.

Since courts, although representing the law, *United States v. Shipp*, 203 U.S. 563, 574, are also sitting in judgment, as it were, on their own function in exercising their power to punish for contempt, it should be used only in flagrant cases, and with the utmost forbearance. It is always [314 U.S. 305] better to err on the side of tolerance, and even of disdainful indifference.

No objections were made before us to the procedure by which the charges of contempt were tried. But it is proper to point out that neither case was tried by a judge who had participated in the trials to which the publications referred. *Compare Cooke v. United States*, 267 U.S. 517, 539. So it is clear that a disinterested tribunal was furnished, and since the Constitution does not require a state to furnish jury trials, *Maxwell v. Dow*, 176 U.S. 581; *Palko v. Connecticut*, 302 U.S. 319, 324, and states have discretion in fashioning criminal remedies, *Tigner v. Texas*, 310 U.S. 141, the situation here is the same as though a state had made it a crime to publish utterance having a "reasonable tendency to interfere with the orderly administration of justice in pending actions," and not dissimilar from what the United States has done in § 135 of the Criminal Code.

</html</htm