

# Enemy of the People?

The United States of America has always been more than a location or place on a map. It has been a set of ideals founded upon a belief in and adherence to the rule of law. In order for that foundation to remain strong and vibrant, it is important that there is public confidence in the institutions of government – Congress, the Executive Branch and above all, the Judiciary – as well as what is commonly referred to as the fourth estate, the press.

Our nation today faces challenges, obstacles and threats that a short time ago would have seemed unthinkable. We lawyers are the guardians of our democracy and we have an obligation and duty to stand on the front lines in a battle to defend and protect the precious civil liberties that are enunciated in our Constitution and Bill of Rights. From the earliest days of our republic, our democracy and system of government have been built upon these fundamental principles.

The first 10 amendments to the U.S. Constitution were adopted in 1792, three years after adoption of the Constitution itself, and are commonly referred to as the Bill of Rights. That phrase – the Bill of Rights – speaks volumes. It sends a message: Not a Bill of Hopes, or a Bill of Aspirations, but a Bill of *Rights*.

The first of those amendments, arguably the most important of them all, provides the essential support for the most fundamental of all rights, the right of free expression of ideas. It provides for the essential maintenance of a free and democratic system of government and a society where one is free to worship as desired, to say whatever one wants to say without recklessly harming or endangering others, to assemble and seek redress of grievances from the government, and, within reasonable limits of truthfulness and veracity, to express ideas and positions. Religious freedom, freedom of speech, freedom of assembly and freedom of the press are the four great cornerstones of a free society. They are the essence of our majestic democratic system of government.

These very rights are now under siege in a way that we haven't seen at least since the McCarthy era in the 1950s, when individuals' lives were destroyed because of their beliefs. In today's digital age, an avalanche of baseless claims and insults

can be circulated from a smartphone in the palm of one's hand. Through social media campaigns, there have been serious attacks on the essential institutions of our government, and polls show that real damage has been done to the public's confidence in these institutions.

There have been attacks on the judiciary's integrity and "so-called judges" when public officials and their supporters have been unhappy with decisions. There have been attacks on Congress when they have been unhappy with actions or inaction. There have been attacks on the integrity of academics who have disagreed with the administration's economic policies. There have been attacks on law enforcement agencies and anyone who have taken issue with administration policies. And, perhaps most dangerously, in attempts to stifle investigative efforts and criticism, there have been profound attacks on the news media.

Throughout history, when political leaders in authoritarian societies have been unhappy with perceived criticism from the news media and others, tyrants have often referred to those critics as the "enemy of the people." During Roman times, during the worst of the French Revolution, in Nazi Germany, during the Russian Revolution, and during the Cultural Revolution in China, the term "enemy of the people" was used by tyrants in attempts to diminish, stifle or eliminate criticism. As Scott Simon of National Public Radio recently noted, "Enemy of the people" is an incendiary phrase. It's been uttered by some of history's most vicious thugs – Robespierre, Goebbels, Lenin, Stalin, Mao – to vilify their opponents . . . who were often murdered."

It is frightening that public officials are regularly using language from the tyrants' lexicon. Lawful investigations are described as witch hunts. Carefully sourced journalism is described as fake news from the enemies of the people. Immigrants are called vermin. African-American individuals



## PRESIDENT'S MESSAGE

and others are referred to as dogs. This profoundly dangerous rhetoric is precisely the kind of language that was used in Nazi Germany and led to some of the darkest days in our history – World War II and the Nazis' systematic extermination of six million European Jews and millions more Roma, disabled persons, gay men and others.

Before the establishment of this nation, the 1776 Virginia Declaration of Rights, drafted by George Mason with contributions from James Madison and Patrick Henry, recognized that “[t]he freedom of the Press is one of the greatest bulwarks of liberty, and can never be restrained but by despotic Governments.” That is as true today as when those words were first written 242 years ago.

Many of us know the children's rhyme, “Sticks and stones will break my bones but words will never hurt me.” In fact, words can do terrible harm, especially the words “enemy of the people” when used in reference to the news media. Repeated over and over, these words can have a stifling effect on scrutiny and criticism. It is fair to take issue with a story in the media, just as it is fair to take issue with a judicial decision. But it is unfair and deeply dangerous to question

without a modicum of evidence the integrity of the news media or members of the judiciary simply for disagreeing with or challenging political leaders.

President Ronald Reagan warned: “Freedom is never more than one generation away from extinction. We didn't pass it to our children in the bloodstream. It must be fought for, protected, and handed on for them to do the same.” Democracy is fragile. We cannot and must not sit idly by on the sidelines as witnesses to the erosion of the public's confidence in the fundamental institutions of democracy and freedom.

We members of this great and noble profession must have the courage to challenge unsubstantiated claims. We must confront those who brand the news media the enemy of the people. The oath that each of us took to protect and defend the Constitution of the United States gives us a special obligation. Winston Churchill noted, “To each there comes in their lifetime a special moment when they are figuratively tapped on the shoulder and offered the chance to do a very special thing, unique to them and fitted to their talents.” This is our special moment.

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