

Near vs. minnesota and the case of morrison

[Politics](#)



“ Although his name is hardly a household word, the ghost of Jay M. Near still stalks most U. S. courtrooms. There exists no plaque that bears his name.... Near is truly the unknown soldier in the continuing struggle between the powers of government and the power of the press to publish the news.”
(Friendly, 172)

Fred Friendly, journalist, wrote of the struggle men, such as Jay M. Near, fought in their determination to live the American dream. Their dream may not be acknowledged by the general public, but Near and his peers were trying to live the rights bestowed upon them as Americans. Among those rights were the right to free speech, and freedom of the press.

The reason Near is not a household name is because his cause may not have been seen by many to be noble. If fought today, his cause or his dream would be likened to that of *The Enquirer* or *The Star*. In fact, Friendly, in *Minnesota Rag: Corruption, Yellow Journalism, and the Case That Saved Freedom of The Press*, described *Near vs. Minnesota*, as a case that placed freedom of the press in the least favorable light.

Minnesota Rag, by Fred Friendly, traces the roots of this case all the way back to Duluth, Minnesota, beginning with a man by the name of James Morrison, who edited the *Rip-Saw*. Morrison is described as a self-righteous man, willing to do anything to prove his point. He saw a need in Duluth to expose the lawmakers for what they were. It was a time of prohibition and Morrison saw failure in politicians and corruption in the police. The *Rip-Saw*, as described by Friendly, was relentless. “ Once it had a victim in its sights, it didn’t stop until its prey was wounded.” (Friendly, 8)

The Rip-Saw became a popular success. The prohibition had been a failure and opened the door for Morrison to attack. He ran stories of gambling dens increasing, prostitution and politicians, but did so under the guise of moral decency, which led the general public to believe him and the Rip-Saw. The business sector did not have as much faith in Morrison or the Rip-Saw. They accused him of trying to force businesses to buy advertising in order to eliminate the risk of gossip.

Morrison was a single man trying to affect an entire community into believing and acting on his morals. He had identified what he thought was just and decent and insisted that the rest of the community live by his law, or be punished. His punishment was to be published as a headline in his paper in a non-flattering and often libelous manner. He took it upon himself to judge the morals of others. Morrison had an impact on local elections with the stories he printed, whether true or untrue.

When finally brought to court on charges of libel, Morrison was found guilty. Morrison immediately appealed the decision and six months later was ordered to make a public apology. By that time, Morrison had already won, as the Mayor Power he had so maliciously written about had lost his election. Morrison issued an apology, but certainly in jest as he had already accomplished what he had set out to do.

Having accomplished such a feat, two other politicians, Boylan and Lommen, who had been lambasted in the Rip-Saw, determined that this type of press was unacceptable and formed legislation prohibiting publications that were producing "malicious, scandalous, and defamatory material." (Friendly, 20)

This legislation is what would become known as the Public Nuisance Bill of 1925, often referred to as the “gag law.”

“ Any person who.... shall be engaged in the business of regularly or customarily

producing, publishing or circulating, having in possession, selling or giving away,

(a) an obscene, lewd and lascivious newspaper, magazine or other periodical, or

(b) a malicious, scandalous and defamatory newspaper is guilty of nuisance.”

This law enabled a single judge to prevent the publication of anything they believed or considered to be obscene, lewd, lascivious, or malicious, scandalous and defamatory. Press coverage of this bill was almost non-existent and yet it had the largest impact on their business. America, founded on freedom and liberty, was now going to allow the fate of individuals to rest in the hands of one judge, and his beliefs. This judgment went against everything that our laws were founded on. This wouldn't go down without a fight.

Minneapolis, Minnesota was vastly affected by the prohibition as well.

Friendly described it as a crossroads in the Canadian whiskey trade. From Minneapolis it could be shipped to Chicago and St. Louis. Some journalists in the Minneapolis/St. Paul area described both the politicians and law enforcement as being on the take. Minneapolis was known as a town of
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gambling, illegal booze and prostitution, plagued by gang killings. Friendly describes many of the journalists of respectable newspapers as looking the other way. They chose not to get involved. Enter Morrison's successor, Jay M. Near.

Near is not described as a man of conscience or character, but a man who was looking to profit, in any way he saw fit. Again, this is likely why his name is not a household term. Near and his partner Guilford, began a crusade against local authorities, including the chief of police. Their publication *The Saturday Press* took aim at the local authorities. Their implications tied the police to the local gambling syndicates and further accused the police of extorting money from local businesses.

Brunskill, the chief of police had ordered an official ban of the paper from all newsstands in Minneapolis, on the basis that it would corrupt the morals of children. Brunskill threatened arrest of anyone who would be selling the paper, which made Near fight harder. Near and his cohorts promised legal aid and bail to anyone who would willingly sell the paper. It was a political and racial fight from beginning to end. Near, who was anti-Catholic, anti-Semitic, anti-black, anti-labor, would find support in the Jewish community to further his cause. Never the less, *The Saturday Press* was eventually closed and padlocked.

The United States, a country founded on freedom, had caused the creation of a number of civic unions that would fight for a cause, whether they believed in it or not. They were fighting for freedom, yours, mine and theirs. Near had found a way to reach out to the American Civil Liberties Union, and

although they did not agree with his publication, they agreed with his right to publish it. Near was also joined by Robert Rutherford McCormick, publisher of the Chicago Tribune. McCormick joined the battle because of his belief in the First Amendment.

They joined forces in order to fight the Public Nuisance Law and to support Freedom of the Press. They did not all agree on the purpose of that freedom or how it should be used, but that it should be present for everyone. They had determined that no one man should have the right to quiet the voice of another, despite their difference in opinion, and they took their case to the Supreme Court.

Weymouth Kirkland, appellant's counsel, in his address to the court, asserted that the Minnesota law violated the United States Constitution by restricting freedom of the press. Kirkland admitted that the articles were defamatory, but added, " So long as men do evil, so long will newspapers publish defamation." (Friendly, 126) Kirkland concluded that every man has the right to publish malicious, scandalous and defamatory matter, even if untrue and with bad motives. (127)

They may be dealt with after the publication of such matter, but no one has the right to prevent such publication. Kirkland's point was that the Minnesota gag law was a method of permanent censorship, however criminal proceedings on a specific complaint were always available to the state. (128) The Supreme Court ruled in Near's favor.

According to Friendly, Near vs. Minnesota, placed freedom of the press in the least favorable light. (172) Near's cause did not appear to be significant or <https://assignbuster.com/near-vs-minnesota-and-the-case-of-morrison/>

even just, except by those that choose to fight this battle. To those who fought the battle it created a “sturdy” law. “If great cases like hard cases make bad law, as the Holmes proverb warns, it may follow that since few knew or cared about Near’s cause, freedom of the press was transformed successfully into a twentieth-century constitutional bulwark.” (Friendly, 173)

Had this case never been heard, we may be left with the inability to question our government or local authorities today. We live in a democratic society, where we have been granted certain unalienable rights, among them the right to freedom of speech and freedom of the press. Without those options, the press would be unable to publish stories of certain unflattering truths about our elected officials. We would be unable to make informed decisions.

“Both the history and language of the First Amendment support the view that the press must be left to publish news, whatever the source, without censorship, injunctions, or prior restraint. Only a free and unrestrained press can effectively expose deception in government.”

(Friendly, 176)

Near vs. Minnesota and the case of Morrison and the Rip-Saw, either story seems hard pressed to point to a great law that would emerge from the scandals. But to leave the Public Nuisance Law in place, to limit the freedom of the press, would ultimately result in a restraint upon the freedom of the general public. If the press cannot print what they learn, then our democracy is dissolved.

“ But, history, fate, or whatever fore it is that provides the unlikely champion, or the subtle, improbably turn of events that leaves its indelible stamp upon the course of human events, intervened. It was one such incident that ultimately empowered five Supreme Court Justices to infuse with life and spirit and amendment which for 150 years had existed only as a bare skeleton.” (Friendly, 179)