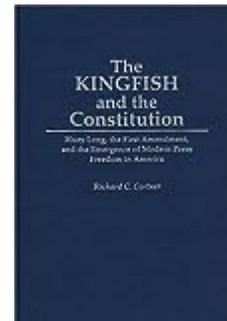




**Richard C. Cortner.** *The Kingfish and the Constitution: Huey Long, the First Amendment and the Emergence of Modern Press Freedom in America.* Westport, Conn.: Greenwood Press, 1996. xiv + 196 pp. \$55.00 (cloth), ISBN 978-0-313-29842-4.



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*The Kingfish and the Constitution* is a legal analysis of Huey P. Long's war upon the press in 1934. By 1934, the Kingfish's compulsion to dominate Louisiana had reached manic dimensions and his dictatorship was near its apogee. Still, the Louisiana daily newspapers remained in opposition. A rural factional leader, Long's program had little to offer urban people, even the urban poor. The New Orleans, Baton Rouge, and Shreveport dailies led the parade of journalistic opposition.

Getting mad, getting even, and getting elected, were all in Long's repertoire. "These daily newspapers have been against every progressive step in the state and the only way for the people of Louisiana to get ahead is stomp them flat," he vowed (p. 35). Long founded the Louisiana Progress in 1930, renamed the Louisiana Progress in 1935 as his personal journalistic interpreters. Aware of John Marshall's dictum that "the power to tax is the power to destroy" (p. 103), the Kingfish also introduced a bill to tax gross advertising receipts of newspapers with weekly circulations of above 20,000. The bill failed in 1930, but was revived and passed in 1934 with the tax set at two percent. About 163 publications sold advertising in Louisiana, but the tax applied to only thirteen of them, all of which opposed Long. "I believe in freedom of speech, but its got to be truthful speech," Long said, "and lying newspapers should have to pay for their

lying" (p. 79).

The newspapers joined forces to sue and the case of *American Press vs. Grosjean* was heard by a three-judge federal panel. The dailies argued that the tax was unconstitutional on two grounds: that it was discriminatory because it taxed only selected newspapers and because it violated freedom of the press as provided in *Near vs. Minnesota* (1931). Eberhard Deutsch, who presented much of the publisher's case, went beyond the *Near* precedent and argued that freedom of the press required not only freedom from prior restraint but from threats of restraint. Charles J. Rivet, the state's attorney, countered that freedom of the press did not guarantee reaping a profit from exercising that freedom.

The three-judge court ruling on March 22, 1935 was a less-than-satisfying victory for the publishers. It nullified the Louisiana law under the grounds that it violated the equal protection clause of the Fourteenth Amendment yet ignored Deutsch's argument that the due process clause of the Fourteenth Amendment applied to the states the First Amendment's guarantee against abridgment of freedom of the press. The victory nonetheless was only partial because remedial legislation could be enacted that would apply the tax to all newspapers.

Both sides sought vindication when the state ap-

pealed the Grosjean case to the United States Supreme Court. Before the case was heard by the high court on January 14, 1936, the Kingfish was slain by an assassin. This time the publishers were represented, not only by their own attorneys, but by Elisha Hanson, the attorney of the American Newspaper Publisher's Association, who made the free press presentation. This time the press won a total victory. Justice George Sutherland's opinion held the tax unconstitutional because it was selective and also because freedom of the press was protected from state interference by the due process clause of the Fourteenth Amendment. Sutherland rejected Rivet's argument that the Constitution protected the press only against prior restraint and broadened the protection of freedom of the press beyond any previous interpretation. "In a very real sense, the Grosjean case marked the beginning of the modern scope of protection afforded freedom of expression in U.S. constitutional law," Cortner concludes.

Cortner's research relies on the three most recent biographies of Long, daily newspapers, legal arguments and decisions, and the Huey P. Long Scrapbooks at Louisiana State University. In particular, he has carefully scrutinized the legal documents in the case. His research is the most thorough to date.

The author's prose is sometimes cumbersome in guiding the reader through a maze of legal arguments. Digressions into some of Long's other activities, while interesting, distract from the focus on legal analysis. Sections of the book, especially those describing reaction by the press to actions taken by the Kingfish are strung-together quotations. The book contains repetition and is not carefully edited.

Cortner is fair in his analysis. Intellectually honest, he makes no secret that he is appalled by Long's bullying of the press. The narrative flows best when it focuses on the legal arguments, decisions, and significance of Grosjean. It will find a niche among legal scholars, and, to a lesser extent, among those interested in the Kingfish. It is not likely to be duplicated. In the final analysis, however, the Grosjean case is a weak skeleton on which to hang a monograph. It could reach a significant audience as a series of scholarly essays.

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