Harry Bridges (holding book), being met at the San Francisco Airport by labor leaders when he returned from New York, Oct. 2, 1941. In *Bridges v. California*, 314 U.S. 252 (1941), the Court cited the First and Fourteenth Amendment guarantees of freedom of speech and press to overturn contempt convictions against a newspaper and aganst Bridges, who had criticized judicial proceedings in pending cases. *(AP Photo/Jack Rice, used with permission from The Associated Press.)*

Harry Bridges and the *Los Angeles Times:*

Unlikely Free Speech Allies

BY HENRY WEINSTEIN

On monday december 8, 1941, as millions of Americans were reeling from the Japanese military's attack on Pearl Harbor a day earlier, the United States Supreme Court overturned contempt convictions imposed on one of the nation's most outspoken and contentious labor leaders and California's largest newspaper. The Court's controversial 5–4 decision significantly expanded the right of individuals and news organizations to comment on ongoing legal proceedings and criticize judges. Because the Court issued *Bridges v. California*[1] at a time when Americans, understandably, were preoccupied with the nation's entry into World War II, it is not nearly as well known as many free speech cases but for nearly eight decades the decision has had an important role in enhancing the power of the First Amendment.

The impact of *Bridges* "has been great and wide ranging, setting America on the path of providing far more legal protection for free expression than exists or ever has existed elsewhere," wrote noted First Amendment lawyer Floyd Abrams in his 2017 book, *The Soul of the First Amendment*.[2] Since 1941, *Bridges* has been cited in more than 625 First Amendment cases,[3] including *New York Times v. Sullivan*, the 1964 decision that provided dramatically enhanced protection for news organizations in libel suits.[4]

The *Bridges* decision marked the culmination of a six-year battle pitting the California judiciary against two of the most unlikely allies in U.S. legal history — leftist labor leader Harry R. Bridges and the aggressively anti-union *Los Angeles Times*. In separate proceedings, Los Angeles trial judges had held both Bridges and the *Times* in contempt for allegedly attempting, through out-of-court actions — a telegram Bridges sent to the secretary of labor and blistering editorials in the *Times* — to improperly pressure judges in ongoing cases,

1. (1941) 314 U.S. 252.

2. Floyd Abrams, *The Soul of the First Amendment*. New Haven: Yale U. Press 2017, xx.

3. Confirmed on Lexis and Westlaw as of Aug. 29, 2020.

4. (1964) 376 U.S. 254.

rulings that the California Supreme Court upheld by lopsided votes.[5]

Harry Bridges and the *Times* became short-term allies when, on appeal, the U.S. Supreme Court consolidated the two cases, concluding that they raised the same primary issue. Ultimately, the Court reversed both contempt convictions as violations of the First Amendment. "It is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions," Justice Hugo Black wrote for the majority, a forceful statement supporting the right of individuals and institutions to criticize judges, as well as elected officials. "The First Amendment does not speak equivocally," Black emphasized. It prohibits any law "abridging the freedom of speech or of the press."[6]

Black also scoffed at the notion that intemperate comments about judges would harm the legal system. He wrote that "an enforced silence, however limited, 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."[7]

The *Bridges* decision not only expanded free speech rights in the U.S., it also sharply delineated the differences between the legal systems in the U.S. and Britain, which has considerably more restrictive policies regarding news coverage of judicial proceedings. Justice Felix Frankfurter, an Anglophile who supported the British stance, issued a sharp dissent, contending that "the atmosphere of" Black's decision gave license to "trial by newspaper"[8] and could erode the tradition of administration of justice by an impartial judiciary "that has been basic to our conception of freedom ever since Magna Carta."[9]

Historically, American judges had used the contempt power to jail or fine people for three reasons, as Anthony Lewis observed in his book, *Make No Law: The Sullivan Case and the First Amendment*: (1) violation of a court order; (2) creating a disturbance in the courtroom; or (3) making comments outside the court that "threatened the integrity" of a pending case.[10] The accusations against both Bridges and the *Times* were in the third category.

Black's majority opinion relegated to the dustbin of history a line of cases going back to the early twentieth century under which courts had used the summary power of contempt to curb out-of-court criticism of the judiciary and other public officials — in other words, category 3 cases, sometimes called "constructive contempt." Prime among them was a 1907 Supreme Court decision, *Patterson v. Colorado*,[11] upholding the contempt conviction of a Colorado newspaper publisher who favored municipally owned and operated power. In editorials and cartoons, Thomas Patterson blasted the Colorado Supreme Court for its decision overturning the election of a new governor who favored home rule, a prerequisite for changing the utility system as the voters wanted.

Justice Oliver Wendell Holmes, Jr. grounded his *Patterson* majority opinion in long-established English legal practices, sharply restricting what a lawyer could say about an ongoing case. "If a court believes that comments about a pending case have a tendency to interfere with the proper administration of justice, the court may punish that conduct by using the court's power to hold the publisher in contempt," Holmes wrote. Quite simply, Holmes declared, "the propriety and necessity of preventing interference with the course of justice by premature statement, argument or intimidation hardly can be denied."[12]

Black's opinion in *Bridges* took a diametrically different approach, saying that such an assumption about the potential negative impact of media coverage of a pending case was unwarranted. He rejected the idea that a distinction should be drawn between what could be said about a court case while it was in process and when the case had concluded: "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."[13]

"Legal trials are not like elections, to be won through the use of the meeting hall, the radio and the newspaper," Black acknowledged.[14] "But we cannot start with the assumption that publications . . . 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."[15]

Although the contempt charges against Bridges and the *Times* emerged from different circumstances and concerned different parties, "both relate to the scope of our national constitutional policy safeguarding free speech and free press," Black wrote, explaining why the Court considered the cases simultaneously.[16]

The improbable judicial shotgun wedding of Bridges and the *Times* that the Court orchestrated stemmed from the labor battles of the 1930s, one involving longshoremen, the other involving Teamsters.

5. *Bridges v. Superior Court* (1939) 14 Cal.2d 464; *Times Mirror Co. v. Superior Court* (1940) 15 Cal.2d 99.
6. *Bridges v. California*, *supra*, 314 U.S. at 263.
7. *Id*. at 270–71.
8. *Id*. at 279.
9. *Id*. at 282.
10. Anthony Lewis, *Make No Law: The Sullivan Case and the First Amendment*. New York: Random House, 1991, 97.
11. (1907) 205 U.S. 454.
12. *Id*. at 463.
13. *Bridges v. California*, *supra*, 314 U.S. at 269.
14. *Id*. at 271.
15. *Id*. at 270–71.
16. *Id*. at 258.

Harry Bridges, the central figure in the first case, was Australian by birth. He came to San Francisco in 1922 and soon became the leader of longshoremen in that city. He played an instrumental role in a 1934 general strike there that led to improved wages and working conditions. Two years later, Bridges and others broke away from the New York–based International Longshoreman's Association (ILA) and formed a new, more militant organization, the International Longshoreman's & Warehouseman's Union (ILWU).[17]

In 1937, the ILWU, affiliated with the Congress of Industrial Organizations, was engaged in a battle with the American Federation of Labor–affiliated ILA over the right to represent workers on the docks in San Pedro. Los Angeles Superior Court Judge Ruben Schmidt appointed a receiver to take charge of the contested dockworker hiring hall under ILA authority. Bridges angrily sent a telegram to Frances Perkins, FDR's secretary of labor, branding Schmidt's decision "outrageous," considering that the ILA had only 15 members on the San Pedro docks and the ILWU had 3,000. "Attempted enforcement of Schmidt decision will tie-up port of Los Angeles and involve entire Pacific Coast," Bridges wrote, noting that the ILWU had 11,000 members on the West Coast, dwarfing the ILA, which had only 1,000. He said the ILWU 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."[18] Bridges' secretary, as was the union's custom, gave the telegram to the CIO's West Coast public relations director, who, in turn, gave a copy of the telegram to a reporter. The telegram generated widespread news coverage.[19]

Soon thereafter, the Los Angeles Bar Association sued in Superior Court. The bar's attorneys alleged that Bridges should be held in contempt because the statements in his telegram and the ensuing publicity were "calculated and had inherent tendency to interfere with the orderly and due administration of justice" in the case over which Judge Schmidt was presiding. The judge added that the telegram was designed "to interfere with, influence, sway and control the proceedings" and "to embarrass and influence" Judge Schmidt's actions and decisions.[20] Bridges, represented by the American Civil Liberties Union's first full-time attorney A.L. Wirin and several labor lawyers, unsuccessfully attempted to get the case dismissed. They maintained that private lawyers, acting on behalf of the bar association, could not

Harry Bridges at a meeting in Washington, D.C., July 7, 1937, with CIO Head John L. Lewis to plan for a coordinated unionization drive in the marine labor industry. *(Library of Congress.)*

lprosecute a criminal case, noting that criminal proceedings are virtually always launched by government attorneys.[21]

Another Los Angeles judge rejected that argument and moved the case forward. He denied Bridges' request for a jury trial. He concluded that Bridges might as well have sent the telegram "direct to the newspapers," found him guilty of contempt of court, and ordered the labor leader to pay a $250 fine.[22] The *Times* published an editorial supporting the contempt decision.

In October, 1939, the California Supreme Court upheld all those decisions. On the key contempt issue, the Court said that Bridges' telegram "was not only a criticism" of Schmidt's decision in a pending case "but was a threat that if an attempt was made to enforce the decision, the ports of the entire Pacific Coast would be tied up."[23] The telegram "contained a direct challenge to the court that 11,000 longshoremen on the West Coast would not abide by its decision," Justice Jesse W. Curtis, wrote in his majority opinion.[24] Chief Justice William H. Waste, Associate Justices John Shenk and Frederick

17. Charles Larrowe, *Harry Bridges and the Rise and Fall of Radical Labor in the U.S.* Brooklyn: Lawrence Hill Books, 1972; *The ILWU Story*, *http://www.ilwu.org/history/the-ilwu-story/*.
18. *Bridges v. Superior Court*, *supra*, 14 Cal.2d 464, 470–71.
19. *Id*. at 471.
20. *Id*. at 471.
21. *Id*. at 472.
22. *Id*. at 468.
23. *Id*. at 489.
24. *Ibid*.

A crowd of workers on strike from the Douglas Aircraft Corporation plant in court, Santa Monica, 1937. A bitter struggle ensued between union labor leaders concerning whether or not to support the strike. *(Photo: Los Angeles Daily News Negatives, Collection 1387, Library Special Collections, Charles E. Young Research Library, UCLA.)*

W. Houser, and California Court of Appeal Justice John T. Nourse, pro tempore, concurred.

Curtis' opinion said nothing about any actions Judge Schmidt took in the case after Bridges' telegram was widely publicized. Curtis emphasized that the issue was "not the influence upon the mind of the particular judge" but "the reasonable tendency of the acts done to influence or bring about the baleful result."[25] Curtis rejected Bridges' contention that he had a First Amendment right to make the statements he did, quoting *Stromberg v. California*, a 1931 U.S. Supreme Court decision holding that " 'the right [of free speech] is not an absolute one, and the State in the exercise of its police power may punish the abuse of this freedom.' "[26]

Justice Douglas L. Edmonds dissented. He said the California Legislature had enacted a law in 1891 prohibiting any punishment for contempt for comments on a pending case "unless made in the immediate presence of such court while in session and in such manner as to actually interfere with its proceedings."[27] However, an earlier California Supreme Court decision had ruled that statute unconstitutional, thus permitting punishment for such "constructive contempt."[28] Edmonds' lengthy dissent said that numerous court decisions had erroneously described the history of contempt law. He also wrote, "the experience of Pennsylvania and other jurisdictions where immunity of the press has long been maintained conclusively proves" that the power of summary contempt was "not necessary to maintain either the existence of courts or the respect for them. It is not necessary to the wholesome administration of justice in this state that judicial officers have uncontrolled discretion in passing upon alleged constructive contempts of court. The opportunity for arbitrary punishment often provides the occasion for it."[29]

Edmonds drew a sharp contrast between direct and indirect contempt. "Noise, interruptions, violence of any kind in the course of judicial proceedings must be repressed; obedience to all lawful orders must be enforced. To uphold its authority when challenged by such affronts to the judicial procedure, a court may and should summarily punish the offender. But indirect contempts, particularly publications in a newspaper, are entirely different in their nature and consequences."[30] In summary, Edmonds wrote, "no claims of judicial necessity can outweigh" the free speech guarantees in the California Constitution.[31] But, at that point, in October, 1939, his was a lone voice on the state's highest court.

The contempt case against the *Times* stemmed from three blistering editorials about pending court cases, one involving political corruption. The two involving labor disputes drew the most attention. The first, entitled "Sit-Strikers Convicted," applauded the convictions of 22 members of the United Auto Workers who had been found guilty of conspiring to enter Douglas Aircraft by force and to vandalize the property during an organizing campaign. "The verdict means that Los Angeles is still Los Angeles," a reference to the city's reputation as bastion of "the open shop," a workplace where an individual does not have to join a union.[32] The editorial blasted "union terrorism."

The third editorial, headlined "Probation for Gorillas?" turned out to be the most important.[33] A jury convicted two members of the Teamsters Union for conspiracy and assault with a deadly weapon after they attacked non-union truck drivers with "steel missiles" fired from slingshots. About two weeks after the verdict and five weeks before the sentencing hearing, the *Times* implored Los Angeles judge A.A. Scott not to grant probation to the duo. The *Times* declared that the judge should make an example of the Teamster "sluggers for pay" by sentencing them to state prison. If Teamster leader Dave Beck's "thugs realize that they face San Quentin when they are caught, it will tend to make their

25. *Id*. at 490.
26. *Id*. at 492.
27. *Id*. at 494.
28. *Id*. at 506, citing *In re Shortridge* (1893) 99 Cal. 526, 532.
29. *Id*. at 509.
30. *Ibid*.
31. *Id*. at 510.
32. *Los Angeles Times* editorial, Dec. 21, 1937, quoted in *Times Mirror Co. v. Superior Court* (1940) 15 Cal.2d 99, 104.
33. *Los Angeles Times* editorial, May 5, 1938, quoted in *Times Mirror Co.*, *supra*, 15 Cal.2d at 112.

disreputable occupation unpopular. Judge A.A. Scott will make a serious mistake if he grants probation to Matthew Shannon and Kennan Holmes."[34]

The Los Angeles Bar Association swung into action again and a local trial judge held the *Times* in contempt for undertaking actions that tended to improperly pressure a judge. In both of the labor cases, the judges noted that the editorials were published after the convictions but before sentencing, meaning that the decision was not final.[35]

When the *Times* appealed, it acquired an unlikely ally, the American Civil Liberties Union of Southern California, which filed a highly unusual friend-of-the-court brief on behalf of the paper. Co-authored by ACLU attorney A.L. Wirin, the brief described the ACLU as a liberal organization whose members are "concerned with the preservation and extension to all, of constitutional liberties as guaranteed by the Bill of Rights" and acknowledged that a reader might be surprised to see the ACLU supporting the *Times*.[36]

The ACLU said its Southern California branch had a particular interest in the case because the *Times* had "for over half a century, been a vigorous and active mouthpiece of the anti-labor and open shop interests in Southern California. For 50 years it has had much to say in its editorial columns upon many public issues. Not once, however, has it ever raised its voice in defense of freedom of speech for anyone other than itself and for those in its, and its publisher's economic class."[37] The brief noted several instances in which individuals had been denied their free speech rights and the *Times* had "maintained a studied silence."[38] The brief added that it was joining the protest over the suppression of the *Times*' free speech rights, but "we want it clearly understood . . . that our appearance is as a 'friend of the Court,' and *not* as a friend of the *Times*."[39]

The ACLU's act of political magnanimity apparently had no impact on the California Supreme Court, which upheld the *Times*' contempt conviction 5–2, three months after it upheld Bridges' conviction. Justice Curtis reiterated most of the points he made in *Bridges*. He rejected the *Times*' contention that a test U.S. courts had used since at least 1918 was the incorrect standard to assess whether the newspaper had been in contempt. That standard, known as the "reasonable tendency" test, was fully articulated in *Toledo Newspaper Co. v. United States*.[40] That case involved a contempt conviction imposed by a federal district court judge on the *Toledo News-Bee* for editorials and cartoons it published during a six-month, high-profile dispute over the legality of a Toledo city ordinance limiting fares on local streetcars to three cents a ride. The Toledo Railway Co. sued in federal court, contending that the fare limitation was confiscatory. U.S. District Judge John M. Killits, who presided over the case, was the subject of the critical editorials and cartoons in the *News-Bee*. Several months into the dispute, Killits found the newspaper guilty of contempt in a trial held without a jury. Eventually, the dispute that began in 1914 got to the United States Supreme Court. Killits had relied primarily on Section 268 of the Judicial Code of 1911, which stated that U.S. courts "shall have power . . . to punish, by fine, or imprisonment at the discretion of the court, contempts of their authority: Provided, that such power to punish for contempts shall not be construed to extend to any cases except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice . . . ."[41] Killits' decision suggested that he considered Section 268 broad enough to include local newspaper coverage.

The Supreme Court, in a 7–2 ruling, rejected all the major arguments of the newspaper's lawyers, including the fact that the contempt had not occurred in the courthouse or even close to it. More significantly, Chief Justice Edward D. White's majority opinion upholding the contempt ruling said it did not matter that there was no proof that the *News-Bee*'s editorials had any impact on the administration of justice in the case.

"Our power, in disposing of [the *News-Bee*'s] objection, is not to test divergent contentions as to the weight of the evidence, but simply to consider the legal question whether the evidentiary facts found had any reasonable tendency to sustain the general conclusions of fact based upon them by the courts below," White wrote.[42] He continued, "we are constrained to say that the contention on the face of the record is too plainly devoid of merit to require any detailed review." White added that the determining factor was "not the influence upon the mind of the particular judge." Rather, he said the test is "the reasonable tendency of the acts done to influence or bring about the baleful result" of obstructing the fair administration of justice.

Justice Oliver Wendell Holmes, Jr., dissented. He said the words of the Judicial Code "point only to the present protection of the court from actual interference, and not to postponed retribution for lack of respect of its dignity — not to moving to vindicate its independence after enduring the newspaper's attacks for nearly six months, as the court did in this case." Holmes added,

34. *Los Angeles Times* editorial, May 5, 1938, quoted in *Times Mirror Co.*, *supra*, 15 Cal.2d at 113.

35. *Times Mirror Co.*, *supra*, 15 Cal.2d at 114.

36. Amicus Curiae brief filed in the California Supreme Court by the American Civil Liberties Union's Southern California branch in support of Times Mirror Co.'s appeal of its conviction for contempt, pp. 2–3.

37. *Id*. at 4.

38. *Id*.

39. *Id*. at 5.

40. (1918) 247 U.S. 402.

41. Public Law 61-475, enacted March 3, 2011.

42. *Toledo Newspaper Co.*, *supra*, 247 U.S. at 421.

"misbehavior means something more than adverse or disrespect."[43] Although Holmes had a towering reputation as a jurist, his was the minority view until 1941.

Indeed, Justice Curtis' majority opinion for the California Supreme Court in the *Times* case adopted, without reservation, the "reasonable tendency" test. He rebuffed the argument of the *Times'* lawyers that the Court needed to examine the effect of the allegedly contumacious editorial on the judge in question.

Curtis emphasized that although verdicts had been rendered in the three cases, none was final because the judges had not yet imposed sentences. He said the editorial blasting the sit-down strikes "could not help having an effect upon the trial judge" when sentencing the culprits.[44] Curtis cited the *Patterson* decision, periodically, in particular describing the "Probation for Gorillas" editorial as a "striking example of a 'premature statement, argument and intimidation.' "[45]

Edmonds dissented again, briefly reiterating key parts of his *Bridges* analysis. The Court's then-newest member, Phil Gibson, also dissented, criticizing the "reasonable tendency" test because it did not examine what actually happened but "what might have happened." Gibson said "this test is so vague and elastic, varying with the viewpoint of the individual judge who cites the offender, that it necessarily places an unreasonable restraint upon free speech and press."[46] He cautioned his colleagues not to ignore "the growing suspicion that courts are prone to place their own security above all other considerations. We should recognize the importance, indeed the vital necessity of the fullest comment and criticism in matters of public interest, and not seek to exempt the courts from such criticism."[47] Gibson added, "the editorial page cannot be confined to abstract academic discussion of non-controversial matters or of issues long dead."[48]

Gibson conceded that the language of the "Gorillas" editorial "was ill advised and unfortunate, but it does not necessarily follow that it was contemptuous." Nonetheless, he said the editorial was consistent with views the *Times* had expressed for many years and that "a judge who felt that it was obstructive or embarrassing would have to confess ignorance of one of the most familiar facts of daily life in his community."[49]

Both Harry Bridges and the *Times* — the latter with the support of the American Newspaper Publishers Association — asked the U.S. Supreme Court to review the case. The Court granted certiorari early in 1940. The justices decided to consolidate the two cases, concluding that they raised, in essence, the same issue, even though the appellants could not have been more different.

At that point, the *Times*' lawyers had to decide if they would make common cause with Bridges' lawyers. The relationship got off to a rocky start because the *Times'* attorneys were opposed to relying on a 1937 Supreme Court decision in their brief that had vindicated Angelo Herndon, a Black Communist organizer in the South. But eventually they agreed to cite the case in their brief.[50]

The clash at the Supreme Court centered on the dramatically different views of justices Hugo Black and Felix Frankfurter over what sort of out-of-court comments deserved constitutional protection. As noted, Frankfurter was an Anglophile. He had taken a year's leave from his position on the Harvard Law School faculty to study in England in 1935, four years before President Roosevelt appointed him to the high court. Then and now, English courts are very restrictive concerning what a lawyer or a party can say outside of court while a case is pending. In contrast, Black, appointed to the Court by FDR in 1937, was a virtual absolutist on the First Amendment, frequently saying that the First Amendment's words "Congress shall make no law" abridging freedom of speech were to be taken as close to literally as possible.

The Supreme Court first heard the cases in October, 1940. The justices voted 6 to 3 to uphold both contempt citations.[51] Chief Justice Charles Evans Hughes and Associate Justices Harlan Fisk Stone, James McReynolds, Owen Roberts and two Roosevelt appointees, Frankfurter and Frank Murphy, were in the majority. Black and two other Roosevelt appointees, Stanley Reed and William O. Douglas, dissented. Chief Justice Hughes, according to Court records, asked Frankfurter to write the majority opinion. Frankfurter's lengthy draft opinion relied on both English and American history, saying the contempt power was "deeply rooted" and "part and parcel of the Anglo-American system of administering justice."[52]

Black's draft dissent, which like Frankfurter's, can be found in the Library of Congress, sharply disagreed with the basic underpinnings of Frankfurter's opinion. "The first and perhaps basic fallacy of the [majority] opinion is that the vitalizing liberties of the First Amendment can be abridged in whole or in part by reference to English judicial practices," Black wrote.[53] He added, "Perhaps no

43. *Id*. at 423.

44. *Times Mirror Co*., *supra*, 15 Cal.2d at 109.

45. *Id*. at 113.

46. *Id*. at 124.

47. *Id*. at 126.

48. *Id*.

49. *Id*. at 128.

50. Brief filed by attorneys for the Los Angeles at the U.S. Supreme Court, viewed in the Library of Congress and photocopied by the author. See Robert Gottlieb and Irene Wolt, *Thinking Big: The Story of the Los Angeles Times, Its Publishers and Their Influence on Southern California*. New York: G.P. Putnam's Sons, 1977.

51. Documents viewed by the author at the Library of Congress; Lewis, *Make No Law*, 98. Roger K. Newman, *Hugo Black: A Biography*. New York: Pantheon Books, 1994, 290.

52. Documents viewed by the author at the Library of Congress; Lewis, *Make No Law*, 98.

53. Documents viewed by the author at the Library of Congress; Lewis, *Make No Law*, 99; Newman, *Hugo Black*, 290.

single purpose emerges more clearly from the history of our Constitution and Bill of Rights than that of giving far more security to the people of the United States with respect to freedom of religion, conscience, expression, assembly, petition and press than the people of Great Britain ever enjoyed."[54]

Before Frankfurter's opinion became final, developments at the Court led to a dramatic change in the case's outcome. Early in 1941, McReynolds, probably the most right-wing justice, retired. Soon thereafter, Justice Murphy, the former pro-labor Governor of Michigan, changed his vote. That meant the Court was split 4–4.[55] The justices set the case for re-argument during the next term. Then, after Hughes announced his retirement, those favoring reversal comprised a narrow majority. Roosevelt elevated Stone, an appointee of President Calvin Coolidge, to succeed Hughes as chief justice and appointed two new associate justices, Attorney General Robert Jackson and South Carolina Senator James F. Byrnes. Ultimately, Jackson voted to reverse the contempt citations and Byrnes to uphold them; the final vote was 5–4 for the defendants, Bridges and the *Times*.[56]

Before announcing the decision on December 8, 1941, the justices attended a joint session of Congress where Roosevelt asked Congress to declare war on Japan.

Black's majority opinion was not as truculent as the dissent he had planned to issue a year earlier, but it still reflected his fundamental disagreement with Frankfurter's view that the First Amendment was simply a logical progression of Anglo-American jurisprudence.

Black emphasized the importance of "the environment in which the First Amendment was ratified." He quoted James Madison, whom Black described as "the leader in the preparation of the First Amendment." Madison had said that whatever its virtues the British Magna Carta "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."[57]

Though he did not use the same language, Black's decision reflected the themes expressed in the dissents written by California Supreme Court Justices Edmonds and Gibson.

Black rejected the "reasonable tendency" test that had governed for many years.[58] He embraced the positions taken by attorneys for the *Times* and Bridges, adopting a more stringent standard that justices Holmes and Louis Brandeis had earlier formulated when considering cases

Bridges, 'Times' Contempt Convictions Reversed

WASHINGTON, (AP) — The supreme court reversed today contempt of court convictions against the Los Angeles Times and Harry Bridges, west coast CIO labor leader.

Justice Black, who delivered the majority decision, asserted that the first amendment to the federal constitution prohibits "any law abridging the freedom of speech or of the press" and "must be taken as a command of the broadest scope that explicit language, read in the context of a liberty-loving society, will allow."

The newspaper was convicted on charges growing out of the publication of editorials about court cases prior to a final settlement.

Bridges was convicted of sending to Secretary of Labor Frances Perkins a telegram, subsequently published, criticizing a decision by the Los Angeles superior court.

Justice Frankfurter wrote a dissenting opinion, in which Chief Justice Stone and Justices Roberts and Byrnes joined.

The Times case represented another chapter in the long history of the controversy over the proper interpretation of freedom of speech and of the press.

The newspaper and its managing editor, L. D. Hotchkiss, were convicted in the Los Angeles superior court and the verdict was upheld by the California supreme court.

A $500 fine was imposed on the newspaper by the superior court. Hotchkiss was fined $100 with the provision that if it were not paid he was to serve 50 days in jail.

Conviction of the newspaper followed the publication of three editorials in 1937 and 1938 entitled "Sit-Strikers Convicted," "The Fall of an Ex-Queen" and "Probation for Gorillas."

The first discussed the conviction

Article in *News-Pilot*, San Pedro, California, Monday evening, December 8, 1941.

alleging that speech was subversive. To sustain a contempt allegation, Black said, a complainant would have to demonstrate that the out-of-court speech constituted a "clear and present danger" of producing an "unfair administration of justice."[59]

After describing the earlier key subversion rulings, Black said what emerged "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."[60] He added that the First Amendment prohibition against laws abridging the freedom of speech or of the press "must be taken as a command of the broadest scope that explicit language, read in the context of a liberty-loving society will allow."[61]

In essence, Black said, no "clear and present danger" had been demonstrated in either the *Times* case or the *Bridges* case. Given the *Times*' "long continued militancy" regarding unions, Black wrote, "it is inconceivable that any judge in Los Angeles would expect anything but adverse criticism from it in the event probation were granted" to the two Teamsters.[62] Consequently, Black added, to regard the "Gorillas" editorial "as, in itself, of substantial influence upon the course of justice would be to impute to judges a lack of firmness, wisdom and honor — which we cannot accept as a major premise."[63] Similarly, he said that under the First Amendment Bridges was entitled to threaten a strike, to inform the

54. Documents Viewed by the author at the Library of Congress: Lewis, *Make No Law*, 99; Newman, *Hugo Black*, 290.
55. Newman, *Hugo Black*, 291.
56. *Ibid*.
57. *Bridges v. California*, *supra*, 314 U.S. at 264.
58. *Id*. at 273.
59. *Id*. at 261–63.
60. *Id*. at 263.
61. *Ibid*.
62. *Id*. at 273.
63. *Ibid*.

secretary of labor about the possibility of a strike, and to make his remarks when "the particular labor controversy was at its height."[64]

Then, Black brought the two cases together, manifesting both his firm belief in the breadth of the First Amendment and his background as an advocate for working people. "The observations we have previously made here upon the timeliness and importance of utterances as emphasizing, rather than diminishing, the value of constitutional protection, and upon the breadth and seriousness of the censorial effect 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."[65]

In the nearly 80 years since the *Bridges* decision, it has been widely, if quietly, praised, unlike the acclaim for another First Amendment opinion, authored by Black, *New York Times v. United States*.[66] That 1971 ruling permitted newspapers to write about a secret history of the Vietnam War known as "The Pentagon Papers" — a case of such notoriety and prominence that it became the subject of a movie starring Tom Hanks and Meryl Streep. There has been no movie about the *Bridges* case, but Benno C. Schmidt, Jr., a First Amendment scholar who served as dean of Columbia Law School in the mid-1980s, described Black's opinion in that matter as a "Judicial Declaration of Independence for the First Amendment, freeing it from English law."

In addition to its monumental impact on free speech, the *Bridges* decision marked the first step toward changing the reputation of the *Los Angeles Times*. Although it was the largest newspaper in California, the *Times* was considered a laughingstock by serious journalists because it was so partisan. Its reputation in that era was perhaps best characterized by a story told by humorist S.J. Perelman, who had been traveling west by train and asked a porter to bring him a newspaper. "Unfortunately," Perelman said, "the poor man, hard of hearing, brought me a *Los Angeles Times*."[67]

Five months after the Supreme Court decision, Columbia University awarded the *Times* its first Pulitzer Prize: the gold medal in the Public Service category "for the most . . . meritorious service of any American newspaper in 1941 for its successful fight" in a freedom of the press case that went all the way to the Supreme Court. The Pulitzer judges said the *Times*' campaign "resulted in the clarification and confirmation for all American newspapers of the right of free press as guaranteed under the Constitution."[68] ✯

Henry Weinstein is a Professor of the Practice of Law at U.C. Irvine School of Law. A graduate of U.C. Berkeley Law School, Weinstein worked as a journalist for 40 years, including 30 years at the *Los Angeles Times*, where he covered law, labor and politics.

64. *Id*. at 277.
65. *Id*. at 278.
66. 403 U.S. 713.
67. The Perelman anecdote has been cited in at least three books about the *Los Angeles Times* (Gottlieb and Wolt, *Thinking Big*; David Halberstam, *The Powers That Be*. New York: Alfred A. Knopf, 1979; and Dennis McDougal, *Privileged Son: Otis Chandler and the Rise and Fall of the Los Angeles Times Dynasty*. New York: Hachette, 2001.
68. Pulitzer Prize citation available at *www.pulitzer.org/prize-winners-by-year/1942*.