

*The Constitution of the United States
is not a self-executing document.*

Where, ladies and gentlemen [of the press], do you think these great constitutional rights that you were so vehemently asserting, and in which you were so conspicuously wallowing yesterday, where do you think they came from? The stork didn't bring them. These came from the judges of this country, from these villains here sitting at the table. That's where they came from. They came because the courts of this country at some time or place when some other agency of government was trying to push the press around or, indeed, may be trying to do you in, it's the courts that protected you. And that's where all these constitutional rights came from. . . . It's not that it was done for you or that it was done for ourselves. It happened because it is our understanding that that's what the Constitution provides and protects. But let me point out that the Constitution of the United States is not a self-executing document. . . .

If you look at the literal language in the First Amendment of the Constitution of the United States, it says, "Congress shall pass no law abridging the freedom of the press." That's all it says on this subject, absolutely all. It doesn't say a word about what a state can or can't do. It doesn't say a word about a reporter's privilege before a grand jury. . . . The very fact that these protections are available is attributable to the creative work of the judiciary over the last 190 years.

If you say it's self-evident, that this was always clear, let me tell you that it wasn't always so clear. If you went back to the original understanding of our ancestors, back in the early years of the nineteenth century, you would find that their understanding of this clause and the Constitution in their judgment allowed them to enact the Alien and Sedition law. And if those laws were still on the books, Richard Nixon would still be President of the United States and Spiro Agnew would still be Vice President of the United States, and all of you people would probably be in prison.

*Justice Potter Stewart
Washington Post/Ford Foundation
Seminar on Media and the Law,
March 9, 1975¹*