VIEW OF SOUTH SIDE OF CHESTNUT STREET BETWEEN 8TH & 9TH, 1860
WITH good reason Americans have long considered freedom of the press to be among their most important liberties. Editors quickly learn that this freedom is not absolute, for they are always expected to refrain from publishing treasonable, libelous, or seditious material. In times of war they are to do everything possible to avoid printing articles that might weaken morale or offer aid and comfort to the enemy. This is no simple task, for often it is difficult to distinguish between material which calls for loyal opposition to the government and stories which represent a clear and present danger to the existence of the nation. Unfortunately adequate guidelines have never been drawn up to differentiate between disloyalty and constructive dissent, and this subjects freedom of the press to a severe test whenever the United States becomes involved in a conflict with a foreign or a domestic foe. Perhaps at no time in American history has freedom of the press been in greater danger than during the Civil War. According to one estimate, before Lee’s surrender no less than three hundred Yankee editors had been arrested for disloyalty or had been subjected to having their newspapers suppressed.¹

The secession of the Southern states was one of the most unfortunate episodes of American history. Nearly all Northerners wanted to restore the Union, but Democrats and Republicans—or Unionists as they wanted to be called during the war—differed as to how this might best be effected. As the anti-slavery faction of the Unionist party grew in strength, leaders of the Democracy began to assert that Abraham Lincoln was but a pawn of the abolitionists, a man willing to turn the war into a crusade to end slavery. These peace Democrats maintained that the Northern anti-slavery zealots

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were as fanatical and mischievous as the secessionists of the Confederacy. Some even argued that the president was an arbitrary dictator intent upon making the United States into a military despotism. One West Chester, Pennsylvania, Democratic editor published the following poem, which expressed his own feelings about "Honest" Abe:

God made man,
And man made money.
God made bees,
And bees made honey.
God made the Union
Nice and slick.
In came old Lincoln
And spoiled it quick.²

If Democrats mistakenly thought of Lincoln as a despot, their Unionist neighbors showed equally poor judgment when they denounced all of their critics as being traitorous Copperheads. Equating mild dissent with treason, panicky federal officers took it upon themselves to censor Northern newspapers and to prevent them from printing stories critical of the Lincoln administration. Few of the hundreds of arrests they made caused as great a stir as the jailing of Albert D. Boileau, the editor of the *Philadelphia Evening Journal*.

By January, 1863, the *Evening Journal* was the only Democratic daily being published in Philadelphia. Though Boileau was not an extreme peace man, he frequently delegated his editorial responsibilities to others, some of whom were sharply critical of the war. One such individual was William Bradford Reed, a distinguished diplomat, a skillful lawyer, and a brilliant orator. Reed was also a man who believed that the Union could not be restored by force, and he was certain that the conflict was a fruitless waste of men and money. As early as 1862, he had called for cessation of hostilities so that a national convention of the states could propose terms of reconciliation. In a pamphlet he wrote in 1862 he declared, "If it be a choice between . . . the subjugation of the Southern States and their tenure as military provinces and peaceable recognition [of the Confederacy], I am for recognition."³

²*West Chester Jeffersonian,* May 10, 1862. Unless otherwise indicated, all newspapers cited in this study were published in Pennsylvania.
The editorial he composed and inserted into the *Evening Journal* on January 20, 1863, without Boileau's knowledge, led to the editor's arrest and the suppression of the paper. The item in question compared Jefferson Davis's third annual message to the Confederate Congress with Lincoln's December 1, 1862, message to the United States Congress. It was the opinion of the writer that such a comparison was "quite damaging to the intellectual capacity of the Federal President." Reed devoted several paragraphs to praising the speaking ability of Davis and to marveling at his analytical mind and his skill at answering questions. Lincoln, on the other hand, he denounced as an idiot who hoped to free the slaves in Dixie and to encourage them to start a black revolt in the Confederacy so that Southerners would "quake in their knees." The editorial concluded, "Who but a madman or a fool believes that the Union can be restored by such means?"4

A number of Northerners who saw the editorial disapproved of its sentiments, but none reacted with more anger than Major General Robert C. Schenck, commander of the Eighth Army Corps in Baltimore, whose forces were responsible for the defense of Philadelphia. The general, a staunch supporter of the war, had been elected to Congress in October, 1862, to replace Ohio's Clement L. Vallandigham, the most famous Copperhead spokesman in the North. Congressman-elect Schenck was determined to punish the editor of the *Evening Journal* before he resigned from the army to go to Congress, for he was unwilling to tolerate the publication of newspapers critical of Lincoln in the Eighth District. On January 24 he issued a special order directing his highest ranking subordinate in Philadelphia, Brigadier General William Montgomery, to arrest Boileau and send him to Fort McHenry in Baltimore. According to Schenck's directive, Boileau's offense was publishing the editorial comparing Lincoln and Davis and "other articles of like dangerous character." The order also directed Montgomery to suppress the publication of the *Evening Journal* until further notice.5

Montgomery hesitated to carry out the orders of the message, and he wrote his superiors in the war department to warn them that such an arrest could inflame public opinion. Moreover, he requested that he be given a civil magistrate's order before proceeding with the arrest. This, he hoped, would enable him to avoid much trouble and

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vexation. In the meantime he persuaded the editorial staff of the *Evening Journal* to publish nothing objectionable in the paper.⁶

Montgomery was overruled, and before dawn on January 28 Boileau was arrested and sent to Fort McHenry. Edward W. Carr, a member of the *Evening Journal* staff who witnessed the seizure of his boss, was also seized and conveyed to the guardhouse of the provost guard. He was discharged later that day and apparently had been detained solely to prevent him from interfering with the removal of his employer.⁷

January 28 was a gloomy day, and a mixture of rain, hail, slush, and snow covered the city streets. Despite the inclement weather a sizeable crowd gathered in front of the *Journal* building as soon as news of the arrest became public. The staff prepared an issue of the paper announcing the arrest of their editor, and some copies were distributed to subscribers and street vendors. But at 4:00 P.M., before all of the issues had been printed, eighteen soldiers took possession of the newspaper office, confiscated all visible copies of the *Evening Journal*, and silenced the busy presses. Guarding the door of the building was an armed sentinel, who allowed newspaper employees to enter and leave the office at will as long as they made no efforts to publish a paper or to remove their personal effects.

Spectators staged no protest against these activities; a few even suggested that the *Sunday Mercury*, another Democratic journal, also be suppressed. Yet there was some sympathy for Boileau from several people in the crowd. One man stated, "I'm sorry for Al Boileau and only wish the government would hang those who write his satanic articles." Another agreed, saying, "That's so. Mr. Boileau never wrote an article in his life. I know that."⁸

As was to be expected, Democratic newspapers all over the state vehemently denounced the incarceration of Boileau. The *Ebensburg Democrat and Sentinel* called it a "hellish" kidnapping and claimed that it made a mockery of the civil liberties of all Americans. The *Harrisburg Patriot and Union* originally considered the deed to be a despotic attempt to crush freedom and insisted that no free people should submit to such an outrage. Several days later, on February 3, the paper was somewhat more subdued, conceding that the com-

⁶William Itter, "Conscription in Pennsylvania During the Civil War" (Doctoral Dissertation, University of Southern California, 1941), 166-67.
parison of Lincoln and Davis had been “improper and in bad taste, but it was not criminal.” Even if the editorial had been disloyal, the paper added, there was still no justification for arresting Boileau without a legal warrant or for transporting him outside the boundaries of the commonwealth. The *Pittsburgh Post* speculated that Boileau was seized because he had had the audacity to attack John Wien Forney, editor of the rival *Philadelphia Press* and a friend of President Lincoln. Whatever the cause of the deed, editor James Barr considered it to be an insult to the citizens of the state. On February 3 he noted:

> The act was not committed in clear, open day, when the courts are in session, prepared to give every citizen a hearing, but [rather] in the dead waste and middle of the night when none but its guardians are in the street, save the crouching burglar in quest of plunder, and the poor inebriate, unconscious in his shame, going tottering and plunging to his home.

Such sentiments, however, seemed tame when compared with those from the *Bellefonte Democratic Watchman*, which claimed that

> if there was any cause for his arrest, it was the fact of his comparison between the productions of the old Imbecile [Lincoln] and those of one of the brightest intellects on the face of the globe. However wrong President Davis may be in the course he is now pursuing, it does not cover up the fact that, in point of intelligence, he has but few superiors.⁹

The arrest also caught the attention of one of the nation’s most influential Democratic journals, the *New York World*. This paper insisted that Boileau had committed no crime and that his arrest was both arbitrary and illegal. If Boileau had done something that was unlawful, it declared, he could have been brought to trial in Pennsylvania. It concluded by arguing that if Lincoln considered the freedom of the press to be a formidable menace to his administration, the nation was closer to despotism than it realized.¹⁰

Nearly all supporters of the Unionist party thought that the jailing of Boileau was a mistake. The *Philadelphia North American* and

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⁹ Ebensburg Democrat and Sentinel, February 4, 1863; Harrisburg Patriot and Union, January 31, February 3, 1863; Pittsburgh Post, February 2, 3, 6, 1863; Bellefonte Democratic Watchman, February 6, 1863.

United States Gazette and the Philadelphia Press voiced no objection to the suppression of the Evening Journal, but they were guarded in their praise of General Schenck for ordering the arrest of Boileau. Neither the Philadelphia Public Ledger nor the Philadelphia Evening Bulletin approved of removing Boileau from the commonwealth, and Sidney George Fisher called the deed a bold step, especially provocative since the Democracy had carried the state in the 1862 elections. He believed that the Democrats were looking for a pretext to start trouble, and the arrest might give them the issue they were looking for. Silencing journals like the Evening Journal would have a good effect on the nation, he thought, only if editors throughout the country were treated in a uniform fashion.11

Fisher's prediction that Democrats would exploit the arrest for their own purposes proved to be well-founded. Shortly after Boileau was sent to Fort McHenry, General Montgomery, realizing that he had opened a Pandora's Box, wired his superiors, "Civil authorities are moving—much excitement—Doubtless the Court will order the release of the Evening Journal—Shall the order, if made, be resisted,—if so, re-enforcements will be necessary."12 It is not known whether or not he received a response to his message.

At the time Boileau was removed from the commonwealth, the Philadelphia County grand jury was still in session. Judge James Ludlow summoned its members to a special meeting and asked them to investigate the case. The judge did not disguise his sentiments. He claimed that if Boileau were guilty of a crime, he should be brought to trial in Philadelphia. Arbitrary arrests, he stated, had been tolerated too long and should be stopped. Since the local courts were functioning, it was unnecessary to remove suspected criminals from the commonwealth. Therefore Schenck had acted illegally when he brought Boileau to Maryland. Unionists considered this part of Ludlow's speech to be mere political rhetoric. They were flabbergasted, however, when the judge asked that, if the editor had been illegally removed from Pennsylvania, bills of indictment be drawn up against his abductors so that they could be brought to trial "and, if guilty, be punished for what, in that event, may become a criminal act."13

Republicans and war Democrats attacked the judge for interfering in the Boileau case. Sidney George Fisher suspected that the reason Ludlow had summoned the grand jury was that he hoped to exploit the incident in the 1863 elections. Therefore he considered the episode to be a flagrant example of the influence of partisanship upon an elected judiciary. The *Harrisburg Telegraph* called Ludlow a "butternut" and denounced his address as an unpatriotic speech in behalf of that "notorious blackguard Boileau." The *Pittsburgh Gazette* was equally critical of the judge. Believing that he had rendered a verdict in his speech to the grand jury, the paper thought it obvious that he would not consider the evidence objectively. Perhaps, the *Gazetter* speculated, Ludlow was himself disloyal. One Philadelphia paper, the *Sunday Dispatch*, went so far as to suggest that Ludlow's intemperate remarks represented as "unauthorized an abuse of power as anything the military authorities had done."\(^{14}\)

Notice of the grand jury investigation came to the attention of the *Christian Observer*, a Presbyterian paper published in Richmond. Until a federal officer had suppressed the paper in August, 1861, it had been published in Philadelphia. Thereafter, finding its editorial position more pro-Confederate than pro-Union, it moved to the Confederacy and became a champion of the Southern cause. Though editor Amasa Converse congratulated Ludlow for having courage to protest assaults on "the liberty of speech and the press," he felt badly that no grand jury had expressed indignation when his own press was assaulted and expected little to come from the grand jury investigation.\(^{15}\)

Within twenty-four hours after being charged with the investigation of the Boileau incident, the grand jury had interviewed pertinent witnesses and had submitted its findings to Ludlow. No indictments were presented since the jurors had no desire to weaken the government's efforts to suppress the rebellion. Before any further action could be taken, the new judicial term began. On Monday, February 2, Justice James Allison, a Unionist, replaced Ludlow on the bench. Allison insisted that his predecessor had exceeded his authority when he had ordered the grand jury to study


\(^{15}\)Richmond Christian Observer and Presbyterian Witness (Virginia), February 12, 1863.
the Evening Journal affair. Therefore he directed its members to suspend their investigation immediately.16

The case had also been brought to the attention of the select council and the common council of Philadelphia. Members of the first of these two bodies proposed offering a $1000 reward for the arrest and conviction of those who had authorized seizing Boileau. After a long and heated argument, the resolution was tabled by the close vote of 13 to 12. In the common council, however, by a margin of 25 to 18, a resolution was adopted which instructed Philadelphia’s representatives in the state legislature to promote the passage of legislation to “prevent the kidnapping of our citizens and the illegal interference with the destruction of their property.” Yet another resolution adopted then “emphatically condemn[ed] the arrest of Albert D. Boileau and the suppression of his paper as unlawful acts, dangerous to public liberty.”17

Partisanship was evident when both branches of the state legislature considered the Boileau matter. Democrats controlled the Pennsylvania house of representatives, and on January 30 they succeeded in adopting a resolution protesting the arrest of the newspaper editor and calling upon Governor Andrew Gregg Curtin, a Unionist, to go to Washington and demand Boileau’s release. A similar resolution was tabled in the Unionist-controlled senate.18

Democrats refused to drop the matter, and on February 2 Representative Daniel Kaine introduced a bill in the house to make it a criminal offense to arrest a Pennsylvanian and remove him from the state. He proposed that the penalty for violating this law be a $1000 fine and ten years’ imprisonment in solitary confinement. One day later a memorial was presented to both branches of the legislature protesting arbitrary arrests and calling upon the governor to relate information about such incarcerations to the people.19 Democratic journals approved of these actions. “This is right,”


exulted one editor. "Let us have no more of these despotic proceed-
ings."20

Finally Governor Curtin felt it necessary to take notice of the situation. He recognized that by expressing his own moderate criticism of the arrests he would be depriving his political opponents of an election issue that could be important in the upcoming gubernatorial contest. In a message to the legislature he claimed that the federal government was using military arrests to discourage treason and insisted that no state executive had the power or authority to interfere with such activities. Nonetheless he admitted that as long as the local courts were still open, they represented the proper place for the accuser and the accused to seek justice. Curtin proposed that Congress pass a law punishing treason and providing for a speedy and impartial trial of prisoners "so that the guilty may justly suffer and the innocent be relieved."21 This message disarmed his critics, and even the New York World conceded that it represented a good sign and earned Curtin at least "a back seat among the defenders of the rights of free speech and a free press."22

On February 17 the Pennsylvania senate passed a bill demanding that Congress enact legislation to define and punish acts of treason. Perpetrators of disloyalty, the bill stated, should be brought to trial as soon as possible. Democratic senators unsuccessfully sought to modify the bill so that offenders would have to be tried in the district in which they resided. The house refused to enact a similar measure; perhaps its Democratic majority thought that passage of such a law would be beneficial to the Unionists in the October elections.23

Meanwhile Boileau was making his own efforts to get out of jail. When a few of his friends from Philadelphia and Baltimore visited him in his cell, he told them that he had written a letter to Schenck concerning his arrest. This letter, dated February 1, actually was an apology to the general in which he expressed regret that his newspaper had printed the offensive editorial comparing Davis and Lincoln. The editor insisted that he had had nothing to do with the publication of the editorial and declared that at no time had he sanctioned its contents. More importantly, he promised that as long as he

20Easton Sentinel, February 5, 1863.
21Pennsylvania Archives (Harrisburg, 1902), 4th Ser., VIII, 492-94; Pittsburgh Post, February 14, 1863.
22New York World, February 14, 1863.
23Pennsylvania, Legislative Record, February 17, 1863, 204, 208; Lancaster Express, January 31, 1863.
was connected with the *Evening Journal* he would not write, publish, or permit others to print in his paper articles critical of the government. The prisoner was immediately released from jail and was allowed to take a train back to Philadelphia. Upon his arrival in that city he received word from General Montgomery that he could resume publication of his newspaper.\(^{24}\)

The Unionist press was jubilant. Boileau’s apology, they insisted, indicated that the action of General Schenck had been justifiable. Yet, if Boileau’s letter was welcomed, the editor himself did not become a hero to the Unionists. In fact, he was called a “recreant martyr” and a “collapsed martyr.”\(^{25}\)

Naturally the Democracy took a different view of Boileau’s “cringing, whining” statement. According to its members, he was nothing but a “pompous humbug,” a poor “craven fool,” and “a paltroon and coward.” But even though they thought he was unworthy of the attention “wasted on him” and that Democrats should cancel their subscriptions to the *Evening Journal*, they still believed that arbitrary arrests were unconstitutional. The editor of the *York Gazette* declared: “We have lost all respect for Mr. Boileau after his abject apology. This, however, does not detract in the least from the enormity of the outrage on the rights of the citizen and the insult to the sovereignty of Pennsylvania.”\(^{26}\)

Those who canceled their subscriptions to Boileau’s paper did so prematurely. As early as February 12, it was reported that the editor had severed his connections with the paper. His successor was Charles Pine, a peace Democrat and one of Boileau’s editorial writers. In rather bold words Pine announced that he would not allow the government to intimidate him: “If it be treason for a public journalist to insist upon a strict observance of the fundamental and supreme law of the land by men in office and to condemn all officials who violate that and their oaths to observe it, then the undersigned desires to be deemed a traitor.”\(^{27}\)

\(^{24}\)Letter quoted in *Harrisburg Telegraph*, February 2, 1863; *Philadelphia Public Ledger*, February 3, 1863.

\(^{25}\)Philadelphia Inquirer, February 2, 1863; Lancaster Express, February 4, 1863; Pittsburgh Gazette, February 5, 1863.

\(^{26}\)Ebensburg Democrat and Sentinel, February 11, 1863; Pittsburgh Post, February 16, 1863; Bellefonte Democratic Watchman, February 6, 1863; Wilkes-Barre Luzerne Union, February 11, 1863; Easton Argus, February 5, 1863; York Gazette, February 10, 1863; Meadville Crawford Democrat, February 17, 1863.

\(^{27}\)Pittsburgh Gazette, February 12, 1863; Philadelphia Evening Journal, March 12, quoted in Bellefonte Democratic Watchman, March 20, 1863; Wilkes-Barre Luzerne Union, March 25, 1863.
making no idle boast, for it soon became obvious that he was not afraid to criticize the Lincoln administration. In May he wrote: "We desire to avert this fearful slaughter. We believe that there is another road to reconciliation than through the valley of death. It was not that we loved our section less but [because we loved] the Union more that we opposed war as a remedy." 28

The importance of the Boileau affair was that it made some Pennsylvanians question the propriety of arresting a man merely for voicing criticism of the government and transporting him to a jail outside the boundaries of the commonwealth. Such deeds, noted Congressman Charles John Biddle, were the acts of despots, for when all was said and done Boileau's offense turned out to be one "that could be expiated by an apology." Even the Philadelphia Public Ledger, a supporter of the government's war policy, observed with dismay that of all the people arrested for disloyalty in the city "not one has been brought to trial for the offense of which he was supposed to be guilty." Occasionally, it added, for no apparent reason prisoners would be released. Others could not leave jail before they signed loyalty pledges, but the Public Ledger thought that these statements were worthless since they "were made under threats or hopes of release." Such activities did not encourage patriotism, and "one conviction of a man before a jury would be worth a hundred times more than any declaration made while under restraint and made in hope of liberation." 29

Boileau was not the last Pennsylvania editor to be arrested for expressing sentiments critical of the Lincoln administration, but he was the last to be incarcerated for this offense in another state. To be sure, this was a minor victory, but testy generals learned that they could not do as they pleased with controversial Pennsylvania newspapermen. Apparently pro-peace editors in the commonwealth quickly learned this lesson, for they became increasingly bold in their attacks on the war. Many a federal official had reason to wonder whether the Boileau affair had backfired. Instead of silencing Pennsylvania's peace Democrats, it encouraged them to be more critical of the government than they had ever been before.