

n i e m a n

june 1973



Louis M. Lyons
Barry Bingham, Sr.
Thomas Winship
Robert Yoakum
John S. Service

1973 Nieman Convocation

“Does the First Amendment Need Saving?”

Panelists Clark Mollenhoff, Jack Landau, Anthony Lewis
Albert M. Sacks, Richard C. Wald

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nieman reports

june 1973
vol. XXVII no. 2

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Nieman Reports is published quarterly by the Nieman Foundation at Harvard University, 48 Trowbridge Street, Cambridge, Massachusetts 02138. Subscription \$5 a year; add 40¢ for foreign mailing. Single copies \$1.25. Third class postage paid at Boston, Massachusetts.

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ABOUT THIS ISSUE

As *Nieman Reports* goes to press, the turbulent relationship between the Fourth Estate and the Executive Branch has yet again shifted. In our consolidated December–March *NR*, the overtone was one of alarm about new constraints and, more bluntly, repression that the Nixon landslide might bring upon the press. But in the weeks of March through June, the tables were—perhaps temporarily—turned. The President seemed now at bay, with impeachment or at least resignation freely discussed as never before in this century. And one chief instrument in the turning of the tables was the press, notably one persistently brave and ingenious paper—meaning a publisher, an executive editor, and two young reporters.

* * * * *

Planned some time ago, in quite a different climate, was a Nieman Convocation for late May—a two-day assembly in Cambridge, Mass., of Nieman alumni and Nieman Associates (publishers who have contributed to the Nieman endowment). On the opening night of the Convocation, Curator-emeritus Louis M. Lyons was asked to reflect on any lessons the press might learn from the past five years of increasing assault by the Executive Branch and then, by the skin of its teeth, apparent victory. His speech is printed here in full.

We also offer the edited transcript of a free-swinging Convocation panel on the various topics encompassed by the question, “Does the First Amendment Need Saving?” Gleanings from other Convocation panels will appear later in the year.

* * * * *

Elsewhere in this issue, Tom Winship of *The Boston Globe* gives his colleagues, especially *The Washington Post*, the praise they properly deserve (along with the Pulitzer they won). But Barry Bingham of the *Louisville Courier-Journal*, speaking at the University of Kansas at an earlier date, still raises the important question—now temporarily in abeyance—as to whether the press shouldn’t try to police itself, through a national Press Council. (Before, one might add, the climate starts shifting once again.)

* * * * *

One session of the Nieman Convocation weekend was devoted, in part, to the future of this journal. Those present seemed to want *NR* sustained, invigorated, and perhaps seriously expanded. This is welcome news to the editors who will be calling on our friendly supporters to make good their enthusiasm with production—analytical, critical, polemical, creative. A committee to appraise *NR*’s prospects will also shortly be assembled.

Meanwhile, once again, we invite actions and reactions from our readers.

—J. C. T., Jr.

Reflections on the Condition of the Press

It is my special distinction to represent the class of Edwin Lahey, who created the Nieman tradition in its first year, that those who followed him have extended.

It is a distinction I share with Irving Dillard, here also as a fellow pioneer. The fellowships very quickly became highly valued. When Pierre Salinger was press secretary to President Kennedy, Pierre told me, "If you'd given me that Nieman Fellowship I wanted, I might be on the Supreme Court by now."

We have had as yet no member of the Supreme Court, although at times some of our law professors have sounded about ready to propose Tony Lewis. He has certainly been more of a force for law and order than the Nixon Justice Department.

"Sleaziness" was Elliot Richardson's word yesterday for the department that he took over today.

Returning Fellows find many changes at Harvard, but the one that must interest them most is to find a Nieman Fellow as financial vice president of the University. This is one thing that Jim Conant never contemplated when he invented the Fellowships. He was skeptical enough about it, but if anyone had suggested he was planting the seed for a future financial vice president, he would have said, "Let's leave something to the Business School."

His most frequent words to me the first dozen years—almost his only words—were: "Let's not complicate it. It's going all right, isn't it?"

This held off the inevitability of women for a while; also appointment of outside newspapermen to the Selecting Committee, and several other threatening complications. To all of these he was later reconciled, largely through the diplomacy of Professor Schlesinger in softening up Conant and toughening up me.

I remember vividly the day Conant capitulated about women. It must have been about the third year that Prof. Schlesinger had taken me by the hand to Massachusetts Hall to undermine the President's position. Meantime he had forced open the medical school to women. One day I read in the paper that a woman had been appointed to a Littauer fellowship—forerunners of the Kennedy fellowships.

Arthur said, "We've certainly got him on that."

Conant's last line of defense was: "But you serve whiskey at these dinners."

When he finally gave up, he said, pointing at me: "The blood be on your own head."

But Conant counted the Nieman Fellowships one of his successful inventions. He says so in his autobiography—*MEMOIRS OF A SOCIAL INVENTOR*.

It's a paradox that a chemist invented what was a unique journalistic institution. The closer you got to Conant the stranger it seemed. The first time he gave me a speech to read, before its release, he said:

"The thing is to see there are no headlines in it"—a scientist's comment on the press.

One enterprising Fellow drew up a proposed organization chart for Harvard and gave it to Conant. Public relations had a large, high-up place.

Conant drew a big question mark on it and sent it to me. He said: "Good public relations grow out of sound policy. If the policy isn't sound, all the public relations in the world won't save you."

Journalists here and elsewhere have a right to feel a revival mood. When this Convocation was first broached, such a number of enterprising journalists had become items

on the police blotter as to make me wonder how many of our members might be in jail by now. I contemplated taking a text from the title of Lord Francis's provocative book on British journalism, DANGEROUS ESTATE.

But The Washington Post and Watergate have turned the tables, have turned back the credibility gap to where it began and belongs.

I remember hearing Tom Wicker answer a question after a lecture to the Massachusetts Historical Society a couple of years ago. The question was:

"Isn't the President better informed than The New York Times?"

"No," Tom said. "By the time it has filtered through to him, he's probably badly informed. The Times has been there and seen for itself."

Now I suspect the question would not be asked.

Senator Baker said, the first day of the Senate Watergate hearings:

"We are indebted to the press for a billion dollars worth of staff investigation."

To be sure, most of us participated vicariously, if at all. Ben Bradlee, who directed the investigations of the Post, was frustrated last Fall at the apathy even of newspapers, even the newspaper customers of the Post's syndicate. Most of them put the story on page 37, he lamented.

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As newspaper readers we are journalistically privileged with the papers between Boston, New York and Washington. Mr. Agnew's attacks on the effete Eastern press accented that for us.

Back in 1956 The New York Times sent me a book about the press to review. It was mid-summer and the tone of the campaign seemed so different from 1952 when Adlai Stevenson complained of the one-party press, that I suggested the reporting of this campaign might be marked by its fairness. But the Times put the review on the back burner and brought it out in mid-October, when the heat was on, and too many rules honored in the breach. It was embarrassing, and more so when a pointed note from Elmer Davis asked, "Where have *you* been?"

I wrote him the lamentable circumstances. He came back with: "Lyons, the trouble with you is you live with the newspapers of Boston, New York and Washington. But you should see my mail from the arid middle of the country."

I am sure he would have conceded some oases with which we are familiar, as well as numbers of strong independent regional papers serving their communities.

I've tried to remember, and reminded people, *that* might help account for Massachusetts' lonely distinction last November.

Now, Mr. Agnew, who tried to discredit the very papers we are indebted to for exposing the dimensions of Watergate, suggests truce and cooperation. But the press needs to sustain its vigorous adversary role. We can't feel that The Washington Post, like Lord Jeffrey Amherst, has conquered *all* the King's enemies. We still need Tom Wicker and Tony

There has been much change in the press in the 35 years since the start of the Nieman program, and the Nieman Fellows have propelled much of the part that it good.

Lewis and their equivalents to smite them hip and thigh. Enterprise and investigation should be infectious. Other papers should get it off page 37.

The Pentagon Papers trial ended without resolving its important issues, whether the government can bottle up important information and prosecute those who refuse to comply with arbitrary classification. But it closed with such melodramatic demonstration of the government's flouting due process and suborning intelligence agencies and trying to suborn the judge, as to make it unlikely that such an attempt will be made again soon.

It should give more courage to the apathetic part of the press to exercise the function that was so ringingly asserted for them by the Supreme Court in the Times-Alabama decision of May 9, 1964.

The Court then held "that there is a profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide open, and that it may well include vehement, caustic and sometimes unpleasantly sharp attacks on government and public officials."

"Erroneous statement," it said, "is inevitable in free debate and it must be protected, unless made with absolute malice"; otherwise "the pall of fear and timidity imposed on those who would give voice to public criticism is an atmosphere in which First Amendment freedoms cannot survive."

There has been much change in the press in the 35 years since the start of the Nieman Program, and the Nieman Fellows have propelled much of the part that is good.

The dimensions of reporting have enlarged. Joe McCarthy's exploiting of the debilitated condition of objective reporting in the '50's led reluctant editors to open to interpretive reporting; that is, reporting in enough depth to show the meaning of the news. They soon got over the tim-

idity of labeling it "news analysis." Now it is recognized that a report in depth can be as objective as a superficial one.

What we used to call crusading journalism has had a constructive revival in investigative reporting.

But in these bad times, the kind of columnist Ken Galbraith classifies as moralist, which includes Dave Broder, Tony Lewis, Tom Wicker, Mary McGrory, may be more informing, even than the investigative reporter, as to the condition of affairs.

No one claims the mantle of Walter Lippmann as the philosopher of journalism. But Lippmann's was another era. He once said he felt an obligation to write in such a way that his readers would not be too surprised at events.

. . . Only a responsible press can remain free and only in a responsible press has freedom meaning to the society.

He wrote from the pattern of his view of a rational world relationship and policy for it, until Vietnam broke his pattern. He fought it until frustrated.

We have more informed reporting. Special fields are covered by specialists who can concentrate on a given area and develop sound sources of their information. One paper that I see daily had three specialists a dozen years or so ago, and now has 20. This not counting the columnists, critics, sports writers or the older fields of politics and finance.

What a specialist can do to serve the reader we realize when we read one of Mort Mintz' books that have developed from the special field he practically created and fought for on *The Washington Post*, on drugs and the drug administration, *THE THERAPEUTIC NIGHTMARE*, and going on to the regulatory agencies, *AMERICA, INC.* He has explored the bureaucratic thickets to get at the activity, or lack of it, that affects the safety of our foods and medicines and clothing and the fairness of our utility rates.

Mort has pointed out also the neglected area of Congressional debates, not just the drama of veto and confrontation, but the bread-and-butter issues that affect our lives as consumers. The distorted power of the Presidency has been in part enhanced by the imbalanced attention to it by the press, compared to that given Congress.

The press has not been alone in this. When Arthur Maass introduced at Harvard his course on the Congress he said it was a needed corrective; that the Government Department was giving all its attention to Administration. The lapses of the press are not greater than of other institutions—only more visible, and more important, as the primary source of what we find out about public affairs.

When I began broadcasting news 22 years ago, the Supreme Court was the neglected branch. That has been cor-

rected as the press discovered its vital role in segregation, apportionment, civil liberties, and it has developed more informed reporting on the Court.

The demands on journalism increase. Philip Meyer, a former Nieman Fellow, has a book just out, *PRECISION JOURNALISM*, urging us to take a leaf from the social sciences and learn to analyze statistics.

Eddie Lahey acted on this 35 years ago. Among other things he was studying accounting. When I remonstrated—with all the riches of Harvard, you can study accounting at night school any time—he said,

"Louis, I'm going to be able to squeeze the water out of a municipal budget." He did. In one squeeze he squeezed out the State auditor.

I appreciate the need of his precision. Once having the fish and game editor's column dumped on me during his vacation, I decided to illustrate it and sent around to the library for pictures of partridge. The office boy came back to say they hadn't any. I knew they did, but said, "Get quail or pheasant or something." He returned to say they had none; so I went without. In a few days he came embarrassed, apologetic. "They do have those bird pictures," he said. "I never thought of looking under Ornithology."

One word that has become a hallmark we owe to non-journalists. The Hutchins Commission, mostly college professors and four of them Harvard, took Henry Luce's assignment to explore the problem of freedom of the press, and in their report in 1946 added a word and a dimension to it. "A Free and Responsible Press" they titled their report. They said only a responsible press can remain free and only in a responsible press has freedom meaning to the society.

The publication of the Nieman Fellows, *Nieman Reports*, was born of that Hutchins Commission report and took their word "responsibility" as its standard and challenge. If the meaning and effect of the Nieman program in its first 25 years were to be spelled in one word it would be "responsibility" and it has taken root in what we now, as a matter of course, call "responsible journalism."

The responsibility is to the reader.

That responsibility is now generally recognized. It still lacks total fulfillment.

A mildly optimistic political forecast might be that after the moral collapse of this Administration, there will be less likelihood of another embedding itself completely in public relations, depending wholly on the image-makers to sustain a public illusion of a government.

But this cannot be guaranteed. These image-makers learned their trade in commercials and adapted it to the selling of the President (Joe McGinnis's book title).

There should now be a reflex action. Those who have found the contrived image of a presidency as a punctured balloon should see its source and parallel in the corruption of commercial life: ITT, Penn Central, Overseas Investors Service, Vesco, Equitable's phoney insurance policies—the list is long and their frauds dramatic. But the bulk of the television commercials output is nine parts fraud. The Fed-

The bulk of the television commercials output is nine parts fraud.

eral Trade Commission and Food and Drug Administration are kept busy puncturing the rival claims of the varieties of aspirin, telling us they are all the same; and demanding the auto companies stop false claims for the efficiency of their various accessories. Ralph Nader and John Gardner labor to alert us to a "buyer beware" attitude toward both public and private products.

The general disgust with so much of commercials, imputing sex appeal to cleaning fluids and cooking oils, should enhance the consumer movement, with the aid of a suggestive parallel in Watergate. The consumer movement should be the concern of the newspaper for it is surely the wave of any future that can satisfy the American dream.

The press is moving in that direction, but slowly. Remember when Nader wrote his first book on car safety, newspapers just weren't printing anything about safety of autos. It was only the driver who caused accidents. That's why Nader wrote his book, and it took the Watergate type of espionage that General Motors played on him to dramatize his story, to penetrate to the newspapers.

The press has come late to the reader, except as a circulation statistic. As recently as the New Deal, Roosevelt carried Massachusetts all four elections. But he carried only one Massachusetts newspaper, the Berkshire Eagle in Pittsfield. The readers were going one way, the publishers the other.

One time about 1943 I had an assignment to look into war production. I called on the paper's Washington correspondent with a list of names of key people I needed to see. All I wanted from him was their addresses. One after another he shook his head. It became embarrassing. Finally he said, "I tell you, Louis, I never thought the New Deal would be permanent."

When the press began, only the elite could read. Politics and finance were of interest to a few. Education has moved faster than the press to redress the balance.

I never believed the old saw that advertisers control the newspapers. It's simpler than that. Publishers and their business managers are fellow business men. Their daily contact is with the advertiser. They naturally think alike and center their thinking on the same things to which they give importance.

The advertiser doesn't control the paper. But he determines the shape and form and size of the paper and so its contents. The ads are dummied first and that determines the number of pages and the form of the pages. The news fits around the ads. There's probably less news in an 80-page paper than a 40-page paper, because there isn't time left over to set a proportional amount of news for the paper so fat with ads. The news is harder for the reader to find because it is stuck into the spaces around the ads and often has to be cut to fit two inches at the top of the page or one column on the sides.

Advertising requires the five-pound Sunday paper at 50 or 75 cents, but with often less news in it than in the 15-cent daily. It has a great deal more type, but most of it material that most readers don't want and never read.

Advertising is essential in a mass production, mass distribution economy. Much of it is a reader service. The merchant has a right to buy space to offer his wares to the reader. But I don't think he has a right to demand position to dominate and overshadow the news or distort the rational flow of the news in the paper.

But has he a right to demand an acre of scarce forest for a whole page ad, or multiple pages that could tell its story in a fraction of a page? Our fast growing environmental problems will certainly bring more rationality into newspaper display advertising.

The newspaper has changed relatively less than the institutions it reports.

The change has been chiefly in what Oswald Garrison Villard long ago, 1943, chronicled as *THE DISAPPEARING DAILY*. In most big cities there is a local news monopoly. That is, either a morning and evening paper published by the same ownership, or, if two owners, one morning

When the press began, only the elite could read.

paper, one evening, not directly competing. Even New York has no afternoon competition. Very few cities have newspapers competing for the readers' attention at the same time, either morning or evening. The result is a serious loss of diversity.

The notion that television or the news magazines offer competition to the local newspaper is meaningless. Time magazine can't cover city hall, and the local news broadcast typically only skims a few headlines.

The more serious competition comes from the magazines, that moved in on topical issues during the press lag in developing depth reporting.

The New Yorker has scooped the press regularly on the dimensions of its reports on Vietnam. Bob Manning in *The Atlantic* scoops the press every month in examining issues

NIEMAN CONVOCAATION

May 25-27, 1973

Program

FRIDAY, MAY 25th

- 6:00-7:30 p.m. Registration and Cocktails
Faculty Club, Kresge Hall, Harvard Business School
- 7:30 p.m. Dinner
Remarks: Derek C. Bok, President, Harvard University
Roderick W. Beaton, President, United Press International
Speaker: Louis M. Lyons — Nieman Curator Emeritus
James C. Thomson Jr., Nieman Curator, presiding

SATURDAY, MAY 26th

- 9:00 a.m.-12 noon Panel Discussions
Roscoe Pound Building, Harvard Law School

PANEL I

Does the First Amendment Need Saving?

Moderator: Anthony Lewis — London bureau, The New York Times

Jack Landau — Supreme Court reporter, Newhouse News Service
Clark Mollenhoff — Washington bureau chief, Des Moines Register & Tribune

Albert M. Sacks — Dane Professor of Law, Dean of the Faculty of Law, Harvard

Richard C. Wald — President, NBC News

PANEL II

What Ever Happened to Humor in the Media?

Moderator: Robert Manning — Editor in Chief, The Atlantic
Russell Baker — Columnist, The New York Times

John Kenneth Galbraith — Paul M. Warburg Professor of Economics, Harvard

Robert Yoakum — Columnist, Los Angeles Times Syndicate

- 1:00 p.m. Buffet Luncheon
Pound Building
Speaker: Kevin O. Starr — Associate Professor of English, Harvard
Subject: Whither the American Language?
- 4:00-5:30 p.m. Panel Discussion
Gutman Library, Harvard School of Education
The Nieman Fellowship: Its Role, Problems, Constraints, Obligations and Future
Panelists — Current Class of Nieman Fellows
- 7:30 p.m. Dinner
Fogg Art Museum
Speakers: Catherine Mackin — News Commentator, NBC-TV
Tom Wicker — Associate Editor, The New York Times
John T. Dunlop — Chairman, Cost of Living Council, Washington, D.C., formerly Dean of the Faculty of Arts and Sciences, Harvard
James C. Thomson Jr., Nieman Curator, presiding

PANEL III

Asia After Vietnam

Moderator: Frances FitzGerald — Free-lance reporter, author FIRE IN THE LAKE

John K. Fairbank — Francis Lee Higginson Professor of History, Harvard

Edwin O. Reischauer — University Professor, Harvard

Henry Rosovsky — Professor of Economics, Dean-designate, Faculty of Arts and Sciences, Harvard

Alexander B. Woodside — Associate Professor of History, Harvard

PANEL IV

Can People and This Planet Co-exist?

Moderator: Gerald Holton — Professor of Physics, Harvard
Jean Mayer — Professor of Nutrition, School of Public Health, Harvard

Matthew S. Meselson — Professor of Biology, Harvard

George W. Rathjens — Professor of Political Science, Massachusetts Institute of Technology

Carroll M. Williams — Bussey Professor of Biology, Harvard

SUNDAY, MAY 27th

- 10:00 a.m.-12 noon Informal Brunch
Harvard Faculty Club
- 12 noon-1:30 p.m. Informal Workshop
Conducted by Nieman Fellows who are members of the Reporters Committee for Freedom of the Press

that haven't surfaced in the news. In *Esquire*, now that the business department has eased Harold Hayes out of its editorship, they presumably won't have to put up any longer with serious exploring of the social scene. But somebody will.

The owners of the press have been hypersensitive to criticism. They ridiculed the Hutchins Commission report in 1946. We see this now in their opposition to an independent press council to appraise and report on the performance of the press. Its work may be disappointing, but its reports on the performance of the press will certainly be instructive and could be suggestive to the press itself. It seems to me absurd to greet it as a threat, as an entering wedge to government regulation, or a harassment to have someone breathing down their neck.

The press is by function critic of everything else. It has never had systematic professional criticism. It criticizes television as it does books and movies. Television has never managed to bring the press under scrutiny. CBS tried it a couple of times and gave up. In New York Channel 13's "Behind the Lines," a public television service, does penetrating reports about the press now, but can't bring it under comprehensive survey, even within New York.

Establishment of an ombudsman by *The Washington Post* is a suggestive move in self-criticism but, so far as I know, unique to the *Post*.

The publishers and their editors say any one has a right to criticize the press and they welcome it. But we get only incidental press criticism, usually in books that are read by the converted, or some demagoguery by people who are uninformed or have axes to grind.

When I was a cub reporter in 1919 I got hold of a book called *THE BRASS CHECK* by Upton Sinclair. It was about the control of the venal press. Reporters read it to justify their posture of cynicism. I turned first to the chapter

I never believed the old saw that advertisers control the newspapers.

on Boston and read that the *Globe* was owned by Standard Oil. Well, anybody knew the *Globe* was jointly owned by the Taylor family and the estate of Eben Jordan, who had financed General Taylor 100 years ago. So the rest of the book I read for entertainment and it was lively stuff.

Of course this would not describe A. J. Liebling, who for a time produced entertaining pieces on "The Wayward Press," first in *The New Yorker*, exploiting the bizarre or outrageous. But Liebling used the press, as Thoreau did nature, as something to write about. He made little distinction between *The New York Times* and the *New York*

Mirror. He had one gear and just two points. One was that there's no news in the newspapers, and the other that publishers are no damn good. I used to have to review his books. He was terrific on the Earl of Louisiana.

Publishers ought to be glad of a professional, systematic critique in a council headed by a retired chief justice of California. You can find plenty to criticize about the pro-

Has . . . the merchant a right to demand an acre of scarce forest for a whole page ad . . . ?

posal of this council and its organization. But not the fact of its existence and aim. I realize that some eminent Fellows and distinguished associates take a different view. They have published it. I am only claiming equal time.

The press today is less partisan than when Adlai Stevenson complained of a one-party press—a natural result of local monopoly, having to serve the whole community.

It is more open. More papers seek to serve as a civic voice.

But the press is still largely committed to seeing news in conventional grooves and treating it in conventional ways.

With few exceptions it has given too little attention to the youth movement, to the rising consciousness of the black community, to the interests of women outside the society page, to consumer movements and interests.

A result is what we called the underground press, that has now surfaced to provide what its editors want to call an *alternative* press.

It finds response among students, radicals, eccentrics, the disenchanted with emphasis on the arts—movies, records, books—and with sensational exposés, sometimes informing, more often of a character that the laws of libel cause the conventional papers to stay away from. Some of the alternative papers evidently find protection in the axiom that you can't get blood from a stone. Too many of them have yet to learn responsibility or any approach to objectivity.

One may guess that they will occupy only a fringe where the regular papers keep pace with the interests of their readers to occupy the whole middle area. But where the papers are static, stodgy, resistant or disdainful of our evolving society, these new papers will be accepted as real alternatives. No monopoly in information can long persist. If economic conditions required this, the newspaper would soon be treated as a common carrier, the First Amendment amended in the large interest of the society.

A new book came the other day, by the law dean of Syracuse University, Jerome Barron: *FREEDOM OF THE PRESS FOR WHOM? The Right of Access to Mass Media.*

He argues that freedom of the press was never meant to be just freedom for publishers.

The dean wants access for the man who may have an idea and no way to circulate it. Should the press circulate only its own ideas or those of a representative few of its critics and contributors? Clifton Daniel told him The New York Times gets 40,000 letters a year and prints six per cent, 2400. To print them all would take 13 entire editions of the daily Times, obviously an economic burden that can't be asked of the Times, and nobody would read them. Responsible papers do carry letters, especially those disagreeing

The notion that television or the news magazines offer competition to the local newspaper is meaningless.

with them. The Globe a couple of years ago began printing a whole extra page of letters every week or two, besides those it can run on the editorial page. The Times has turned its op ed page into a true forum, carrying not only opinion pieces of its columnists but opinions from a whole spectrum of views. But the dean has a point to consider, holding that the press needs to find ways to expand its role as public forum.

If Dean Barron hasn't all the answers, he raises some of the right questions and perhaps has a right to leave it to the enterprise and innovation of the newspapers to find the answers.

For the press needs, and will ever need, to provide a convincing answer to the question, "freedom for whom?" if it is to justify its unique constitutional protection.

—Louis M. Lyons

There's no rule against an editorial writer
scooping a beat man that I know of.

Probing reporting is essentially how you
effect change and how you *improve* the
quality of life in our hometowns and in the
nation.

—Tom Winship
A Return to Serious
Newspapering

"Does the First Amendment Need Saving?"

Introductory Note: On Saturday morning, May 26th, participants in the Nieman Convocation (for full schedule, see page 7) heard four journalists and a law professor discuss the cosmic question, "Does the First Amendment Need Saving?" Under the chairmanship of Anthony Lewis, columnist for The New York Times, the panelists were: Clark Mollenhoff, Washington Bureau Chief, Des Moines Register & Tribune; Albert M. Sacks, Dean of the Harvard Law School; Jack Landau, Supreme Court reporter for Newhouse News Service; and Richard C. Wald, president of NBC News.

What follows is a very lightly edited transcript of the four opening statements and the discussion that ensued.

Clark Mollenhoff:

This is supposed to be a discussion of the media and government, and the two things involved today are really the shield law and executive privilege. Just getting right to the point, I am against the shield law—absolutely, totally against the shield law under any circumstances.

I've spent 20 years on this subject and think that I know it pretty goddam well; and I'm amazed at some of the juvenile amateurs who are in the investigative field for one or two shots who take the other position. I'm sympathetic with them in not wanting to go to jail, but I'm sympathetic with all people who don't want to go to jail. There are newspaper reporters as well as other citizens who deserve to be in jail, not necessarily because of the wrong they have done, but in such cases as the Bridge case and the Farr case because of the utter stupidity with which they arrived at the decision to go with the stories in the manner in which they handled them.

I think the Caldwell case represents a good decision because it's the first time that the Supreme Court of the United States has recognized that there is any right that the press might have to withhold sources where there is harassment of government. An analysis of that case will demonstrate that in the 5 to 4 decision, the swing vote was Justice Powell's; and in his concurring decision he states that in those cases where you can make a case that there is harassment and misuse of government power, he'll swing over the other way. I am sure that there will be others on the Court including Justice White that will do the same, if you can make the real case of harassment.

Now, what is the alternative? The alternative that we're faced with, as many people including Mr. Landau suggest, is an absolute shield law.

Well, let's take a look at what an absolute shield law is. That would cover, as it should, everyone from pamphleteers to the great press, to the great television networks. Remember, the First Amendment was not written to cover just big television and big newspapers; it's supposed to be for those

I am against the shield law—absolutely, totally against the shield law under any circumstances.

pamphleteers. Just from a practical standpoint, you are never going to get Congress to pass a law that will provide a shield for your left wing, right wing, fringe pamphleteers. It's just not in the cards, and those who embarked upon this venture should have understood that at the first.

In addition, though, I'm for the total shield law, if there is going to be one for coverage. I'm for total coverage of it. But when you examine what it is, it would represent total coverage on all crime from petty larceny up to murder and sabotage. It would cover every forum from a county grand jury up to and including Congressional investigations. That's no different from executive privilege.

My experience with the press is that there are a few people in our ranks whose motives are not quite balanced all the time, and I think that's putting it mildly. There are some people in our ranks who are irresponsible. I think that *New York Times vs. Sullivan*, while I am in favor of it, probably goes a step too far in fostering irresponsibility. And where I benefited by it, I like that—but not irresponsibility, because I try to be responsible. In the case of the book I did on Hoffa, *New York Times vs. Sullivan* made it possible for me to get that book published because I could prove every damn thing I had in that book; but I might have been subjected to harassment, and the publisher would not go ahead with it until after *New York Times vs. Sullivan*.

But there are abuses that can take place under *New York Times vs. Sullivan*, and I don't think we need any more than that. What an absolute shield law amounts to is an executive privilege for every reporter—cub reporter up to the publisher. We've seen in the Watergate case what the executive privilege and the belief that they have a right to run behind the White House door and refuse to answer questions did to the Nixon Administration. And I had some considerable dealings with these people and understood from the outset the problem of where they were going to end up.

Ehrlichman and Haldeman were not necessarily poorly motivated as they took the oath. They had this obsessive secrecy, they wanted to cover everything with secrecy. They permeated the White House atmosphere with that

attitude and in the process corrupted themselves completely and corrupted the young men who were around them. I knew those young men and I had seen, I thought, the potential of those young men in 1969, and I saw what happened to them. And if you watch them on television, you'll see that they just walked over the line a little bit—a little bit here and a little bit there—faced with the inevitable pressure and the total power of the presidency in the White House and the fact that they did not have any reputations when they went there. Haldeman and Ehrlichman brought them in as young men, impressionable young men who had nothing else and whose future depended upon Ehrlichman and Haldeman. Executive privilege corrupted them.

A shield law would corrupt the press just as much because secrecy is a corrupting influence. It's the greatest power that there is.

Albert Sacks:

I would suggest that there are two processes by which the vigor and power of the First Amendment are felt at any given time in our society. One is the judicial process; and there we deal with court decisions, and we deal with very sophisticated and rather technical interpretations. We get ourselves involved in complexities. Lawyers and newspaper people read both and come out in different ways; and since they put in different things, they put out different things.

And then there is what I would call the political process, which in some ways may be the more important one where—withstanding what the courts have decided—you may or may not have a government whose members are making an effort to restrain the press by informal means, by criticism, by implied threats; and you may have a public which is either skeptical of such attacks or which in one or another fashion supports those attacks.

It seems to me that if you want to talk about the vigor of the First Amendment, you have to talk about both of those. Yet I suppose that on the theory that I am trained in law, I ought to talk only about the first. But, in fact, I'm going to take up a couple of words about the second as well.

As to the first, and what the courts have done, it seems to me that the record taken as a whole demonstrates that the support for freedom of the press remains very strong and very vigorous.

The area of possible liability for libel or invasion of privacy is worth noting. It is, in fact, one of the major potential restrictions on the functioning of the press as a practical matter, as Mr. Mollenhoff noted in his own experience. The *Times vs. Sullivan* case was a very big, you might also say a revolutionary, change in the functioning of the press in terms of the restraints on it, and the Court has given very little indication that it is going to temper that in any way.

Indeed, it has broadened it: from public officials, it has moved it to public figures; from public figures, it has moved it to private persons who are projected into the public eye by events or by circumstances. And the standard of recklessness, the standard of knowing falsehood, those standards are extremely difficult for anybody to establish. One of the questions I have about it relates to whether, indeed, it doesn't go a little too far in the direction of protection of the press in the sense that in every other aspect of our economic organization today, when large functioning operations, corporations do in fact cause economic harm to an individual—and I'm not now talking about punitive damages or speculative damages, but actual economic laws—we have over the last century developed a body of doctrine which permits the individual more and more to recover that loss from the organization because it can spread that loss more easily. The press is one group which is saved from that by the doctrine. And for today's purpose, it's enough to say that it goes very far.

Similarly, so far as I am concerned, the decision of the Supreme Court in the Pentagon Papers case—notwithstanding some of the language and some of the opinions. It would seem to me any decision that could be handed down that quickly and in so complex a case is going to produce a certain amount of confusion as to doctrine, as to language. The fact of the matter is that the Court protected the press against the government at a very critical time.

Third, the newspaperman's privilege, the question of whether or not one can get at sources. I don't know enough about the operation of the press to understand all the practicalities of the problem. I have not spent 20 years working at it, I have not spent 20 days working at it. I would be interested to listen to what you see as a practicality.

I would suggest to you the following: first, in the argument to the Supreme Court in the Caldwell case the attorneys argued for a qualified privilege. They never argued for an absolute privilege. I think that reflected a perfectly correct understanding that the Court would never have given them absolute privilege; that if they were going to get anything, they were going to get a qualified privilege, and that there would then remain the many difficulties in future cases of working out what that qualified privilege was. And, of course, that would be very complicated. The Court, in fact, rejected even that and—as Mr. Mollenhoff says—we seem to have, because of Justice Powell's concurrence, a protection limited to the instances where a newspaper can show it is being harassed, or the reporter can show harassment.

From my own point of view, I'm inclined to think the Court was wrong on that, that the proper balance to have been struck would have been to give a qualified privilege,

and then to embark on the job of working out what it was; and the various practicalities on the newspapers' side, the problems on the investigatory side, would have led courts overtime to work out the various problems in the extent of the privilege. In a way, that is done with every other institution in our society. Lawyers have privileges, but they are not absolute in the sense that they never can be broken down. Various other privileges exist, including government secrecy, but they can be broken down under

There are newspaper reporters as well as other citizens who deserve to be in jail . . .

proper circumstances. So, too, it seems to me, it would have been possible with the press; and I suggest to you that if the Court had done it that way, there would have been no outcry in the press. The press would have seen this as a pretty good solution to the problem and waited for the Court to work it out over time.

As it becomes a legislative problem, maybe for understandable reasons the press has said, "We can't seem to work with this legislatively, we can't see the draft coming up in such a way that we can deal with it." It's an interesting fact, if that is so, that the press would have been prepared to let courts do it, case by case, but is not prepared to see something like that happen through legislation.

Finally, I said before that I thought the political process may be as important as the judicial process in the question of what freedom is. I have the sense that the attacks of various people in the Nixon Administration on the press were a threat to the First Amendment of a very different kind from arguments about cases. They did have the potential in them of restricting freedom of action, of causing a certain amount of fear. From my own perspective I think the reaction to that over the last three or four years was an extremely healthy one. I tend to think that the events of the past six months have turned that around for the present, and the question is what the press will do about it.

What will it do? Will it function more freely by the process of simply saying we can now publish anything and everything? Will it figure that any kind of rumor is worth plastering into a headline? Will it just sort of say, now we've got our enemies on the run, let's mount an all-out offensive, however we go about it? Or will it use the occasion to try and figure out just what are the guidelines that should govern in very sensitive situations where the newspapers are free to print or not print, how exactly are decisions to be made in such circumstances.

I take it that newspapers and other media have opted for complete freedom for each unit to decide for itself, with no notion that even informal oversight might be possible in the

guise of some group, committee, commission, or whatnot, even set up by the press, which would attempt to look at what the press is doing, criticize and lay down guidelines. At least that's the sense I get.

The press is made up of an enormous variety of units, ranging from the most powerful, really with power that rivals the power of most other non-governmental units in the society all the way down to tiny units that have no power, that are just getting going, that are gadflies. You have this enormous range. By the way, if every unit of the press was small and in that sense struggling and without much power, I would be inclined to say that complete freedom and the irresponsibility that goes with it are good things. But with the units that we now have, I would raise the question as to whether that's so—whether it doesn't become important for the press to set up some means by which, internally, criticisms are organized and guidelines worked out, not in any compulsory way, but with whatever persuasive character they have. It would seem to me that something of that sort is probably a good idea.

Bear in mind that one of the results, I would say, of the events of the last decade in this country has been to produce tremendous mistrust of all institutions. That has now been brought to a boiling point with respect to government institutions. The mistrust of them is fantastic, and one sees it even in the functioning of the press vis-a-vis government.

I suggest to you that the large and powerful units of the press can become the victims of such mistrust. It is possible that it can happen, and I think one of the problems is how they're going to avoid it.

Jack Landau: I agree with Dean Sacks that there's tremendous mistrust. I think the polls show it. I think that Agnew made it politically respectable, the Court made it legally respectable, and in the last two years we've seen a pattern of harassment and lawsuits that's really just unrivaled as far as anybody knows in terms of historical analysis.

There isn't a major newspaper in this country that has not been hit by a subpoena or some attempt to pull it into formal process as a result of its news stories—the Times, the Post, the L.A. Times, Time Magazine, Newsweek, Gannett, the Chicago Tribune, the Chicago Sun-Times. The TV networks themselves had over 120 subpoenas in an 18-month period. Small newspapers—Bath, Maine; Plymouth, Indiana; Seattle, Texarcana, Baton Rouge. The list is just endless, and I think I'm not as optimistic as Dean Sacks is.

I'm not at all sure Watergate has changed the attitude. A month ago the U.S. Court of Appeals in New Orleans upheld the first contempt citation that's ever been upheld in a federal court for reporting a public trial. Three weeks ago Tom Oliphant in The Boston Globe was arrested, indicted for covering the airplane food-drop at Wounded Knee. Last week the Court of Appeals in New York, which is the

highest court in New York, ruled that two television guys who got into the Attica Prison yard during the riot are going to have to talk in front of the grand jury. Three weeks ago the Supreme Court took an action which means that David Lightman from the Baltimore Sun is going to have to go to jail because he talked to the grand jury. I don't see—as opposed to the Dean—that the courts are letting up one bit, and I don't think that the press (and our committee doesn't think that the press) should just wait around supinely hoping that the First Amendment is going to protect them.

It's all very well and good to say that the First Amendment is going to protect us, but it's no good to tell Bill Farr that after 40 days in jail. The New York Times spent \$250,000

What an absolute shield law amounts to is an executive privilege for every reporter . . .

last year in legal fees. Now how many newspapers are going to cover stories, especially smaller papers with relatively few assets, if the city editor feels that there's a chance he's going to get himself into a lawsuit that's going to cost thousands and thousands of dollars?

The Administration only a month ago, in the middle of Watergate, was defending S-1400, the new criminal code they want Congress to pass, which would make it a crime for any newspaper to publish any national defense information that's not released without authorization. They define national defense information as any information relating to foreign affairs—I forget the exact wording of it. Senator Hart asked the Justice Department guy during the hearing, "Give me one story that The New York Times has published out of the Defense Department in the last month that couldn't be prosecuted under the statute," and the guy didn't have an answer for him.

Furthermore, in the Ellsberg prosecution they were trying to make it a crime to publish any government report—the government now claims it owns information. They persisted with that argument right up to the time that Judge Byrne dismissed that case. And they have included that in S-1400 which is now before both the Senate and the House.

I'm not trying to argue subjectively about what the future is going to hold. All I'm saying is that we think we have a very strong statistical case, that the press has got to fight back, and that it just can't hope that things are going to get better.

We found that one of the big problems in this area is that we do not have lawyers who know First Amendment law. I urge you to go back to your local newspapers, tell them not to rely on their local counsel who's an expert in tax matters and corporate law matters, but to get a guy who knows how

to handle First Amendment problems so when that subpoena hits, you know what to do. Should you break it, should you move for a stay, should you abide by it, should you go to an appellate court—what are you going to let yourself in for?

Many times the initial reaction of the newspapers determines the whole course of events. In the Pentagon Papers case for example, if The New York Times had broken that injunction initially, the whole case might have been entirely different, and we might have had an entirely different set of facts to deal with on whether newspapers have to obey invalid injunctions. Now in the Fifth Circuit that Court of Appeals has said they must obey invalid injunctions and appeals.

On the shield law you'll hear a lot—there are a lot of arguments on one side or the other. Everybody will concede that if this were a perfect world, theoretically we would like the First Amendment to protect us. But it isn't a perfect world. The Supreme Court has said there is no protection under the First Amendment for newsmen going before grand juries and probably before criminal trials. So we think that we need the tools to help protect the reporters.

As to whether it should be absolute or qualified, I think Dean Sacks hinted at something that's probably very well known privately among all of you: that one of the only ways you could get everybody to agree on any one approach, in terms of the large media organizations, was to have an absolute shield law. If you had tried something less, the other organizations would have split off.

Secondly, there was a legislative problem. The legislative problem was if the media asked for a qualified bill or the minimum that it would accept, knowing the animosity of Senator Ervin to the whole idea of the shield law, it was felt that there would be nothing to negotiate if they came originally into the committee hearings with the minimum position. So really for two reasons a lot of people put aside private considerations on the grounds that it was decided by the ANPA, ASNE, NAB, Sigma Delta Chi, and all the other big organizations, that for tactical purposes in Congress and to keep the larger organizations together, the absolute shield law was the best approach initially to take.

I'm not convinced that if a good qualified shield law came out of the Congress, the major organizations wouldn't support it; but I don't think so now in the middle of the legislative process where the chances are that you're going to get a shield law that has tremendous holes in it. For example, the Ervin bill says that any eyewitness to a crime is an exception, one of the exceptions. Since conspiracy is a crime and words themselves are an act, a completed act in the conspiracy, any time Earl Caldwell in interviewing a couple of Black Panthers heard words which would be part

of the conspiracy and which could be cited in an indictment, that would be a crime. So there's really almost nothing under the Ervin Bill that would be protected. There's not a single case that's gone on grand jury subpoenas that would be protected under the Ervin bill.

Richard Wald: I feel like an intruder in other people's private arguments. Since everybody's ridding his hobbyhorse, I thought maybe you would sit still for a few moments and take some notes while I ride mine.

I had taken the title of our little colloquium a bit more broadly, and I would like to introduce you to a problem that you may not be aware of, that infringes on the First Amendment, and that may be important to you. And if I may, I will start with a slight amount of history which most of you undoubtedly know; and that is that I, representing broadcasting here, am a creature of a communications act which

... The Court protected the press against the government at a very critical time.

stipulates that broadcasting shall be conducted in this country for the public interest, convenience and necessity. I think that's the act of 1935, but I don't remember the date. And as a result of that and of the very good-hearted liberal impulses that were rampant in the land at the time and later, we have developed for television journalism mainly a variety of interesting attitudes.

One of them is that you have to ensure, specifically for broadcasting, standards set by the government because there is no competition. This is in a country in which I don't think there are three cities that have competing daily newspapers, but there aren't three cities that don't have at least five competing broadcast organizations. In the city where I live there are 42 competing radio stations and seven competing television stations. There are three newspapers and they hardly compete. At any rate, that is the theory. And the theory goes on that one of the things that you must do is have fairness, and the fairness gets itself resolved—as theories of comparatives usually do—by the judges deciding the least objectionable course among competing lawyers; and we are now at a situation where fairness is set by somebody, and nobody's quite clear who decides what fairness is.

I have a case in point. We recently did in television a thing on pensions. It was the first of any of the major journalistic treatments on the problems of pension plans that actually don't cover you—because of "portability," and things like that. The FCC has decided tentatively, so far, that this violates the fairness doctrine, by deciding this way—and it's quite logical if you accept the doctrine. This is a matter of controversy; there's been no controversy about it before, that's true, but now that you've said it, *ex post facto* it used

to be a controversy; therefore the other side must be represented equally. Well, there is no organized other side because the people who have lost their pensions don't have people of exactly the same kind who didn't lose their pensions. So, therefore, the other side is the Chamber of Commerce of the country and the National Association of Manufacturers, etc. Therefore, they should have the same amount of time to say that there is no problem with pensions. Therefore, you have to have a program that says there is no problem with pensions. And that is the fairness doctrine.

Now we think that this is both illogical and absurd, like most other things in life, and we are appealing this interesting ruling. But I would suggest to you that this is the result of institutionalizing good impulses in a foolish way, and that

Lawyers have privileges, but they are not absolute in the sense that they never can be broken down.

many of the dangers to the First Amendment come from deciding that there ought to be a law that will set people straight by setting up outside agencies to dictate to the press what it is that ought to be done. Obviously in this case the outside agency is directly identifiable—it's the FCC. And it seems to be directed against television, or broadcasting (it applies also to radio). The fact of the matter, however, is—and I would warn you of this—some believe that those rules that apply to broadcasting ought also to apply to the press. I do too. I believe that if I should have a fairness doctrine, so should everybody else in this room. And I believe that if I should have a public access suggested to me, so should everybody else.

I would suggest to you that the real danger to the First Amendment does not necessarily come in the question of that small amount of investigative reporting that ultimately finds its way into the few newspapers in this country that do investigative reporting; nor does it come from the foolishness of various people in the press who, for reasons I can never really quite fathom, say dumb things in public forums; but it does come from the good impulses in everybody's heart that will lead you to do things that you're going to regret later. And I think that we are in danger, in terms of the First Amendment, of agreeing to the idea that the public ought to have access, and that fairness is a good thing, and then writing a law about it.

Now, I would hate to see a day when it was *forced upon* The New York Times to have an Administration columnist to share the Op-Ed page rather than merely suggested to The New York Times. I would hate to see a day when various other organizations, or indeed Mr. Mollenhoff himself, would write a book saying that Hoffa is a no-good rat—and then had to write another book saying Hoffa's one hell

of a swell fellow. But I would kind of enjoy the company.

If I may go on to things not quite my hobbyhorse. I am interested in the arguments on two other topics that have so far been spoken of. One is, tentatively, a press council, and one is privilege—absolute or qualified. I would suggest to you that a press council fits into that definition of things which could be proved to be silly if one were but to observe the facts. The argument for a press council for this country is that it will do a lot in two ways: one, it will remove the pressure of a lot of other people who'd like to set up a press council and ram it down your throat (so why don't you cut your own throat?). And two, it would improve the quality of the press. This is demonstrable, it is said, by looking at the press in Great Britain, where there is the Press Council upon which we would model ourselves—and which has for its press the Daily Express, the News of the World, and other similar exemplars of marvelous journalism. So much for the press council.

In terms of qualified or unqualified privilege, I might point out to you that a lot of people in my business always thought that the First Amendment meant that there should be none of these foolish interferences with our operations, and they proceeded that way for I guess about 185 years. Justice Powell suggested otherwise, but in a variety of ways the justices suggested that if you don't like what we did, you ought to go to Congress and seek relief because maybe this isn't a legal problem.

And I have merely two comments to make about that: one, I think that the First Amendment is in conflict with other amendments. I don't know what the legalities of the situation are, but it could well be that when those bright people who framed the Constitution set us running down those rails that lead to today, they set up conflicting rights; and conflicting rights do not necessarily have a point of agreement. They may be in conflict. And if they are in conflict, maybe the other fellows are wrong. It may be that when you talk about the First Amendment, and when you talk about the rights of the courts, these are not able to be reconciled. And if they're not able to be reconciled, maybe they are not directly working in concert. And if that's the case, we in this profession have already said, well, the courts must be right and we'll let the courts decide; and I think the courts will always decide that their convenience and necessity is superior to ours, no matter what it is that the First Amendment says.

One other point: in terms of privilege, I would like to suggest to you that most of the terrible examples that would flow from an absolute privilege that I have heard of are really fictitious. No one knows of such a case. I was privileged to read various of the testimony before the House and the Senate Committees and I read some of it with care and some of it with laughter, because I am always amused at

those hypothetical situations that in the previous 197 years of the Constitution have never arisen, do not seem likely to arise, and seem idiotic on the face of it, for which we will write a law.

Anthony Lewis: I'm on the minority side of the privilege question, at least as to the legislative privilege. I think the press would be very ill-advised to try to carve out for itself a special position, legislatively.

What's interesting is that the Constitution doesn't only speak of freedom of the press, it speaks about freedom of speech in the same amendment—and that goes for everybody. Indeed what's noteworthy about the case of New York Times against Sullivan is that it didn't create that very important revolutionary new privilege only for newspapers. Quite to the contrary, it was for everybody; and I would hate to see the creation of a testimonial privilege which applied only to something called the press and which excluded, for example, Sam Popkin when he is brought before a grand jury and required to testify and has information just as important—whose confidentiality is just as important—as something that journalists may have, and serves the public interest just as much by retaining its confidentiality.

I would hate to see it a privilege which applied to me, but not to Ralph Nader when he wrote an article about some aspect of life in this country because I think it's just as important, and just as much encompassed by the Constitution, that Nader should have protection for important confidential sources. So my own instinct is to leave it to the courts, not to try to create something that by the very nature of legislation is going to be, I think, rigid and incomplete and probably invite something worse than we already have.

Well, that's my speech. Do we have some questions before we get into the debate that I know is seething here?

Question: I've worked with Jack Landau in the committee that helped to draft the Cranston Bill, and the thing that strikes me as we get into this subject more and more is that as a practical matter we've had a privilege, very close to an absolute privilege, for 100 years. Of course, you never faced up to it until the Caldwell case. Now everybody thinks that the world will come to an end if that decision is upheld; and if legislation overcomes that, then we'll go back to something different. But we won't; we'll go back to what we had before, really. The problem is that we call it an absolute privilege, and that's a bogey man. What we're trying to do is to create legislation which will re-establish what we felt we had before the Caldwell decision. I'd like to ask Mr. Mollenhoff to comment on that.

Mollenhoff: Well, I don't know how many of you people have read the Caldwell decision. I'm amazed usually at how few have read it, and I think that the concurring

opinion of Justice Powell is really the good balanced law that comes out of this. I might say that there are some aspects of it here that I should read.

"The Court does not hold that newsmen subpoenaed to testify before a grand jury are without Constitutional rights with respect to the gathering of news or in safeguarding their sources." Then it goes on to say, as indicated in the concluding portions of the opinion, that no harassment of newsmen will be tolerated. Indeed, if the newsmen is called upon to give information bearing only a remote and tenuous

. . . One of the results of the last decade in this country has been to produce tremendous mistrust of all institutions.

relationship to the subject of the investigation, or if he has some other reason to believe that his testimony implicates confidential source relationships without a legitimate need of law enforcement, he will have access to the Court on a motion to quash, and an appropriate protective order may be entered. (I'm skipping.) In short, the courts will be available to newsmen under circumstances where legitimate First Amendment interests require protection. We're going to take it up on a case-by-case basis.

I think that's where we should leave it. In the Caldwell case, Caldwell wouldn't even go before the grand jury. There is no law you can write where Caldwell could reject the subpoena on his own and not go before the grand jury, and that was the defect of the case, the initial defect, if there weren't others.

In the Branzburg case, you had actual participation in observing a law violation. Now, was that needed? I don't know whether it was needed to dramatize the dope situation in the Kentucky area, but you had the reporter who saw this, the photographer who took the picture of it—it was an overt act of law violation, as they stated. There's an obligation that goes with the use of confidential sources, and that obligation is to truly protect the confidential sources. That does not mean waving the red flag: "See, I've got a confidential source, come and subpoena me and then I can go to jail and be a hero." The Washington Post in the Watergate case did a responsible job of using confidential sources. They didn't set out what the sources were last fall during the campaign. They used the material, and they tried to hide the sources because the sources would have had their heads chopped off. That is the wise use of confidential sources. It isn't to say: here, I've got a scoop—look, I've got a confidential source.

Question: May I hear Dean Sacks' response to this?

Sacks: Well, I find myself rather sympathetic to the last remarks about the feeling of these cases, but that's because I'm not in the newspaper business and I don't really understand it completely. I listen, and I have a sympathetic

reaction; but on the law part of it, I don't think that's enough protection, myself.

I put this into the framework of the usual discovery practices that occur both in civil cases and in criminal investigations; and the protection against harassment is a minimal protection. You really have to be pretty clearly abused before a court says you're being harassed, we will protect you. It's conceivable to me that with newspapers, harassment will take on a somewhat broader tone, if you like, but even so I'd say the prospects are not good. I would myself have preferred for the Court to have taken the qualified privilege that was argued for, which would have been that the government must make a showing that (a) there is very good reason to believe a crime was committed and (b) there is very good reason to believe that this individual reporter has information relevant and important in understanding the facts, and (c) indeed that it is necessary to get it from that reporter because it's not available in any other way.

Now, what that does is not to give the reporter a complete assurance that the government won't come after the information—no guarantee in advance—but rather that as a routine matter the government must go elsewhere. The reporter becomes a last resort then, an unusual object of inquiry, and you ordinarily take your inquiry elsewhere.

What I think has happened as a result of the case that's bad is since the Court said no privilege, it rejected that qualified thing. Many prosecutors in different parts of the country, and some judges, have taken the view you can go after a reporter as a routine matter—that the first thing to do is to get the reporter, get him in here and find out what he knows and we don't have to investigate the rest of the case until we hear what the reporter tells us. That I think is unfortunate.

Mollenhoff: Just a moment here. We're going to have these abuses by the courts regardless of what laws are passed. I assume you have been a practicing attorney at some time and would have some knowledge from that that the courts are not even-handed and fair in all localities under all circumstances.

Sacks: Even if I weren't a practicing attorney, I would be able to—

Mollenhoff: Under these circumstances, I can agree with everything Jack Landau says about the cases and be totally outraged, as he is. But I do not see any law that solves all of these problems. I have been fighting for the last thirty-two years, with the full knowledge of this type of practice and specific cases. And I can't think of a law that will provide justice in all cases.

Question: Can I frame just a question to Al that might bring out that point? If one agreed with your view that the Court was wrong in the way it decided this particular case, and that by not going for the qualified privilege it

encouraged these bad judges and lawyers, do you think that mistake can be cured now by legislation, or would you prefer to wait and let the Court correct it itself?

Sacks: Well, that's a great dilemma. I could hope that within the next year or two or three, as a result of some of these experiences, the Supreme Court will change. If I had to guess, I'd be rather pessimistic—if the change occurs, it won't occur for quite a long time. That, however, I submit as a guess; I'm no better at that than anyone else.

On legislation, I myself am inclined to think that the only legislation you can get is legislation of a very general character, of just the kind of general character that the Court would have written had it written a qualified privilege. What I don't know is whether the communications media are politically in a situation vis-a-vis government such that a statute giving a qualified privilege in general language would inevitably mean that you take your chances on how the Court would interpret it.

Mollenhoff: And you take your chances on government, and you get into a general fairness doctrine that the television industry is now properly upset about. I am completely in agreement with the television industry with regard to

There isn't a major newspaper in this country that has not been hit by a subpoena or some attempt to pull it into formal process as a result of its news stories.

the fairness doctrine: it's an atrocious thing; it puts the government in a position of making these absurd decisions. But bringing the government in with a shield law will create the same kind of situation for the newspaper industry.

Sacks: All I can say about the virtue or vice of a general statute is that it is perfectly obvious to me that if the Supreme Court had announced exactly that doctrine in the Caldwell case, the press would have regarded it as a great victory, would have been very pleased with it. Most other people would have thought that it was great, and it would then be for the lower courts to work out over time what it meant. A statute could be written that would give us exactly the same thing; but at that point we get loud hollers about how you can't trust the legislature, you can't trust the government, you can't trust anybody! Why you can trust them if the Supreme Court announces it and you can't trust them when the legislature announces it, Mr. Mollenhoff will tell you.

Lewis: Not now! I have to give other people a chance. Dick Wald?

Wald: I just want to say one thing. I think that subjectively speaking we can all draw whatever conclusions we think from this, but we have some twenty shield laws on the books. Thirteen are absolute. We haven't seen the Republic

fall from those shield laws. We haven't seen newspapers being subjected to state regulatory legislation. I don't understand what the statistical basis is for arguing that the shield law is some ogre. We don't have the Mafia starting newspapers, the way Clark suggested in the Senate. We don't have state legislatures starting to regulate them, setting up ethics councils as the first step to a regulated press. Where is all this coming from? We have plenty of experience with state shield laws.

Question: What really bothers me is that there seems to be an underlying assumption that the needs of law enforcement and the needs of the press and the people who ought to know aren't necessarily the same, or are in conflict. My background has only been for twenty years, and the last year has been in organized crime, an area where people can refuse to talk to investigators about a situation that at this point is public and I believe they have got to know about. They have talked to me on condition that they would remain confidential.

I could never get this kind of information from law enforcement people, and the public would never know about it unless I could use sources which would be kept confidential. Why should we be the investigators, the front men, for various law enforcement agencies who can get their information in many ways?

Wald: Well, lady, you are speaking truth, in case you didn't know it. Let me just point out a couple of very quick things about what it is we do as a general thing. One of them is not to stand inside the establishment that is represented by the legislatures and the courts.

One of the very few things that bothers me about asking for an absolute privilege is that I am asking it of people to whom I wish to owe nothing. One of the very few things that is absolutely true is that all prosecutors all the time are

It's all very well and good to say that the First Amendment is going to protect us, but it's no good to tell Bill Farr that after 40 days in jail.

as lazy as anyone will let them be. Except for political ambition, there is little else to drive them. Our general attitude should have been for a very long time what the administration always said it was and that is this stance of an adversary; but our general attitude is instead to enjoy the privilege of closeness to power and to be a part of the establishment. And that establishment always seeks a consensus and always seeks comfort.

Our role, insofar as we have historically defined it—and I speak for a business that's only about twenty years old—is as somebody else said a long time ago, to afflict the comfortable and comfort the afflicted. It is a silly role for an institution as large and profitable as the one we run, and

yet it is a true one. And if we are ever to develop that sense of where we are all going together, one of the things that I think it is important and incumbent upon us to do is to become adversaries and to remain adversaries in the best sense of the word—not as the Administration often uses the word to mean enemy, but to be adversaries.

One of the problems of seeking this shield law that we do seek is that at the present time the drafting committee for the bill has a bi-level bill in which there will be an absolute privilege for investigating agencies but not within the trial courts themselves. The fact of the matter is that we need to fight for the purest thing we can get because otherwise we are going to be mired in that business of working with people whom we shouldn't be working with. Period.

Question: Mr. Lewis, you said that part of your opposition to shield law is that it would not affect Ralph Nader in the same sense it would you. I'm curious as to why it would not, in view of his role as a journalist. My second question is to Mr. Mollenhoff: when he talks about the irresponsibility that Sullivan is seeking, I'd like an example of the irresponsibility.

Lewis: Well, I think there are problems of definition. Perhaps, as Jack informs me, the shield laws as presently drafted would cover Nader. But I think there are real problems of defining who is a journalist if the shield law is for journalists.

The other example I gave is Professor Popkin, who was in fact not involved but was dragged before the grand jury to answer questions about the Pentagon Papers. He was a scholar who happened to be an expert on Vietnamese village life. He knew about the existence of the papers; and I think in terms of the public interest and the constitutional interests, there was just as strong a case for protecting Sam Popkin from disclosing his sources within the government as for protecting Neil Sheehan and his sources within the government.

Partly this comes back to what Al said earlier that I had trouble with—that if the Supreme Court had gone 5 to 4 the other way and had come down for a qualified privilege, as he described it very well, the press would have been very happy, and everybody would have thought that was wonderful. But now when the same kind of statute is suggested, they are not so happy.

Well, I think there is a reason for that, and that is that judicial decisions don't have the same sense of finality. You can decide about Mr. Branzburg and Mr. Caldwell without necessarily saying what you'll do for Professor Popkin. You don't have to face Professor Popkin until later, and you don't have to define the scope of the privilege—you don't have to draw these very important distinctions between the investigative phase of some judicial process and

the trial. You just face what you have before you at the moment and deal with that.

The trouble with legislation is that you have to face all of these questions. They are very hard to resolve; they present political problems within the communications industry as well as with the House and Senate. So I would think it myself very unlikely that you could come up with a satisfactory shield law, whereas I would have agreed with Al completely about that judicial result.

Landau: Well, the definitional problem that split the committee more than anything else was that the establishment press could not go to Congress and ask only for protection

There's not a single case that's gone on grand jury subpoenas that would be protected under the Ervin bill.

for itself because in point of fact statistically the underground press in this country has suffered horrendously from government harassment. They've been closed down in Dallas; they were closed down in Atlanta; they've been prosecuted twice in Los Angeles; they were pushed off the streets in Washington.

And so the definition they tried to write goes this way: any person regularly engaged in the dissemination of news and ideas—and this was meant to protect Mrs. Jones with her mimeograph machine who decided she's going to go after the mayor on an environmental issue. It was attempted to make it as broad as possible to protect the classical 18th Century pamphleteers whom the First Amendment was designed to protect originally.

Question: That would also include Professor Popkin.

Landau: That would have included Professor Popkin, but the Supreme Court turned down Popkin's appeal so. . .

Question: There were other excuses.

Landau: Well, there were, but he did raise a freedom of the press issue in that case.

Mollenhoff: Well, I think the Eagleton case in the last year has dramatized more clearly the type of irresponsibility that's possible under *New York Times v. Sullivan* where Senator Eagleton could not sue regardless of how irresponsible the press was in publishing the story—and then not only the initial irresponsibility, the followup responsibility of continuing to say that there might still be a case to be made.

Question: Are you talking about the Jack Anderson piece?

Mollenhoff: I'm talking about the Jack Anderson column. I did not want to mention his name.

Question: Presumably the argument for a privilege for a newspaper reporter is for developing confidential sources for important information to the public; and the assumption is that unless they are protected, the public will not

get the information—that without that kind of protection, they will be deterred from giving out information to newspapers. The question I have is whether or not, since the *Branzburg* and the *Caldwell* decisions, confidential sources have in fact been deterred from talking. Or has the Watergate shown that confidential sources operate totally without reference to the Supreme Court decision, but out of a personal need to talk to reporters and relay information?

Mollenhoff: Confidential relationships will always depend upon a specific source and the specific reporter he's dealing with. There are a lot of reporters who, regardless of what they say, will be blabbermouths about what information they get and careless about the way they throw it around. But I have had no problem at all. I find many injustices where I can go out and not only take the tip but put it together with the record, because I don't have to reveal my source—and that's the proper way to use it. You get a tip from an agency, somebody who knows what a situation is, and then you go out and try to put it together from the public sources—and then go to the erring public official and ask him about it. That's the first thing you do in fairness, anyway—you go to the public official you're going to charge, and then you rely upon the confidential thing only as a last resort. You don't even mention it in your story. But that's the problem: there are too damn many people who want to say, "See, I got confidential source! See, I got a scoop!"

Landau: I just want to leave you with the statement that we think that there has not been a substantial diminution. We do know that ABC has cancelled a very good investigative piece on the Black Panthers because they could not give a promise of confidentiality. We do know that CBS cancelled a piece on welfare in Atlanta because they could not give a promise of confidentiality. We do know reporters who are burning notes—one reporter in Wounded Knee sent his notes to Canada.

In the Watergate case The New York Times had a very extraordinary situation where a reporter came in and said, "I'm not going to jail. Here are my notes. Do what you want to." But part of the thing is that we've got reporters who have gone to jail for this. And I think it's a little awkward for us to sit here and say that we can let reporters around the country go to jail and not do anything to try to help them—and just say, well, that's part of the system: the First Amendment's going to work it out.

Mollenhoff: Jack, this is a rough game, and it takes a tough participant, and it's been that way all the time. It is always going to be that way. And there isn't any damn shield that will take care of it.



The Case for a National Press Council

It would be hard to find a single issue on which journalists in general would agree. (Here and henceforth I include the journalists of the electronic media along with the print journalists.) We are a cantankerous lot.

I believe I can name two points, however, on which I could summon agreement from a healthy majority of my colleagues. One is that American journalism, whatever may be its faults, is the best in the world. The other point, which may seem to conflict with the first, is that our system of providing public information is under strong and unusual attack just now from various directions.

It would be comforting to believe that we suffer only from a general decline of confidence in all institutions. Americans—and not just young Americans—seem reluctant to believe in anything any more. Maybe we have just become a nation of doubters and detractors. In that case the media might expect to suffer proportionately with religion, government, education, and all the other “establishments.”

The Harris Poll has something disturbing to tell us on that point, however. The organization made two surveys of public confidence in various institutions, one in 1966, the next in November, 1972.

The earlier poll showed that the print media enjoyed the confidence of only 29 per cent of Americans, television only 25 per cent. But worse was yet to come. By 1972 there were only 18 per cent in the survey who gave their confidence to the print media, while television racked up a mere 17 per cent. And to drive the point home, there were only two groups who rated lower on the scale of public confidence: organized labor and the advertising industry.

It is hard to dodge the knotty fact that American journalism is undergoing a crisis of public confidence. Some call it a credibility gap. Where journalists diverge widely is on the best way to meet the challenge.

Opinion on the point falls mainly into three schools.

One holds that we should dog it out on our present line of defense, confident in our own virtue and in the fairness of the public. Our downward slide on the Harris Poll makes that strategy increasingly dangerous.

Another group believes that our troubles stem mainly from unfriendly sources in government. They think we should expend our energies in battling the likes of Spiro

T. Agnew and Clay Whitehead. If such critics can be disarmed or converted, the argument goes, we will have nothing to fear from the public.

But who can believe that Agnew's assault on the media really started all the trouble? As William L. Rivers of Stanford University points out, “a demagogue does not create public disaffection. He feeds on it.” Agnew, in his first famous tirade against TV news coverage, struck a match and threw it into a powder keg of public doubt and distrust. That is the only way he could have provided such an explosion. And the flames threaten the print journalists just as much as their electronic brothers.

There is a third school of thought on how to deal with the credibility gap. I believe it is a growing one.

These journalists feel that we must face our problem and attack it at its source, which is deep within the consciousness of the general public. They are reluctantly convinced

It would be comforting to believe that we suffer only from a general decline of confidence in all institutions.

that we can't defend our historic rights just by storming at our critics, or just by doing the same thing we have always done.

The best long-range defense is of course to practice better and better journalism. But in our present state of siege, many of us believe we must take more visible and dramatic steps to win a decent degree of public trust. Our objective is to convince our readers and viewers that we intend always to treat them fairly, that we are at least honest in the mistakes we make, and that we will listen attentively to criticism instead of acting sulky or scornful.

Here again there are several ways to approach an agreed goal. Some papers have opened up their letter columns wider than ever before, accepting all points of view. Some are giving better access to all shades of opinion through columnists and commentators. Some others, including my own papers, have named an ombudsman to the staff. He is a responsible official whose well-publicized job is to hear complaints of unfairness or inaccuracy in news coverage, (not in editorial opinion). The second half of his duty is to provide public corrections whenever they are justified.

These methods are useful and desirable. Many of us feel, however, that they are still not enough to help us as an industry to regain lost confidence among our customers. A more adventurous experiment is the press council, an unofficial group established to hear complaints and to render opinions for or against the media.

This system has been slowly catching fire in recent years. Local press councils have done creditable jobs in Bend,

Ore., in Redwood City, Cal., and more recently in Honolulu. A state council is at work in Minnesota. Across the border, one is functioning in the Province of Ontario. I was urging the wisdom of local press councils ten years ago at a national Sigma Delta Chi convention. I am still for them, especially in one-ownership towns, and also on the state and regional levels.

I had to be converted, however, to the practicability of a national press council.

I knew that such a body had existed for two decades in Great Britain, with a distinguished retired jurist as chairman and a mixed membership of professionals and laymen. I flew over to London to have a look at its operations. I learned that 75% of the cases it handles have been decided in

But who can believe that Agnew's assault on the media really started all the trouble?

favor of the press. I discovered that a voluntary council was only established after a serious threat of an official body set up by act of Parliament. I found that most publishers had disliked the Press Council at first but that nearly all now support it. I agreed with Vincent Jones of Gannett Newspapers in his conclusion: "Foreigners who study the Press Council usually come away in a mixed mood of admiration and bafflement. It ought not to work, but somehow it does."

All the same, I questioned whether a national council could function effectively in America, which is so much larger and more diverse than Britain. I remembered how the Hutchins Commission Report back in 1947, recommending a form of news council, had foundered on the shoals of press resistance. I saw a valiant effort to organize a grievance procedure under the leadership of Norman Isaacs when he was president of the American Society of Newspaper Editors. The idea appeared seaworthy for a time, but eventually it piled up on the same rocks of tradition and pride.

What converted me to the feasibility of a national press council was the compromise worked out at the Twentieth Century Fund.

The fund asked 14 people to form a task force to study the possibilities of a national council. The joint chairmen were Lucy Wilson Benson, national president of the League of Women Voters, and Judge C. Donald Peterson of the Minnesota Supreme Court. Nine of us were representatives of the media. The remaining five were laymen. We worked for a year and a half before making a report. Here I must give you a quick outline of the plan we proposed.

We recommended that "an independent and private national press council be established to receive, to examine, and to report on complaints concerning the accuracy and fairness of news reporting in the United States, as well as

to initiate studies and report on issues involving the freedom of the press."

The name "National News Council" was later adopted. Its new and significant feature is the limitation of its mandate. It will deal only with the national suppliers of news, not with the hundreds of newspapers and radio and television stations all across the country. These wholesalers of news are the ones which provide the vast bulk of the reportage of news events to the American people. They include the primary news services, AP and UPI; the big secondary suppliers, the New York Times Service, Washington Post-Los Angeles Times Service, Chicago Tribune-New York News Service; two national newspapers, The Wall Street Journal and The Christian Science Monitor; the national networks, including Public Broadcasting Service; Time, Newsweek, and U.S. News-World Report.

The council will consist of 15 persons, appointed in the first instance by the Twentieth Century Fund's independent working committee. Members will serve three-year terms. Six members will be from the media, though not from organizations with which the council will deal. Nine will come from the public sector. A layman will always serve as chairman. The first chairman, who has already accepted, is former Chief Justice Roger Traynor of the California Supreme Court.

A small professional staff of three executives will be employed. A budget of \$400,000 a year is projected. It is hoped that the experiment can be funded for a reasonable trial period of three to five years.

All funds will be provided by a consortium of foundations. No money will be sought or accepted from the media.

All complaints must be submitted in writing. The staff will sift these charges in order to screen out the irrelevant, the trivial, and the merely captious. An effort will be made

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by the staff to settle such issues between the complainant and the organization against which he complains, through personal contact.

Those remaining complaints judged to be of a serious nature will be referred by the staff to a grievance committee. The complainant will be required to satisfy two conditions. He must show that he has tried to obtain a correction from the organization involved, and that he has received "an allegedly inadequate response or no response." Second, the complainant must sign a waiver of his right to use any material brought before the News Council in any legal action.

When a case is accepted by the Press Council, it will be examined in detail. Both sides will be asked to present evidence and introduce such witnesses as they may choose. All hearings will be public. A decision will be publicly rendered, but no penalty or punishment could ever be invoked. There will be no requirement for the press to publish adverse rulings of the council. This might seem to be a loophole, but in 20 years in Britain only four papers, all small ones, have refused to publish such findings. The information has reached the public in all such cases through other sources.

The report has brought a mixed reaction from the media, all prior to the actual formation of a News Council. Adverse comments have been strongly and sometimes shrilly stated. Favorable ones have been more restrained, in proper acknowledgment of the fact that the plan is new and experimental. It would be hard to quarrel with the moderate judgment of The Chicago Tribune: "The new council must not count on the support of the press. This is something it will have to prove that it deserves." A chance to provide that proof, I might add, is all that the council is seeking.

I'll give you some of the negative comments first. The one that created the most stir came from A. O. Sulzberger, publisher of The New York Times. His wire service but not his paper would be within the purview of the News Council.

Mr. Sulzberger sent a memorandum to his staff stating that "we have decided not to participate in the work of the council. We will not furnish information or explanations to the council." While avowing "respect for the good intentions of the Twentieth Century Fund and its task force," he cites several reasons for non-compliance with the council's procedures. Compliance would involve "time-consuming investigations and explanations." He acknowledges that a "real threat" exists to press freedom, but holds that an effective defense "does not begin with an unjustified confession that our shortcomings are such that we need monitoring by a press council."

Here I must note that the News Council does not ask for any such "confession of shortcomings" from the New York Times Service or any other agency. All it seeks is the right to bring any serious complaint against the service to the Management, which can then provide such information as it sees fit and defend its position in its own way.

Sulzberger is misled on another important point. He declares that "we feel it is wrong to suggest that reporters and editors who are willing to risk jail to protect their sources would—or should—be ready to disclose them to the council." But no such suggestion has been made. The council has specifically pledged itself to "observe the principle of the confidentiality of news sources." Further, its by-laws state that it shall "receive only such information as is volun-

tarily disclosed to it, and shall have no power to compel the production of evidence by any party or witness."

Tom Wicker has supported his publisher in a column which raises the issue of the Pentagon Papers. He seems to feel that a press council might have interfered with the freedom of The New York Times to publish that controversial material.

What recourse has a reader in a one-owner-ship town if he "doesn't like what he sees" in his paper?

Here is what he says: "It is well-known that numerous responsible, honorable and fair-minded persons disagreed with The Times's decision to publish the Pentagon Papers. That did not make them right. It is entirely conceivable that a press council numbering such men and women among its members could have either condemned that publication or at least issued a divided report. That would have had great public weight. Can the American press, with its constitutional responsibilities, really cooperate in such a potential limitation upon its rights to publish, and upon its willingness to do so fearlessly and powerfully?"

This strikes me as an odd argument. Mr. Wicker tacitly acknowledges that a press council would have had no legal right to interfere with the publication of the Pentagon Papers. As to moral force, would it be dangerous to a major newspaper for an official body to articulate doubts that Wicker notes were held by "numerous responsible, honorable and fair-minded persons"? The Times would still have been free to make its own moral judgment, just as it did in the actual event. I can't accept the implication that a great and responsible newspaper would need to fear the actions of an equally responsible council.

The Los Angeles Times contends editorially that "it is unreasonable to expect the press to join in the work of the News Council. By joining," it continues, "a newspaper would in effect agree in advance to abide by the group's judgment." But no newspaper or other news organization is asked to "join" the council, or to give it either moral or financial support. Nobody is asked to "abide by its judgments." Nobody is even under any obligation to publish the findings of the council, though it would have to be assumed that the public would find access elsewhere to such information.

Some of the negative comments are more emotional than reasoned. The New York Daily News announces editorially: "We don't care how much the Fund prates about its virtuous intentions. This is a sneak attempt at press regulation . . . Newspapermen have fought their own battles—and done a damned good job of it—for years without the aid of self-appointed meddlers."

The Phoenix (Ariz.) Republic declares that "the people are the best press critics." This popular theme is expanded by The Miami Herald: "Our favorite monitor, and one who does not enjoy coercive power, is the reader of this newspaper. If he does not like what he sees he can tell us. If our response is unsatisfactory he can punish us by dropping The Herald. It's been done."

This line of argument would be easier to accept if we had reason to believe that the public was satisfied with present methods of registering grievances against the media. But look at the evidence of the Harris Poll and other similar

I believe this traditional stone-walling has gotten us into a lot of the trouble we are now experiencing with our readers and viewers.

indications. They suggest that a large majority of Americans distrust their media of information, so it stands to reason that they cannot feel they have effective means of establishing their complaints. And Miami, it must be remembered, is one of a small and dwindling number of communities which still have competing daily newspapers. What recourse has a reader in a one-ownership town if he "doesn't like what he sees" in his paper? Does he give up reading a local sheet?

There have been favorable comments to balance the negative ones. Herbert Brucker of Hartford urges recognition that "all human institutions, the press included, are run by fallible human beings. Therefore why not set up a group of some stature, a group with no ax to grind . . . to evaluate complaints of error?"

The Denver Post believes that a council can be "a further bulwark of freedom." The Cleveland Plain Dealer avows "enough confidence in the strength and flexibility of our profession to believe that it can only profit from informed criticism." The Lincoln (Neb.) Star asserts that "the council could turn out to be an invaluable ally in gaining better public understanding of what the media are trying to do." The Des Moines Register declares that "the communications media have nothing to fear from independent responsible evaluation of their performance." The St. Louis Post-Dispatch holds that "as a powerful force in public affairs, the press itself should be subject to the educational check and balance of an agency which would both help to redress the grievances and vindicate the media when they are unfairly castigated."

It is not yet possible to tell whether the National News Council will be given a chance to prove itself.

I am cautiously optimistic over the willingness of several major suppliers of news to work with the council. These include AP, UPI, CBS, The Washington Post, Christian

Science Monitor and Wall Street Journal. Their reactions to the proposal range from guarded acquiescence to actual endorsement.

Warren Phillips of The Wall Street Journal warns that "public bodies set up as watchdogs over the press carry the potential for censorship or intimidation over the long run." But he adds a key phrase: "We will cooperate experimentally on a case-by-case basis." That is all the council asks.

Wes Gallagher of AP feels that "a public body overseeing the news, however well intentioned, is itself subject to dangers of partisanship." Then he makes the important pledge: "as a matter of long-standing policy, the AP responds to all questions raised about its news report by any responsible source." He indicates that this policy would apply to the council. John Hughes of The Christian Science Monitor is fully affirmative in his response. He says: "I think that probably newspapers are going to come out of such hearings much better than many people believe." He is no doubt aware that that has been the British experience.

I wish that so many of the doubts expressed about the council were not based on misunderstanding or ignorance of what the council proposed to do.

I wish, too, that an attitude of instant defensiveness did not mark so much journalistic reaction to any form of criticism. I believe this traditional stone-walling has gotten us into a lot of the trouble we are now experiencing with our readers and viewers.

I believe we would make ourselves stronger with them if we gave an impression of full confidence in our mission, tinged with a little decent humility on our ability to carry it out; if we would truly listen to criticism; if we would act more like the fallible human beings we are, and less like self-satisfied arbiters of judgment, morality and taste.

The National News Council could be a historic breakthrough, though no such result can possibly be assured. It is something new and difficult, but with a major potential. Benjamin C. Bradlee of The Washington Post may be right in saying: "It's an interesting experiment, and I don't think it will work." The Milwaukee Journal says much the same thing in a more affirmative way: "It adds up to an interesting and needed experiment."

The present relationship between the media and the public is not satisfactory to either side. Then why not try a new approach for a few experimental years? If it fails, it can be discarded with loss only to the foundations that footed the bills. But if it succeeds, it could strengthen a pillar of the American social system—the public's right to a free press.

—Barry Bingham, Sr.

The Craft of the Political Reporter Abroad

Editor's Note: A quarter century ago a shrewd and gifted reporter observed the Chinese revolution close-up and came to conclusions that displeased his employers. He was eventually fired for his conclusions, then much later won reinstatement by the U.S. Supreme Court, and was finally prematurely retired since his employers declined to promote him. In January 1973 his peers and successors paid him an unprecedented tribute: he was guest of honor, representing others who had met his same fate, at a gala luncheon for 300 in (figuratively) the Board Room of his old place of employment.

John S. Service was a political reporter for the U.S. Government and, in particular, the Department of State. What happened to him is different in detail but not in thrust from what happened to many—government officials, academics, and journalists—who reported on the Chinese revolution prior to 1949.

At the January luncheon John Service had some important things to say about the craft of reporting, inside or outside government. His remarks will be especially significant to those who worry about the role of reporters—inside and outside—in that most recent American intervention in Asian revolution, the Indochina War.

The group of officers you are remembering today have some things in common—beyond shared experiences in China and in post-China. One of these is that in China we were primarily political reporting officers. But another is that we are all strong-minded individuals. To pretend to speak for this group would be foolhardy—and presumptuous. I speak, then, for myself alone.

If, by some miracle, the clock could be turned back and I had my life to relive, I would still wish to be a Foreign Service officer. But if denied that choice, my second wish would be a career as a foreign correspondent. The link, of course, is the absorbing quest to observe, understand, and report in depth what is really happening in a foreign society: to get beneath the superficial, pick up the important, underlying trends—and from that basis to try to look into the future.

Classified policy matters aside, this common reporting goal often makes natural allies of the FSO and press abroad. Many of the best brains I've picked have been those of newspapermen: American, Chinese, and foreign. A junior officer, nebulously assigned to the American Army in Chungking, would be told to "get lost" if he sought interviews with august figures such as T. V. Soong or Generalis-

simo Chiang. The same questions might just as well—or even better—be put by a representative of the world press, who *could* get a private interview. It was my good fortune that we had a remarkably able group of correspondents in Chungking during the war: my debt to them, as friends and colleagues, is immense.

Obviously, reporting is not merely a glamorous, exciting pastime. It is utterly basic to the intelligent formulation of a realistic foreign policy. And to keeping it up-to-date. Without facts, and an understanding of those facts (which may often be tenuous and largely intangible because they involve people and attitudes rather than quantifiable items in the national balance sheet), our policy makers are flying blind. And even being hard-nosed in a condition of blindness is not to be recommended.

Of course, the Foreign Service officer has many functions other than political reporting: you can name them as well as I. I submit, though, that none is more vital to the country, or more rewarding to the individual, than reporting. It was the best, most satisfying part of my own career. But, again, I was fortunate in having some unusual opportunities.

Twenty-three hundred years ago, a Chinese scholar of strategy said: Know your enemy, know yourself; a hundred battles without danger. Much of our policy toward China and Vietnam since World War II has been a negative example of Sun Tzu's wisdom. Of course, the other side has also had some problems knowing us.

But the value of reporting is far broader than "knowing the enemy." We must also know and understand the problems and attitudes of friends, and neutrals—if we are to continue to have cooperative friends, and neutrals—if we are to continue to have cooperative friends and non-antagonistic neutrals.

Reporting obviously varies. From some countries (such as the developed, free press countries of Western Europe), the flow of information is so great that Foreign Service reporting may play a relatively unimportant role. Elsewhere, reporting may have to be done from a distance, or under severe limitations. Kremlinology, refugee interviews, the piecing together of rumors try to fill the gap. History and social science research can make a contribution, but may often apply more to the past than the present.

Foreign Service reporting becomes vital as we move toward countries that may be small, less developed, non-white, or with cultures and institutions drastically different from our own.

I have yet to learn of a computerized prediction that Mao's people-based forces would defeat the vastly larger, better-equipped, American-trained armies of Chiang Kai-shek; or that Mao would turn against his party and carry

the country with him in the astonishing Cultural Revolution. There is a limit but also much truth in Mao's idea that man and his spirit are more important than machines.

I recently heard a talk by a man who has spent many years, up to the present, as a China-watcher in Hong Kong. His gist was that all the recent American visitors to China

Many of the best brains I've picked have been those of newspapermen: American, Chinese, and foreign.

since ping-pong diplomacy and the President's visit had learned little that was not already known to his craft in Hong Kong. When the chance came for questions, I had two: Had he applied for a visa to China? And, if granted, would he go? The answer to both was an unqualified affirmative.

Confucius seems *not* to have said: "One picture is worth a thousand words." But perhaps one can coin another phrase: one close look is worth a thousand distant guesses. There is no real substitute for being on the ground. The briefings and lectures I listened to during my recent trip to China meant less than being able freely to walk city streets and country paths and to travel some 6500 miles—with eyes and ears open.

Political reporting, if worthy of the name, is nonpolitical. My two chiefs, Ambassadors Gauss and General Stilwell, both anathema to the China Lobby, were both—so far as I know—staunch, life-long Republicans. But their views and reports of the facts in China were inseparable from those of their subordinates whose inclination in American affairs might be Democratic or plain liberal. We who served in China during the 1940s have awaited—for what has seemed an excessively long time—the publication of the annual China volumes in the fat, red-bound series, *Foreign Relations of the United States*. They have just reached 1947. The product has been worth a wait. These are an admirable, objective, and complete presentation of the historical record. There has been no attempt, so far as I can see, to doctor that record, to make it look better than it actually was. Everything is there: including reports and views that pointed in directions other than the policy finally adopted. Perhaps I may be bold here with a collective "old China hands" word of appreciation for the uncompromising honesty and high professional quality of these works of the Historical Office. Personally, I shall also look forward with anticipation—hopefully before 1990—to reading what Foreign Service officers on the ground in Vietnam were actually reporting in 1963, 1964, and 1965.

One notable thing about the record shown in the *Foreign Relations* volumes is the broad unanimity in the Foreign

Service political reporting from China. A few of us (like John Davies, Ray Ludden, and myself) may have been more ready to propose policy conclusions and recommendations. But in substance, our reports, though they received publicity and unmerited notoriety, were not different from those of the many other Foreign Service officers reporting from the Embassy and all over the country. I say this, of course, not to spread the onus; but to suggest that any credit for being "right" must be widely shared.

Successive volumes extend the picture. When the "first generation" of reporters became unacceptable to the fixed ideas of Ambassador Hurley, new men were brought in: men with "fresh minds"—supposedly without "bias" or "preconceptions." To meet these standards, it was obviously necessary to assign men who had not been recently in China. Many were assigned without any previous experience in the country. But very soon the reports of all these men came to sound very much like those of the men they had replaced. The "truth" of China did not change.

There's more to reporting, of course, than merely being on the ground. In October 1946 I arrived in Wellington, New Zealand, as Deputy Chief of Mission. It was just before a national election. Ambassador Avra Warren, an old professional, had assigned a young, new-minted third secretary the task of making an analysis and electoral prediction. Pouch day was upon us—our last chance to get a prediction to Washington. The Ambassador thought the third secretary a capable young man—"likely to do well in the Service"—but had grave reservations about his prognosis. The third secretary conceded that the election would

Reporting . . . is utterly basic to the intelligent formulation of a realistic foreign policy.

be close, but firmly concluded that Labour (the incumbents) would win by certainly three, and probably four seats. "Hell," said the Ambassador, "almost all the press supports the Tories; everyone I know outside the government is going to vote Tory; and everyone tells me the Tories are going to win." Furthermore, the Ambassador had a theory (call it history or political science) that democracies change parties after a long war. The Democrats, he pointed out, lost in 1920; and Winston Churchill in 1945.

My *immediate* task was to read the report and advise whether it should go forward. I knew nothing about New Zealand politics. Having transferred direct from Tokyo, there had not even been the chance for a briefing by the country desk. So I talked to the understandably up-tight third secretary about his sources, and how he had gone about collecting the information for what appeared to be a superbly documented, realistic analysis. On this basis, I

told the Ambassador that I thought we should send it. In contrast to at least one other Ambassador I have known, he took my advice.

The wait seemed long but election day finally came. Labour did win by four seats, but one seat was so close that for a while it seemed that the margin might be only three.

A few comments. Most important, the report was right—right on the button. That's what the game is all about. But more. The officer had a talent for developing contact among the right people—though in this case the right people were clearly to the left of the Ambassador's circle. Furthermore, those contacts led to the development of useful information; we've all seen high-powered social types who "know everybody" but somehow lack a nose for news. And finally, he knew what to do with the information. Some officers accumulate a terrific amount of data in their heads or personal files; but it doesn't mean a thing in the Department if they can't organize it to produce a cogent and timely report.

Also the reporting officer had done his work so well that he had the courage of his conclusions—despite the intimidating effect (even if not intended) of the Ambassador's doubts. The Ambassador deserves credit, too, for a broad concept of reporting, and for willingness to trust the judgment of the reporting officer.

Incidentally, the young third secretary was Marshall Green [Assistant Secretary of State for East Asian and Pacific Affairs, 1969-73]. The Ambassador's early judgment, that he was a man of promise, was indeed correct.

We have been looking at reporting from the American angle. Perhaps a New Zealand echo of this story may not be irrelevant. In 1948, as some of us will recall, everyone (and I mean everyone) was sure that Truman was going to lose. In a conversation with an officer from New Zealand External Affairs a few weeks before the election, I was surprised to have him say: "What are you chaps so excited about? Our Embassy in Washington tells us that Truman is going to win."

Obviously, to be most effective, the reporting officer needs some freedoms. If his reporting is to get beyond clipping newspapers and collecting published statistics, he should not be overly tied to a desk. If he is going to be able to travel about the countryside and succeed in getting close to people, he may need time, encouragement, and facilities for intensive country specialization and language training—and some assurance that the time committed to gaining such in-depth specialization will not penalize him in the competitive rat-race for promotion. Finally, he needs freedom in his contacts in order to get beyond the local elites and the particular party that, for the time being, may be holding (or monopolizing) power.

My assignment at the Embassy in Chungking and later

for two years with the Army gave me these freedoms in what—for the Foreign Service—was perhaps an almost unprecedented degree. Without those freedoms, my reporting would have been much more limited—and you probably would not have invited me here today.

It is interesting, though, to recall that when I first suggested in January 1943 that the Kuomintang-Communist struggle for power was going to engulf all policy considerations in China, and that the only adequate way to inform ourselves on the attitudes and strength of the Communists

There is a limit but also much truth in Mao's idea that man and his spirit are more important than machines.

was to send Foreign Service reporting officers to Yen-an, my proposal was met in the top echelons of FE [Division of Far Eastern Affairs] with much tongue-clucking and grave head-shaking—in a negative direction. I and others did, of course, eventually get to Yen-an. But only because there was a change of guard in FE (with men recently in touch with the actual situation in China—such as John Carter Vincent—taking over). And also because, while State approved and desired our going there, it could be done under the convenient guise of our working for the U.S. Army.

There are still countries—in Latin America, Africa, and parts of Asia—where the situation is not unlike that in China during the 1940's. If we keep ourselves in ignorance and out of touch with new popular movements and potentially revolutionary situations, we may find ourselves again missing the boat. The proper measure of such reporting should not be popular sentiment in the United States as reflected in some segments of the press, or by some Congressional committees not charged with foreign relations. The legacy of Senator Joe McCarthy still needs, in some respects, to be shed.

Sometimes, of course, the reporting is in vain. It may, for various reasons be ignored—or, in effect, rejected—by the President and policy-makers in Washington. This has been well discussed by Barbara Tuchman. But, from the viewpoint of the Department, this should not reduce the value of reporting.

There are many countries, as I have noted, where—despite the information explosion of modern news media and academic research—the Foreign Service reporter is still in a position to be the best, most current, and only steadily available source of reliable information. For State to reduce its flow of sound, reliable reporting from the field is, I suggest, a sure method of slow suicide.

Where does the reporting officer stand in all this? First of all, he has his responsibility to State and the American government. That responsibility is to report the facts conscientiously as he finds them. If the government dislikes or ignores his reports, that does not relieve him from his

Good reporting . . . involves more than a mere recital of facts: it also means an ability and willingness to draw conclusions from those facts.

responsibility as a reporting officer. When Ambassador Hurley resigned in 1945 with strong charges against the reporting of some of us in China, Secretary of State Byrnes replied:

I should be profoundly unhappy to learn that an officer of the Department of State, within or without the Foreign Service, might feel bound to refrain from submitting through proper channels an honest report or recommendation for fear of offending me or anyone else in the Department. If that day should arrive, I will have lost the very essence of the assistance and guidance I require for the successful discharge of the heavy responsibilities of my office.

But the reporter is also in a sense, writing for himself—for his own conception of what good reporting should be, and for his own integrity. Most definitions of good reporting would suggest that it involves more than a mere recital of facts: it also means an ability and willingness to draw conclusions from those facts. If one shirks from having to write reports that may lead to unpopular conclusions, then perhaps reporting is not your line.

The reporter owes something, too, to history. He watches history being made, wherever he is. It may be a relatively quiet backwater. Or he may be very close to momentous events—as I was to the world-changing revolution of a half billion people—that make insignificant his role as an individual. But whatever the magnitude of the events he observes, or his distance from their vortex, the reports he writes today will be part of the history of tomorrow. And if he writes them when he is young enough, he may see that tomorrow come.

I wish I could say, after all this, that the Foreign service itself has always supported the value of reporting and area expertise. I imagine we can all think of negative examples: they have not been few. Let me take an example from my own branch of the Service.

When the Sino-Japanese War commenced and the Japanese occupied Shantung in 1937 and 1938, our consul in

Tsingtao was Samuel Sokobin. He was a capable, conscientious officer—a China specialist of long experience. As often the case, he had come to have a genuine liking and respect for the Chinese. Eventually, Chinese guerrillas began to be active in Shantung. Soon the Chinese press was carrying dramatic accounts of heroic exploits in crippling the Japanese-held railways and denying the Japanese the important agricultural and mineral resources of the province. In his post at the main port, and making intelligent use of excellent contacts in shipping and business circles, Sokobin came to realize the gross exaggeration in these claims. The Japanese were maintaining and even increasing the flow of these strategic materials to Japan.

Sobokin did not consider that a responsible officer needed to be told when (or what) to report. He commenced a series of reports thoroughly documenting the success of the Japanese in countering the guerrillas and in exploiting the resources of their occupied territory. He should, of course, have been commended; but the reaction his reports received was very different. He was upsetting the picture, then the accepted line, of a Chinese resistance not only brave but also effective. Sobokin's reports were harshly depreciated. He was cruelly and ridiculously accused of being "pro-Japanese." And, with a perverted idea of justice, his transfer was arranged to Kobe, Japan. He was never, thereafter, returned to service in China.

Sokobin's career might never have reached the heights—one can never know. But in 1947 he finished 33½ years of loyal service as Class 3 and consul in Birmingham.

This was long before McCarthy had become a senator. The United States was neutral in the Sino-Japanese War, and there was no outside high level pressure. It was entirely an internal State Department affair: in fact, it was done by the China branch to one of their own. Perhaps, in this matter of valuing the integrity and honesty of field reporting, few of us are beyond reproach.

—John S. Service

. . . When those bright people who framed the Constitution set us running down those rails that lead to today, they set up conflicting rights . . .

—Richard C. Wald
Panelist for the
First Amendment discussion

VIEWPOINT

Science and the Reporter

On St. Patrick's Day 1971 Senator William Proxmire, a Wisconsin Democrat, sat down at a table on Capitol Hill to begin a news conference. With him to lend the senator's remarks credence were a Boston dermatologist, an M.I.T. meteorologist and a young atmospheric scientist from the University of Washington.

The night before President and Mrs. Nixon had announced the betrothal of their Tricia, a surprise to anyone just awakened from a six-month nap at the back of a deep cave. In less than a week Frank Sinatra would proclaim his retirement. Also, more to the point, the next day the U.S. House of Representatives would vote 215-204 to scrap the SST. The Senate would concur 51-46 six days later.

Proxmire was releasing letters solicited from 29 dermatologists and atmospheric scientists who evaluated testimony March 2 before the House Appropriations Committee. In that testimony, the words tumbling out so fast the congressmen pleaded for less speed and more clarity, a little-known Arizona scientist had raised the possibility that a fleet of SSTs would cause 6,000 to 10,000 additional cases of skin cancer, a disease which already afflicted 115,000 people a year.

Before the afternoon ended, a committee member reminded his colleagues that Dr. James E. McDonald was the same scientist who had appeared before Congress a few years earlier to warn of a possible link between radar disturbances from unidentified flying objects and power failures. Not surprisingly, McDonald's testimony didn't attract much attention.

So Proxmire, ever ready to flog the hated SST, circulated McDonald's hypothesis to prominent skin cancer, bi-

ology and atmospheric science experts. A substantial majority who replied found the hypothesis plausible. No one refuted it. There was general agreement that the University of Arizona scientist had raised a serious question that had to be answered before man pressed a new technology fullscale upon the earth.

But lest the morning affair leave reporters overly attentive to their watches, Proxmire played his trump card. He accused the White House of gagging a National Cancer Institute scientist who strongly supported McDonald and had agreed to attend the news conference.

Ron Ziegler rushed out a denial, accusing Proxmire of "a shocking attempt to create fear." Reached later, the scientist explained that he couldn't accommodate his schedule when Proxmire postponed the news conference one day.

So the reporters had their story.

But it is my sad duty to report here that those who wrote that day about SSTs, skin cancer and gagged scientists failed in their duty to the public. That is to say, newspaper readers were disappointed if they hoped to find out whether there really were serious unanswered questions about SSTs and skin cancer or if they simply were victims of blatant environmental emotionalism.

The coverage of this minor incident in the SST debate illustrates a problem journalism must solve if the public is to be intelligently informed about technical issues embroiled in political maneuvering.

In the last quarter century technical considerations have played a major role in many government decisions ranging from closing the "missile gap" to the banning of cyclamates. So great is the demand for technical advice that thousands of panels have advised government at every level.

But in the last 10 years or so, the scientific community has realized not only that good advice was often ignored, but that officials sometimes suppressed such advice in order to aid a pet project. As a result some scientists began to speak

out, creating issues like the SST, ABM, pesticide and herbicide control and radiation exposure.

Unfortunately for the public, the press has fallen behind during these debates in terms of separating the scientific wheat from the chaff. It often fails to distinguish among what scientists know as accepted fact, what they lean toward in a loose consensus open to revision, and what remains unknown and in need of further research.

To illustrate, let's go back to the SST and Dr. McDonald, with apologies for the tiny bit of jargon necessary to the story.

When President Nixon decided in 1969 to continue SST development, environmentalists leaped to the ramparts and blazed away with every weapon they could find. The arsenal included vague assertions that SST exhaust would upset the delicate chemistry in the stratosphere, the stagnant, rarefied upper atmosphere where the airplane would fly. The concern was that ozone there (three oxygen atoms bound into a molecule) would diminish, letting more ultraviolet radiation from the sun strike the earth, one consequence of which would be more skin cancer.

In mid-1970, an M.I.T.-sponsored group concluded that an SST fleet might reduce ozone two per cent. But this would be insignificant, they said, because apparent natural ozone variations were greater.

At Tucson, McDonald pondered the M.I.T. findings, then began calculations of his own, telephoning experts about the country, digging into medical journals and even traveling to a famed Texas cancer hospital to confer with a team of photobiologists.

While puzzling over a discrepancy in available data, he stumbled upon the idea of an "amplification factor" that seemed to indicate a tiny decrease in ozone would be amplified into a much larger skin cancer rise. McDonald conservatively estimated the amplification factor between six and 10.

That meant a two per cent ozone decrease might cause a 12 to 20 per cent skin cancer increase, or 6,000 to 10,000 new cases a year in the U.S. A four per cent ozone decrease, which a Boeing Aircraft Co. scientist had predicted, might increase skin cancer as much as 40 per cent. (Although few people die from skin cancer, all volunteers who wish to take the extra chance of getting it should stop forward.)

Genuinely concerned, McDonald presented his findings in late November to the Department of Transportation, whose SST environmental impact statement dismissed the skin cancer question. DOT officials thanked him and said, in effect, "Don't call us. We'll call you."

Next McDonald talked to the climate and weather modification panel, of which he was a member, at the National Academy of Sciences. His colleagues were interested but suggested more calculations and circulation of his findings among other experts for comment.

By March, even more convinced, McDonald grew alarmed that Congress would decide the SST issue without having available this new evidence of a possible long range side effect. So he testified.

Two years of research have proved McDonald was correct in his concern. More research remains, but the scientific community is quite concerned now about the SST's effect upon the stratosphere and solar radiation.

Read accounts of the news conference in 20-plus of America's largest newspapers, and it's painfully obvious few reporters read McDonald's 3,700 words of testimony entered into the House committee record. Most of the 2500 words in the 29 letters also escaped scrutiny.

Predictably, the stories focused upon the Proxmire-White House exchange, mentioning the skin cancer question as an ancillary. The reader received an impression of more political gymnastics in which anti-SST scientists were using

their "expertise" to batter the airplane. The suspicion lingers that Proxmire would have had a non-event if the cancer scientist hadn't dropped out.

I'm convinced that many readers would have welcomed the facts. For example, there was absolutely no disagreement among scientists that more ultraviolet radiation would increase skin cancer. There was a strong consensus, qualified by the need for more research, that a fleet of SSTs could reduce stratospheric ozone. The critical point was McDonald's amplification factor, which many letter writers agreed was possible and might easily be tested.

I'm unaware of a newspaper reader that got this. And before the rocks start flying at my windows, I hasten to add that the blame doesn't necessarily fall upon the reporters that drew Proxmire that day. The senator had left no stone unturned in his battle against the airplane. And now, a scientist who once warned Congress about flying saucers was claiming SSTs might cause skin cancer. With the House vote only 24 hours away, the affair smacked of propaganda.

So it was reported as a political event, charge against countercharge. The losers were the public and an honest scientist concerned about a newly discovered possible side effect of a pending technology.

But that's my point. Journalism must find a new way to report complicated technical issues in government, be it an SST, a state legislature considering power plant siting or a city council debating mosquito control.

There are political squabbles in which it is adequate to report claims from both sides and let the reader sort out the truth. But in many technical issues the public isn't particularly served by filtering out the most preposterous-sounding claims on an intuitive basis and placing the remaining contentious points side by side.

Balancing the remarks of scientist X against those of scientist Y leaves the

reader to sort out only confusion. Quoting the politician or bureaucrat about *his* opinions of the merits of a scientific argument is like asking a hungry wolf if he prefers dogfood flavored with liver or horsemeat.

The problem is complicated further by scientists who forsake scholarly objectivity in the interest of a political cause. The reporter must be careful about which technical "expert" he listens to.

Forging more intelligent technical-political reporting will be tough. The only substantial solution is for the reporter covering a technical issue to spend more time digging in the library.

Any scientist worth his salt will back up an opinion with solid references in technical journals. Ask for the references and study them. Seek out other experts in the field and ask their opinion of the references. These other scientists may be too reserved to comment upon their colleague or his latest views, but they won't hesitate to comment upon the soundness of his references.

Challenge every scientist pushing a particular political alternative to separate explicitly his personal opinions from recognized scientific fact. Even good scientists whose judgment is caught in a political cause retain a basic respect for scientific fact.

Reporters already covering politics are first choice to develop better technical-political journalism. But the people who make their assignments must realize the impossibility of scurrying from hearing to chamber to hallway news conference and then, deadline hovering, to look up Leovy's wet photolysis ozone model in the *Journal of Atmospheric Science*.

Science writers might give up some of their time explaining why the hip bone is connected to the leg bone and explain in the appropriate cases what the politicians are fussing about.

Stratospheric ozone didn't worry James Madison, but he understood his country's political system when he said:

Knowledge will forever govern ignorance. And a people who mean to be their own governors must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it is but the prologue to a farce or tragedy or both.

Some journalists always will consider the job well done if they report only that Senator Foghorn said his study of the technical aspects of the issue convinced him how to vote. How much better if the reporter, after studying the data, can tell the public whether the senator was right.

—William Stockton

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A Return to Serious Newspapering

(Editor's Note: The following remarks are excerpted from a speech delivered in April by Thomas Winship, Editor of The Boston Globe, at the annual luncheon of the Maine Press Association.)

It will be a long day before the Administration again will convince the public that the press goes too far; that its First Amendment freedoms must be curbed; that the President can keep his own house in order. Now we can return to serious newspapering, instead of ducking White House brickbats.

Who was it that made the White House face Watergate honestly—the President? No, sir. It was a newspaper that had suffered three years of vicious abuse, Agnew rhetoric and even bold threats to its cash drawer—The Washington Post.

It was a one-newspaper investigative effort of highly professional quality that for six lonely months had little public and press support. It was conducted by the most skillful, toughest editor in America, Ben Bradlee, the Post's executive editor, and incidentally a proud New Englander. And interesting to all of us, Bradlee's Watergate team was not a big group of high-priced veteran sleuths on his staff. Rather, the Watergate crew that forced the Nixon Administration to its knees this week consisted of two young, inexperienced Post reporters named Bob Woodward and Carl Bernstein. But these two reporters, working under the ever-so-brave umbrella of Bradlee and publisher Katharine Graham, had those all too-rare qualities of *hunger* and *fire in the belly* to get at the truth.

You remember what Ron Ziegler told us over the past many weeks about the Post stories, and how we all almost gleefully printed it without question.

On four different occasions he called them:

"It's irresponsible reporting."

"Absolutely no one on the White House staff was involved."

"The White House is innocent of all charges."

"A blatant effort at character assassination."

And Chuck Colson accused Ben Bradlee in a Maine speech of fabricating Watergate out of "Georgetown cocktail party gossip."

Because most of us are in the news business, it is important that we do not let ourselves ease up on this story. There is a lesson to be learned and re-learned about Watergate because it goes to the very heart of the role of the free press,

. . . The Post's most serious allies in bringing Watergate to public consciousness were the great conservative voices of the country—Bill Buckley, Barry Goldwater, Jim Kilpatrick, and Clark MacGregor.

its investigative function and its gullibility for, and blind acceptance of official statements. Whose side should the press be on—the side of the public office holder or the side of the public in times of a strong government vs. the people controversy? Or on the fence? Are we doing our job when we print as assumed fact of what some official said or do not print *anything* because of certain personal prejudices, which we, as editors, may have on the issue? How many of you editors covered the Watergate on page one, or carried it at all, with any regularity, before the election, let alone after it? But do not feel too guilty because why did it take nearly a month after the daily Washington Post stories by Bernstein and Woodward for The New York Times to decide Watergate was worth investing some investigative talent?

Maybe the public laughed off Watergate until recently because of our casual press attention. I'm interested that the Post's most serious allies in bringing Watergate to public consciousness were the great conservative voices of the country—Bill Buckley, Barry Goldwater, Jim Kilpatrick, and Clark MacGregor.

So I salute most proudly the recently much maligned Washington Post—mighty as it is—for its brilliant investigative job. Remember, there is no more impenetrable target than the Presidency and its attendant snake oil salesmen. Two reporters, an editor, and a publisher pierced the White House smoke screen. That is the ultimate in investigative reporting. And in so doing, they wrote a finale to the four-year-old White House-directed campaign that the First Amendment of the Constitution needs tightening.

I have a slight insight into how chilly the water can be when a newspaper takes on raw power. The Boston Globe ran into some of it, when it did battle with the Kennedy family a few years ago. That was when we prevented the U.S. Senate from naming a Kennedy family friend to the federal bench. That venture was worth it because it was good for decent government and very good for the jour-

nalistic soul. We won all the prizes for our effort and I am sure the Post will win even more for its far tougher job.

With Watergate firmly pasted on the wall, and I submit, the First Amendment skirmish mostly behind us, this is an appropriate time for a brief look at the overall state of the press. I have some suggestions, too.

Shouldn't we be more bullish today than ever about recent trends of the print press?

The writing is better. It is more interesting, more literate, more free and more frank than it was ten years ago. I guess it is simply a reflection of the genetic fact that our kids are much brighter than we are.

The editing is much better. . . . There was a time when I felt the younger reporters were slipping fast ones past the editors; that they were out-smarting the various desks. Not so, by and large, today. Most copy desks now have younger and more motivated people and more women, which is a plus. Most newspapers still, however, are short-changing the deskmen, both where it counts and in status. With each technological breakthrough, deskmen become more and more focal to the credibility and acceptance of our newspapers. I think we should give our copy editors at least the same continuing educational and travel opportunities as we long have given our gifted writers.

I think further . . . that there should be a greater wage differential between the journeymen copy editor and the journeymen reporter. Newspaper deskmen too long have

Shouldn't we be more bullish today than ever about recent trends of the print press?

been second-class citizens. All work, no glory and final responsibility deserves comparatively more pay than they get today in most newspaper shops.

Make-up and design in newspapers generally have made a major breakthrough. My only regret is that so many of us have bought the same new suit of clothes. Attractive, yes, with the dropped rules, Bodoni type face and lots of white space. I say we need even bolder changes in graphics and more appealing news and ad layouts. To this end I think every major newspaper should have a well paid, high ranking corporate graphic arts director. Your graphics man should come preferably from outside the newspaper business because that is where this new discipline has been developed. Why in earth should a newsgatherer, an editor or typesetter know enough about pure art and design, especially in an industry so famous for timidity about change and unattractive, staid printing. The print press must lure readers through the most inviting presentation possible in this wildly hectic age.

I'm feeling hopeful also, because of a purely instinctive feeling that the print press' standing with the public vis-a-vis television has increased. "Usefulness" is probably the more accurate word than "standing." A few years ago many of us newspapermen were rattled because of a feeling TV would gobble us up. Not so by a long shot. If you want to feel better about our future, spend two hours *any* night watching TV with your 13-year-old son. You'll get to see Mannix, Police Mystery, or some other such cheap, plastic world, mind boggler, plus, of course, four minutes of advertising every 15 minutes all night long. Saturation advertising in commercial TV is, I am convinced, turning off more and more people every day. I think it's clear also that the print media has more effect on public issues than TV has. At least that's what my Massachusetts political and lobbyist friends tell me.

I am cheerful, too, because the investigative role of print journalism is improving so much and so rapidly. Perhaps one gauge of the growth in professional investigative journalism is the astounding increase in the number of inquiries in the Pulitzer Prize categories for local investigative reporting and public service reporting. The entries come from everywhere, large and small papers. The only place where this trend has not shown itself strongly enough is in the vast majority of the huge Washington Press Corps. I am leaving out the two Washington newspapers, both of which are doing all kinds of great in-depth reporting.

Probing reporting is essentially how you *effect* change and how you *improve* the quality of life in our hometowns and in the nation. And those missions, for my money, are the name of the game in serious newspapering. That's where the fun is.

The Globe has a marvelous independent investigating team. We call it the Spotlight Team, and after its first year of existence, it last year won the Pulitzer for the local investigative reporting. If I had an unlimited budget, the

I think we should give our copy editors at least the same continuing educational and travel opportunities as we long have given our gifted writers.

Globe would have two Spotlight Teams on corruption and another Spotlight Team on issues and performance of public services, three in all. No paper is too small not to have at least one investigative reporter. I know that is easier said than done. But I know you will be amazed at the return one full-time investigative reporter will bring your paper in good government and in good will.

I am *not* happy about the somewhat increased turnover in newspaper offices. We can stem it if we pay more atten-

tion to training, rotating jobs and assignments, permitting more travel and giving newsmen a bigger piece of the action.

I am still not happy, either, over the amount of superficial reporting, surface news, that makes up most papers. Our biggest mission is explaining issues. TV and radio is doing the straight news well. I know we don't do anywhere near enough explaining at our paper. Every editor's desk should have a big sign on it which reads "Do more *explain* stories; do more *how-to-do-it* stories."

Nor are we doing enough consumer reporting, nor doing it responsibly enough. Too many of us are still being reamed

. . . I think every major newspaper should have a well paid, high ranking corporate graphic arts director.

at the marketplace. Newspapers, if they want to be a friend, must give their readers more help on making both ends meet.

We need a new dimension on our editorial page. Why, they have hardly changed a bit in a hundred years. My, how they cry out for new dimensions; a new look. Here, too, we could do with more *explain* and less preaching editorials. How about more "mood" editorials, more "date-lined" editorials and more exclusive reporting in our editorials. There's no rule against an editorial writer scooping a beat man that I know of.

And finally we should all ask in our Christmas stocking the secret formula on how to cover New England as a geographic entity and how to cover our suburbs which may be even more sick than the inner city.

We have come out of a long cold winter that has lasted nearly four years—a period marked by derision and self-doubt.

But we can hold our heads high—and we should. Our business is going just fine. We have become more willing to change and to accept change more gracefully than ever before.

And most vital of all, our function in a free society was vindicated and reiterated this week in Washington. Let us never forget the lesson of Watergate. Let us never forget the words of Judge Richey, commenting on the special role of the press in the Caldwell case, "a popular government without popular information or the means of acquiring it, is but a prologue to a farce or tragedy, or perhaps both."

—Thomas Winship



Nobody to Kick Around Any More

Unless you've been in a Himalayan hideout for the past three or four years, you know that the American press has been under an unprecedented assault from the Federal government.

But if, as I did, you attended the three media conventions in late April and early May—the American Newspaper Publishers Association, the American Society of Newspaper Editors, and the A. J. Liebling Counter-Convention—you would have heaved a sigh of relief. The sense of the meetings was that problems remain, but the crisis is over—thanks in large part to the role of the press in bringing Watergate home to the American people.

But did the American people *want* smelly old Watergate brought home? Are they grateful? Even if they are, will they remain so? Will future assaults on the First Amendment be resisted by an informed and outraged public? In other words, *is* the crisis over?

Those were the questions rambling through my head the other night as I reviewed panels presented at the Waldorf-Astoria, the Shoreham, and the Mayflower. Slowly sleep took over. And with sleep came a troubled dream:

It was the last year of the second Agnew Administration, eleven years hence, and I was at my typewriter, batting out a report on the day's events for the *Sunday Times* of London. (I was aware that no American publication could touch the thing.) The story went like this:

President Sipro Agnew, at his third and final press conference in eight years, announced that his "Freedom From the Press Act," passed by Congress a week ago, went into effect today.

The Act bans "all contacts between the Executive Branch and the press that tend to imperil national security, confuse or divide the citizenry, encourage inflation, or bring the Office of the President into disrepute."

"You've had a lot of fun," Agnew told newsmen bitterly, "but as I leave you I want you to know just how much you're going to be missing. You don't have Agnew to kick around any more, because, gentlemen, this is my last press conference. It is also yours."

President Agnew's resentment was said to stem from the failure of newspapers to support him unanimously in the 1980 election. "He had hoped for 100% of the papers," said

an aide, "but all he got was the usual 80% given any Republican candidate."

The Agnew comment was followed by an announcement by White T. Clayfoot, head of the Federal Communications Commission. "Henceforth," said Mr. Clayfoot, "elitist gossip and other potentially controversial material will only be permitted on FM stations of 1.7 kilowatts or less, between the hours of 3 and 5 a.m., and in months without 'R's'."

"This move," the FCC chairman said, "is another effort to assist the press in meeting its responsibilities, just as the Administration earlier helped the press by arranging for all news—with the exception of sports broadcasts and most weather reports—to be edited by the White House and the FBI."

One immediate result of the Freedom From the Press Act was the conviction, late in the day, of Jock ("Scotty") Preston, chief and only remaining member of the New York Post-Times bureau in Washington. Preston, who joins 743 other American journalists in prison, was sentenced to an indeterminate term "for refusing to divulge the source of a news story about secret negotiations with a certain friendly power for the importation of baklava, stuffed grape leaves, and olive oil."

Preston's attorney gave the landmark case a strange and bizarre twist by hinting that President Agnew himself was the source his client was protecting.

"This may go down as the first First Amendment Catch-22 case," said the lawyer. "Under the new Freedom From the Press Act, if my client agrees to identify the President as his source, he can be jailed for a breach of national security."

"On the other hand, if my client refuses to name his source he can be jailed for contempt of court, like 743 journalists before him."

Federal Judge Harrold G. Carswell, in sentencing Preston, said, "If the free press does not cooperate in maintaining a strong government, the government will be too weak to protect a free press. I don't know why everyone can't understand that simple proposition."

"There was a time when unrestricted freedom of the press could be tolerated. But that time has passed. This is not, after all, 1776. This is 1984."

—Robert Yoakum

. . . The press has got to fight back . . . it just can't hope that things are going to get better.

—Jack Landau
First Amendment panelist

Nieman Fellows 1973-74

Eight men and four women have been appointed for the 36th class of Nieman Fellows in Journalism to study at Harvard University in 1973-74.

The Nieman Fellowships were established through a bequest of Agnes Wahl Nieman in memory of her husband, Lucius W. Nieman, founder of the Milwaukee Journal. The Fellows come to Harvard for a year of study in any part of the University.

The new Fellows are:

Shirley Christian, 34, United Nations correspondent for the Associated Press. She holds degrees from Kansas State College and Ohio State University, and at Harvard plans to study international finance and economics.

Ned A. Cline, 34, political and legislative reporter for the Greensboro, N.C., Daily News. A graduate of Catawba College, he will study United States government, history, and politics.

Nicholas Daniloff, 39, an editor and reporter for United Press International in Washington, D.C. He holds degrees from Harvard College and Oxford University, and plans to study Asian and American history.

Ronald Gollobin, 32, investigative reporter for the New Brunswick, N.J., Home News. He received his bachelor's degree from East Carolina University. At Harvard, he will study law, economics, and United States government.

Ellen H. Goodman, 32, feature writer and columnist for The Boston Globe. A graduate of Radcliffe College, she plans to study the dynamics of social change in America.

Whitney M. Gould, 30, environmental reporter for the Capitol Times of Madison, Wis. Ms. Gould has her degree from the University of Wisconsin, and at Harvard she plans to study environmental law, urban and regional planning and American architecture.

Edwin P. Hudgins, 32, City Editor of The Times of Gainesville, Ga. He holds a degree from the University of Georgia. At Harvard he will study regional planning and United States government.

Morton M. Kondracke, 34, Washington bureau reporter for the Chicago Sun-Times. He is a graduate of Dartmouth College and plans to study economics, law, and United States history.

Stephen D. Northup, 31, photographer for Time Inc. He is an alumnus of Washington and Lee University. He will concentrate on anthropology and visual and environmental studies.

Patricia O'Brien Koval, 37, general assignment reporter for the Chicago Sun-Times. A graduate of the University of Oregon, she plans to study American government and history.

Gregor W. Pinney, 37, education reporter for the Minneapolis Tribune. Holder of degrees from Ohio Wesleyan and Columbia Universities, he will study American history, sociology, and education.

Hollie I. West, 35, reporter for the Washington Post. A graduate of Ohio State University, Mr. West will concentrate on Afro-American studies, English and American literature.

The Fellows were nominated by a committee whose members were: Charles W. Bailey, Editor of the Minneapolis Tribune; Richard Dudman, Washington Bureau Chief of the St. Louis Post-Dispatch; Dolph C. Simons Jr., President and Publisher of the Lawrence, Kansas, Daily Journal-World; Doris H. Kearns, Associate Professor of Government at Harvard; William M. Pinkerton, Assistant to the Vice President for Government and Community Affairs at Harvard; and James C. Thomson Jr., Curator of the Nieman Fellowships.

Announcement of Associate Nieman Fellows from abroad will be made later.

Forum

Editor's Note: Three Nieman Fellows in the class of '73 led a panel discussion on current issues in journalism at the Cambridge Forum on March 28. The participants were Carl Sims, now Associate Editor of Newsweek; Peter Jay, correspondent for The Washington Post; and Edwin Williams, Jackson correspondent for the Delta Democrat-Times (Greenville, Mississippi). The Rev. Herbert Vetter, of the First Parish Church in Cambridge, was moderator. The following is a condensation of their remarks prepared by Mr. Jay.

Peter Jay: We thought we would talk about a lot of things tonight. There is the whole question of the First Amendment—whether there is a crunch in this country now on the subject of freedom of the press; whether reporters should have legislation protecting them from prosecutors and government agencies seeking to learn the identities of confidential sources, or whether to seek this legislation would endanger the constitutional protection we enjoy or thought we enjoyed until recently; whether there should be a Press Council in this country similar to the one that exists in Britain, a body that could hear public complaints about unfairness on the part of the press and could also defend the press from attacks by the government.

We also thought we should talk about the economics of newspapering. There's a widespread belief that newspapers in the United States are in a bad way, and indeed we have lost a number of metropolitan papers in recent years. But that's sort of misleading, for we have as many dailies now as we did right after World War II, a lot of people are making a lot of money in newspaper publishing, and the fiscal picture is a lot brighter than some of our publisher friends would like to admit. There is a problem of con-

centration of media power, but the problem isn't caused by The New York Times or The Washington Post, it's caused by the generally apolitical corporate giants—Gannett, Newhouse, Thomson, various others—who are gobbling up newspapers all across the country.

What about the local press—there's a problem for you. In little cities where the same man or same company owns the newspaper or newspapers and the only broadcast outlets—radio or television stations—you have a far more complete monopoly on the news than that exercised by the Post, Times or other part of the Big Media.

But the big question right now, it seems to me, is that of the First Amendment. Is it right for grand juries to be able to haul reporters in, under threat of fine or imprisonment, and compel them to talk about conversations they have had with their sources? If that can be done—and I don't think the recent court decisions amount to anything like a license for prosecutors to do this; it's the trend that's worrisome—it could kill free newspapering as we know it in this very free country.

Carl Sims: I'd like to focus on one thing that Peter mentioned—the fact that newspapers are not in trouble financially. In 1945 there were 1772 daily newspapers in this country, and in 1971 there were 1749. There aren't as many big city papers, but newspapers are reflecting the shift of population to the suburbs. We should also note that the average pre-tax profits of publicly-owned newspapers (which does not, of course, mean publicly-controlled) has run about 15.6% in the last several years. The average for all American manufacturing companies for that same period was 8.2%.

Publishers can be the poorest people in the world when they're running to Congress for a Failing Newspaper bill (exempting them from anti-trust laws in certain cases), but they seem to find money to hire new stars, buy new presses, expand their facilities.

Mr. Agnew was talking about The New York Times and The Washington Post, but it's AP and UPI that service most of the newspapers in the country, and the Vice President hasn't accused them of liberal bias. But I'm sorry to say Mr. Agnew's attacks on the media have had some effect. For instance, shortly after he gave his first speech on the press there was the greatest march on the White House in the history of this country, and you had a hard time finding much about it on television.

The term "liberal newspapers" is itself misleading. In the last election, 93% of the papers endorsed Mr. Nixon. It's sometimes said that reporters are liberal and publishers conservative, but the publishers are the ones who have the clout.

Ed Williams: If we're talking about the future of newspaper reporting, there are two different problems we need to address. First is the future of newspapers, and second is the future of reporting.

Newspapers of course are changing, a great deal, and the ones published today look a lot different from ones published 100 years ago. They are less gray, better packaged, more brightly edited. They have to offer more, and there's a reason for that, of course: people now get their headlines from television.

Reporting in some ways hasn't changed much. It's largely a matter of a reporter going out and trying to understand things that people don't want to know about very often, or don't understand and don't communicate to other people. But reporting too has changed. These days, perhaps because of television, we have to know more about what we're writing about. We're reporting causes, not just what is going on. When we do this we get into trouble with people like Vice President Agnew, who wants us to say only what's happening and not why—but if he gives a speech and we only say what he said, we're just doing what television does.

What we need to try and write about is the effect of what he has to say and perhaps the reasons for his saying it. And when you do that you are going to get in trouble with people like politicians. They don't like you talking about why they do things. Politicians like to pretend they rode to the auditorium on a white horse, with nothing in mind except the good of the people.

Newspapermen have known for a very long time that there is a natural adversary relationship between newspapers and government. Really, newspapers and government are never going to get along if newspapers are doing their jobs. If they are doing their jobs, they're nipping at the heels of public officials, and there aren't many public officials who like that.

That brings me to the idea of a press council. It's got a lot of newspapers stirred up like a beehive, buzzing around and saying a press council is an effort to stifle freedom of the press. That's simply not true.

Now, the First Amendment question, the question of a law to shield reporters from prosecutors and grand juries—I think you will find us all conservative about that. After covering the Mississippi legislature for three years, I would be awfully reluctant to put anything I cared about as much as freedom of the press in the hands of legislators.

A final point: the suggestion of a great liberal journalism conspiracy is just ridiculous. Most newspaper publishers are like shoe factory owners; they inherited their companies or bought them as businesses, and run them accordingly—the more's the pity.

Herbert Vetter: Is there a conflict between news and advertising?

Jay: There are two problems here, a local and a national one. On big papers like the Post and the Times that spend a lot of money covering national and international news, there is sometimes a clash between the news people and the accountants over allocation of resources for getting the news. It's not a conflict

with advertisers. On the other hand, there are small town papers that spend no money on news at all—maybe don't even have any reporters—and fill their pages with wire service and other canned material. And if they don't cover their city councils, they've done a terrible thing, for there is no other way people can find out what's going on. On the other hand, if the Post doesn't report what happens in Congress, there are other papers that will—the Star-News, the Times, the Baltimore Sun—and people can read them. In a small one-paper town, there are no alternatives.

Vetter: [What about advocacy journalism and its role in ending the Vietnam War?]

Jay: I think good tough reporting had a lot to do with that, and that's not the same thing in my mind as advocacy journalism.

Williams: You have an obligation to be fair. I think the journalist's job is not to make the final decision for the reader, but to present the facts as clearly as he can. Journalists who are good can look at a situation clearly, which is not to say they don't have opinions. I think that President Nixon in many of his cuts of social welfare programs is wrong, and I think the results will be bad, but I don't think it is my role as a reporter to write a story saying President Nixon is wrong and the results will be bad. I think our job is to give those facts which reasonable people will consider when they form their own opinions.

Sims: I think legislators on the Hill who changed their minds on the war would in all honesty say the Post and the Times had something to do with it. But it wasn't because the papers told them the war was immoral, it was because they could read in the papers, day after day, what was happening—and what was happening wasn't always what the government was saying was happening.

Vetter: How about the press on race?

Sims: The reporters I have known

have tended to be fair people, not necessarily liberal or conservative, but with a real feeling for injustice. I think newspapers came late to the fact that they had a constituency out there only being reported on when they were involved in crimes, and I think many of them—especially since 1968—have bent over backwards to be fair.

Williams: Not just in the South, but throughout the nation, there are not enough black reporters. And until we get a lot more, we are not going to do a very good job of understanding what it is to be a black person in America.

Book Reviews

The Press in the News

Communication is Power
by Herbert Brucker

(Oxford University Press; \$9.50)

Deadline for the Media
by James Aronson

(Bobbs-Merrill Co., Inc.; \$8.95)

The Effete Conspiracy
by Ben H. Bagdikian

(Harper & Row; \$6.95)

(Editorial Note: Although this journal has already reviewed in its previous issue, one of the three books under discussion [Aronson], the editors firmly believe in Curatorial Privilege; and Mr. Lyons, as Curator Emeritus, has the qualifications.)

Communication is Power, Herbert Brucker's book title reminds us, if we needed any reminding in this age of inconsistent communication. The power of

communication has broadened and deepened as it has become visual in its impact and universal in its reach.

The contest to control communication is one of the most vivid realities of our political life. Public awareness of this sharply increased through the 1960's as instant communication made common knowledge of the circumstances of the black revolution, the women's liberation movement, the youth revolt, and finally the national division over the Vietnam War.

Government efforts to refute or obscure or deny the facts about the war brought the "credibility gap" of the Johnson administration. The Nixon administration entered on the scene so entrenched in barricades of public relations as to make public affairs all but impenetrable. A press that ventured to look beyond the official handouts to see for itself was blasted as biased, starting with Vice President Agnew.

His early shotgun blasts on the press have been refined and channeled by experts into threats to television licenses, to emasculating public television by dismantling its national affairs programs, to demanding that reporters hand over notes and tapes of material they did not publish, and jailing those who refused thus to become agents of prosecutions. The administration sought prior restraint of the Pentagon Papers but it abandoned distasteful investigation of the Watergate crime to the press.

The attempts by this administration to control, diminish or discredit the press have reached a point that led that conservative constitutionalist, Sen. Sam Ervin, to proclaim that the First Amendment was in danger, and that unless confidentiality of reporters was shielded the public could be reduced to official press releases for its information about its public affairs.

In this climate these three books were published, all by veteran newsmen, all seeking to set the record straight.

The first, in time, was Ben Bagdikian's. He has turned Mr. Agnew's

charge around, his title ironically, sardonically, using Agnew's own words to invert the indictment. *THE EFFETE CONSPIRACY AND OTHER CRIMES OF THE PRESS* unveils a condition opposite to Agnew's, of a newspaper press essentially as orthodox and conservative as when Adlai Stevenson in 1952 complained of the "one party press." Bagdikian has been around. He knows where bodies are buried. He described what has happened to independent or liberal editors who ventured into newspapers of Delaware or Texas. He explores the PR infiltration of the press, the influences that have secured control of many papers.

He gives a lively close-up account of hypertension in the White House about the press, in the most recent administrations, and recites his own experience with the hypersensitivity of publishers to any criticism or even any attempt to explore the economics of their industry. His is a trenchant, provocative riposte to the attempt to discredit independent journalism, such as there is of it. The titles of two final chapters are suggestive: "LJB and the Press; or, The Commander-in-Chief Thought He Was Editor-in-Chief," and "The Great Nixon-Agnew Media Con Game; or, A Few Plain Facts About the Politics of Newspapers." Some of his incidents of LBJ's love-hate affair with the press are hilarious; of the manipulations of Nixon's PR men, pathetic.

Herbert Brucker, former editor of the Hartford Courant, subtitles his book "Unchanging Values in a Changing Journalism." He too is defending the press and its objective standards against prejudiced attack. He gives a thorough, informing account of the news operation in both newspaper and television, a sturdy support of responsible press traditions and a convincing rejection of any limitation of access to public institutions and actions. He is not uncritical of the press. Chapters take up "Making News by Covering It," chiefly about distortions of the camera, and warn that

"Newspapers Shouldn't Play God."

If his "unchanging values" are more pronounced than his views of "a changing journalism," that is not so of James Aronson's book.

Aronson's is both a more radical and more searching approach to both government and the press. It is a far more detailed, more exploratory, more anecdotal and circumstantial and penetrating examination of the press and its problems. Aronson devastates the current political attempts to suborn or discredit the press. But he is sharply critical of the press itself as Establishment oriented, far too committed to status quo and orthodox views and interests, neglectful of dissident elements, so superficial in its reporting of unrest, violence and crime as to fail to look into the underlying causes.

Aronson more than the others investigates what is going on within the press. He describes the disillusion of many of the younger news staff with the principles and practices of journalism, sympathetically responds to their demands for "advocacy journalism"; though I think neither he nor any other advocate has effectively defined this or come to terms with its effect on credibility. Brucker resists it in sturdy defense of objectivity as basic to credibility.

Aronson explores the "underground press" especially where it has surfaced to become, as he sees it, an "alternative press," and he is hopeful for their development to actual alternatives to the too conventional general press, as he praises it.

Aronson's book has extra dimensions, as in his thoroughly contemporary examination of public television and the Nixon administration's moves to diminish and dismantle its national connectives and resources.

Aronson's radicalism is easy to discount by anyone familiar with the press and its critics. Some of his propositions strike me as unrealistic—as his hindsight charge that the press could have dug out for itself all that the Pentagon

Papers disclosed. But the residue is a relentless examination of the problems and condition of the press. He wants a more open, more responsive, more independent, more penetrating, more crusading, more informing press.

Aronson has served leading newspapers but was obviously more at home as an editor of the radical *National Guardian*. His extreme impatience with the lag of the press, with few exceptions, to catch up with or reflect the convulsive changes in the society are natural enough from his stance, and the urgency of his demands understandable. Inevitably a critique of an institution that mirrors—or should—the whole society, is shaped by one's basic view of that society. This need not dismiss his exposure of the blind spots and distortions of the press. Indeed it should sharpen our awareness.

But he is either devious or has been hornswoggled to an extent unacceptable in so sophisticated a journalist, in his defense of those self-martyred radicals who presume to expect their newspaper employers to abdicate to them. His book would be stronger if his publisher had persuaded him to suppress a few tall tales he has swallowed. Nevertheless his acid treatment supplements as it challenges Brucker's tolerant assumptions about "unchanging values."

All three of these books have their distinctive style of effective narration that sticks to the point and illuminates it. None is diverted by the romantics of the "new journalism" that dissolves any point at issue in an ego stream of consciousness.

Both Brucker and Aronson go into the presently agitated issue of a Press Council. Both favor it and soundly deflate the hobgoblin fantasies that most of the newspaper managers conjure up to frighten themselves at the thought of an independent body monitoring the main providers of national news, to investigate grievances and publish their reports on the performance of the press. Both authors believe that, far from be-

ing any threat or harassment of responsible newspapering, such a Council, that has proved constructive in Britain and other lands, would prove a protection for the press against such threats to its integrity as are now so prevalent in efforts to control, corrupt, discredit or destroy a free press.

The real difficulty about the Press Council, as the 20th Century Fund is setting it up, is its limitation to deal only with the networks, wire services and the news services of those big papers that are wholesalers of news. This makes its task manageable, as against coping with an entire continent of daily papers. But the sins of the press are for the most part in local papers in local coverage. These will escape exposure until the Press Council extends its role.

One of these authors should do another book after the proposed Press Council has experienced its first phase. For it will need informed critics to refine its procedure, as the British Press Council did, in reorganizing for fuller performance.

—Louis M. Lyons

A Farewell To Alcohol

by William McIlwain

(Random House; \$4.95)

Before he dried out it took at least a bottle of vodka to get Bill McIlwain through the day.

By his own admission McIlwain was a drunk, an alcoholic who for years declined to admit to himself that he was on the big slide downhill. A *Nieman* Fellow from *Newsday* ('58), McIlwain went on to become editor of that newspaper before he was gently eased out for reasons including his drinking problem.

Confessions tend to be both mawkish and repetitious, two faults which McIlwain steers clear of in this thin volume about his return to sobriety at the But-

ner Alcoholic Rehabilitation Center in North Carolina.

Personal and professional success, he writes, was tied to his increasingly dependent use of booze. As an editor, McIlwain tried to be Mr. Nice Guy. "I rarely ordered anyone to do anything." He has come to realize that for years he shut in his feelings and masked with alcohol the irritations and hurts of the newspaper business.

"I went on drinking, gradually more because it was accepted on my newspaper, remaining the man who could hold whiskey, a good-natured editor who didn't rebuke anyone. But wishing, too, that I had rebuked someone . . ."

McIlwain's marriage slipped away with his dependency on drink. By 1970 he had become a writer-in-residence at Wake Forest University, a sort of ultra-white-collar firing, he calls it. That year it all fell apart, his marriage and his career. He couldn't write, despite efforts of friends like Harold Hayes, Esquire editor, and former *Nieman* ('59), to get McIlwain back on the track.

This book is a journal of McIlwain's stay at Butner, and the friendly fellow alcoholics he met while there. It takes only a few weeks for an alcoholic to dry out. The problem is staying on the wagon. Not even a beer is allowed. He knew he had to make a psychological decision—to give up booze absolutely on all occasions. Now an editor on the *Toronto Star*, McIlwain is dry. "I worked on a newspaper once with a man who had quit drinking many years before and he always seemed too cautious and conservative . . . I wanted to quit drinking, but not at the cost of becoming a cunuch."

McIlwain's story fits all too well the stereotype of the drunk newspaperman. The stereotype is based on reality. For cons the newspaper business has been highly competitive and pressured by deadlines. One way to ease the strain has been found in the 86-proof bottle. One drink leads to another and the last one leads to hangover and perhaps

worse. Alcohol is the world's oldest drug, and it has been misused longer than LSD. Furthermore, it is possible that alcoholism is a disease, like diabetes, and that alcohol use leads to addiction and body ravage.

After reading this book, it is easy to compliment McIlwain for his straightforwardness and wish him well in his dry years, new marriage and new job. At the same time in the back of the mind there is the worrisome question of where a fondness for cold dark German beer or chilled French white wine stops being healthy moderation and slips into the too often unrecognized (by the victim) hell from which McIlwain has escaped.

—Edward Norton

One Man, One Vote: Baker v. Carr and the American Levellers

by Gene Graham

(Atlantic-Little, Brown; \$8.95)

When the United States Supreme Court shucks off generations of precedent to establish a new interpretation of the Constitution, and in doing so sanctions social or political upheaval, there often is public outcry of surprise and indignation, as though the Court had suddenly yielded to the crazies.

Regular observers can tell you that whatever the Court is, it isn't radical. The Supreme Court moves ponderously but perceptibly toward its landmark decisions; the changes are evolutionary, not revolutionary. While it's not possible to predict with certainty whether this case or that will topple a precedent, it does become obvious after a while which way the judicial winds are blowing, and how much force they're gathering.

So it was with the case of Baker v. Carr, when, in an appeal rising from

Tennessee, the Court decided for the first time to assume jurisdiction over citizen lawsuits challenging the malapportionment of state legislatures.

In retrospect, the one man, one vote dictum which followed Baker v. Carr seems inevitable, merely the yielding of weak precedent to a national demand for representative government.

But judicial precedents aren't toppled by impersonal national demands. They fall because people—often many people, in different places, beset by a variety of reformist itches—are chipping away at them.

That's the story Gene Graham tells in ONE MAN, ONE VOTE—the story of the way many people researched and wrote and argued and tugged whatever strings they could grab hold of to break the rural stranglehold on state governments. Some sought reform because of indignation aroused by obvious injustice, to be sure; but others were moved by frustrated political ambition, or fiscal self-interest, or the simple desire to raise hell with the arrogant backwoods pols who wouldn't surrender their legislative seats even though their one-time constituents had long ago abandoned the cricks and hollers for the big cities.

Graham himself is a Tennessee egalitarian, drawn like a constant lover to that state's peculiar brand of neo-populist politics. He shared a Pulitzer Prize in 1961 with another writer for the Nashville Tennessean, Nat Caldwell.

Graham decided to write this book while a Nieman Fellow in 1962-63. I knew him in 1970, when he was on leave from his teaching post at the University of Illinois, ostensibly doing research. He spent most of the summer, however, as a fulltime volunteer in Senator Albert Gore's doomed effort to avoid defeat by a millionaire Republican candy-maker.

Graham knows Tennessee, its politics and people, well. His book is alive with anecdote and humor. He writes with warmth and understanding about all his characters, good guys and bad, like

old friends cherished as much for their weaknesses as their strengths. ONE MAN, ONE VOTE is a fascinating look at the way people change laws, in the tradition of Anthony Lewis's GIDEON'S TRUMPET. It reminds us that historical forces don't start moving until people start pushing.

Baker v. Carr, of course, was merely the first case in a succession which produced the one man, one vote doctrine. The doctrine was fully enunciated in the decision on Gray v. Sanders, which invalidated Georgia's unique county unit system of voting in statewide and Congressional primaries and declared that the concept of political equality in the Constitution "can mean only one thing—one person, one vote."

In recent decisions, however, the Nixonized Supreme Court has detected other possibilities in the Constitution—one man, 15 (or whatever) votes apparently is in legislative elections, while one acre, one vote, is permissible in California water district matters. (Whether the Court would adhere to the latter precedent by allowing only women to vote on abortion matters remains to be decided.)

While the one man, one vote movement has had a profound effect on state and local government, I don't share Graham's view of the lesson we should draw from its success.

"... One man, one vote stands as a living testimonial that nonviolent reform through law is possible, that the Establishment does indeed bend to the orderly expressed desires of those who protest or attack its shortcomings," Graham writes in his introduction. "One man, one vote . . . holds out hope that a system of law may yet enable civilization to settle its differences and still move ahead in peace."

That's one way to look at it. But there's another, one that provokes less optimism.

From 1901 until 1965, Tennessee legislators (and those of other states for similar periods) flouted the state law

requiring them to apportion on the basis of population every ten years. Powerful rural legislators spat on the law and laughed, while judges and governors, sworn to uphold the law, sat mute. The cities grew and their problems festered, with no money for cures because the small town legislators considered the term "urban sickness" redundant. Only when people with money and power and friends in high places finally came to the side of the egalitarians did the courts decide that the lawmakers, too, had to abide by the law.

It is reassuring, perhaps, to know that after sixty years and the expenditure of hundreds of thousands of dollars and a lot of political stringpulling, justice can be done.

Hunter Thompson, the reigning champion of wildman journalism, pondered the high price of justice in his study of grease-caked America, *HELL'S ANGELS*, and came to this conclusion: "Justice is not cheap in this country, and people who insist on it are usually either desperate or possessed by some private determination bordering on monomania."

Nothing in *ONE MAN, ONE VOTE* disputes Thompson's conclusion.

—Edwin Williams

Precision Journalism

A Reporter's Introduction to Social Science Methods

by Philip Meyer

(Indiana University Press; \$10 cloth, \$2.95 paper)

A scientist friend once remarked that he frequently finds numerical errors in newspaper stories in which a reporter arrived at his figures through simple math—multiplication and division. I accused him of hyperbole. But ever since, I've frequently dragged out my slide

rule or pencil and pad to check statements like, "Police said X wife beatings were recorded this year compared to Y cases last year, an increase of Z per cent." The scientist has been more right than wrong. Too many journalists concentrate on typing at the expense of arithmetic skills.

As I read Philip Meyer's *PRECISION JOURNALISM*, I kept my eye peeled for some basic instructions on calculating simple percentages but didn't find any. I mention this not to call attention to a minor oversight in the book but to illustrate the need for Meyer's book to be required reading for every editor, reporter and journalism student who expects to remain in the business much past the day after tomorrow.

Meyer's thesis is straightforward. Journalism and social science have kindred roots. Both professions (crafts? disciplines?) spring from a desire to report and interpret the behavior of the human organism.

But two decades ago social scientists, armed with the new data-handling freedom given them by the computer, began applying quantitative methods to their attempts to interpret society. Journalists, however, clung to the old finger-in-the-wind approach that is light on data but heavy on interpretation.

It's time journalism adopted some of the precision of social science, Meyer argues, noting in his preface, "As our society becomes more intricate, we must find more intricate tools to describe and interpret it."

Among sociologists Phil Meyer is regarded as one of the country's most knowledgeable and experienced newspapermen in the use of sociological methodology. And he writes from this knowledge in a lively, anecdotal style that is light and even amusing at points. He makes what could be heavy reading quite enjoyable.

The chapter on basic statistics is a gem. He puts us in a blimp cruising above several thousand Kansans milling about a dusty wheat field to explain the

normal distribution. The salaries of the five-man staff of the *Grass City Gazette* (where the society reporter makes \$5,000 and the editor-publisher \$45,000) illustrate mean, median, range, standard deviation, variance and the like.

There are step-by-step instructions about planning and executing a survey, amply illustrated with Meyer's own experiences and the case histories of others. The eight questions he recommends asking about "secret" public opinion surveys commissioned by political candidates and "leaked" to the media should be tattooed on the back of every newsman's right hand.

For those who think they would like to become involved in precision journalism, the book is a handy starting text. For those who wonder only how to challenge more effectively so-called experts who bandy statistics and other methodology about at news conferences and the like, the book is quite useful.

But *PRECISION JOURNALISM* also leaves one with an uneasy feeling. Despite a caveat here and there about social science methodology as only an approximation of reality, there is a certain evangelical urgency to Meyer's low key beating of the social science drum. There is an implied promise that if one can only take enough random sample points, achieve a high completion rate with experienced interviewers using a skillfully designed questionnaire, and then crank the computer just right, lo and behold, the truth will emerge. And it will be a truth far more powerful than a reporter grabbing passersby on the street.

This isn't to say that the methods Meyer urges don't have a proper place in journalism. They do. Our ponderous interpretations often have little basis in reality. But any journalist joyfully embracing the methods of social science must realize from the outset he handles a loaded gun. Social scientists aren't nearly the gods they'd like us to think.

Not many social scientists will admit it, but their discipline was patterned

after physics. Three decades ago when modern social science was emerging, physics enjoyed an extraordinary heyday of discovery in which defining the basic order of the physical world appeared to be possible. It seemed only logical that a discipline that sought to define the order of human behavior should copy such a successful model.

But since then physicists have discovered a new order of structure under-

lying each old order just elucidated. That the microstructure of matter might be infinite looms as much a possibility as cosmic infinity. Biologists are encountering a similar phenomenon.

Bound then as they are to pursue their quest through observation and measurement, the social scientists search for the "mathematical reality" that underlies human behavior. They've found man too unruly a beast to attack directly. To

borrow from Alfred North Whitehead, "If only you ignored everything which refused to come into line, your powers of explanation were unlimited."

Journalism must adopt more social science methods. But personally, I'll always root for a journalism that borrows more from the novelist than the social scientist.

—William Stockton

Notes on Contributors

Louis M. Lyons, *news commentator for WGBH-TV, Boston's educational channel, is Curator Emeritus of the Nieman Foundation. The First Amendment panel, chaired by Anthony Lewis, Nieman Fellow 1957, and columnist for The New York Times in London, included: Jack Landau, Supreme Court reporter for Newhouse News Service, and Nieman Fellow in 1968; Clark Mollenhoff, Washington Bureau Chief for the Des Moines Register & Tribune, Nieman Fellow 1950; Albert M. Sacks, Dane Professor of Law and Dean of the Faculty of Law, Harvard University; and Richard C. Wald, President of NBC News. Barry Bingham, Sr., chairman of the board of the Louisville Courier-Journal and Times, is a member of the Twentieth Century Fund task force. John S. Service, a retired Foreign Service Officer, is a member of the Center for Chinese Studies, University of California at Berkeley. Robert Yoakum writes a column for the Los Angeles Times Syndicate. Thomas Winship is Editor of The Boston Globe.*

Authors of three books reviewed are Nieman Fellows: Philip Meyer, '67 (Precision Journalism); Gene Graham, '63 (One Man, One Vote); and William McIlwain '58, (A Farewell to Alcohol).

Members of the 1973 class of Nieman Fellows who contributed to this issue are: Peter Jay, correspondent for The Washington Post; Edward Norton, reporter for The Record (Hackensack, N.J.); Carl Sims, now Associate Editor of Newsweek; William Stockton, science writer for the Associated Press in Washington; and Edwin Williams, reporter for the Delta Democrat-Times, now on leave with the Ford Foundation.