

# nieman

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winter

1974



## Special Issue Nieman Assembly: The Law and the Press

Anthony Oettinger

Arthur Miller

Floyd Abrams

Henry Rosovsky

Emily Vermeule

Louis M. Lyons remembers Walter Lippmann  
James Higgins recalls the York Gazette and Daily  
Book Reviews

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# reports

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## Walter Lippmann

1889–1974

*Editor's Note: Louis M. Lyons has rounded out the following transcript of his Dec. 16, 1974, broadcast over Boston's public television station, WGBH, with a larger account of Lippmann's association with the Nieman Foundation in the first years of its formation.*

The death of Walter Lippmann at 85 completes the career of the most distinguished of journalists, a political philosopher who applied his philosophy to illuminate public affairs. He was the lodestar for the ablest journalists of his time.

He once told me that a columnist should write so that his readers would not be too surprised at events. That he undertook to do, guided by his own pattern of rational expectation.

It was after the world chaos broke that pattern that Lippmann gave up his column and left Washington, seven years ago. It was said by some that Lyndon Johnson drove Lippmann out of Washington for his tireless and penetrating attacks on the irrational Vietnam War. It would be equally correct to say that Lippmann's logic drove Johnson out of office, just as his support of John F. Kennedy against Nixon in 250 newspapers in 1960 was much more than the narrow factor of Kennedy's victory.

Lippmann was the first political columnist in the modern sense and had no peer. In 1931, when the death of Pulitzer's liberal *New York World* ended Lippmann's editorship, the *Herald-Tribune*, the bible of Republicanism, invited him to do a column. This was an innovation in objective journalism at the time.

Lippmann's luminous writing, bringing understanding to the most complex issues, quickly won syndication in hundreds of newspapers. *The Boston Globe* was one. For 35 years the upper right hand corner of the editorial page became "the Lippmann column." But he almost immediately decided that a column every day left too little time to think and prepare. He made it three days a week. *The Globe* filled in with Dorothy Thompson. But when Lippmann was off, the highest accolade was to be asked by Editor Winship, "Can you do a Lippmann column for tomorrow?"

Lippmann's political awareness grew out of the turbulent period while he was a Harvard student, class of 1910, with Jack Reed and Haywood Broun. He became president of the Socialist Club. Lincoln Steffens, seeking a researcher for his *"Shame of the Cities,"* asked Harvard for its brightest new graduate and got Lippmann, who explored Wall

(continued on page 56)

## Merging Media and the First Amendment

*The 1974 Nieman Assembly, a gathering of special guests from the Bench and Bar, current Nieman Fellows, and Nieman Associates, met for three days at Harvard University last fall to discuss aspects of the law, the media and the First Amendment. (The Associates is an organization of press executives who make voluntary contributions to the Nieman endowment and meet annually with scholars and other journalists for discussions of mutual interest. This was the fifth such meeting.)*

*Anthony Oettinger, Professor of Linguistics and Applied Mathematics, and Director of the Program on Information Technologies and Public Policy at Harvard University, addressed the group at the opening dinner. A lightly edited transcript of his remarks follows.*

Someone approached me out there by one of the cocktail tables and said you're not going to talk about cable television and electronic newspapers and all that sort of stuff. And I said, "Well, it may surprise you, but I'm not."

My wife has this poster hanging on the refrigerator—it's a great poster—a little green man cowering in the corner and the caption is, "Just because you're paranoid doesn't mean they're not out to get you." And so just because you're paranoid about things like cable television and electronic newspapers, that is, something whizzing along over wires and suddenly there's not going to be any more strings and none of those bundles of papers being thrown off of trucks; and somehow at the other end there'll be a TV screen or a little printer, and it's all going to be terribly different. Just because that's not likely to happen in your lifetime or mine doesn't mean that there's nothing to be worried about.

Now, let me tell you one of the things you might be worried about and then I'll try to tell you some other things you might be worried about and then try to weave them all together.

Earlier Jim Thomson made a cryptic remark about the

Program of Information Technologies and Public Policy that I direct—that's what it's all about. To take cryptic little worries by little green men cowering in corners, being paranoid, and pull them all together in one great big fear that becomes understandable, more or less.

For instance, take telephone toll calls. What do they mean to newspapers? Let me twist the immortal words of the great poet John Donne and tell you: Send not to hear for whom Ma Bell tolls, she tolls for thee! I'll put that in more concrete terms. There's a proceeding going on before the FCC. Now some of you may never have heard of the FCC unless you happen to be one of those terrible cross owners who not only run newspapers but have TV stations and maybe sneak in a cable interest here or there. And if so, the part of the FCC that you worry about is the Broadcast Bureau or maybe the Cable Bureau. But there is another entire empire that hardly talks to the other bureaus and only sees the Commission on agenda days, and then through cryptic little comments. There's the Common Carrier Bureau.

And the Common Carrier Bureau has had before it a proceeding known as the Hi-Lo proceeding which sounds like something that might be before the Federal Trade Commission having to do with soft drinks and calories, but it's not. It's high-low, Hi-Lo. And what it has to do with is charging more in some places and less in others. The details of it are that in order to meet competition in an area that has nothing obvious to do with newspapers, like so-called Special Common Carriers who string up wires between Chicago and St. Louis and try—in Ma Bell's terms—to skim the cream off the market, in order to keep things on an even keel, the telephone company thought up the scheme of charging Hi-Lo tariffs. That is, high tariffs where the costs are high—meaning in the boonies—and low tariffs where the costs are low—meaning in the heavily trafficked routes. Now it also happens that those heavily trafficked routes are

where the newly found competition is going, and so dropping the price in the high-density areas means meeting the competition. Out there in the boonies where you raise the prices, there is no competition so you take the high prices. I quote John DeButts, the chairman of the board of A T & T: "So that was the genesis of Hi-Lo. We wanted to keep the total private-line volume the same, and if you're going to reduce prices on the heavier routes you've got to raise them on the low routes. That's what we did. I must say, my friends at the news wire services didn't like it very much." Now, those of you who are familiar with the problems of AP & UPI will understand why raising the rates on the low-density routes might make some people unhappy. The point merely is this: that where Ma Bell tolls does have an effect on newspapers. But that's only one example.

What I'd like to try to do for you this evening is put the newspaper business to some extent in the context of what I call the information industries. A wider kind of thing, still somewhat incoherent, whose business it is, in one way or another, to gather, store, transmit, distribute, and purvey to the public in one way or another, information.

Now you might say what's that have to do with the newspaper business? Well, you know, that's exactly what you do. But you do it in only one way and it's in a format called a newspaper which—come to think of it—is a very strange thing. There's news in it. And you know much better than I how that's gathered and put together and written and rewritten and composed and cut and recut

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### **. . . Where Ma Bell tolls does have an effect on newspapers.**

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and put on page one and on page 56 and so on. There are also advertisements, and you know about those because they pay the freight. There are classified ads, horoscopes, letter to the editor, sports pages. There's even a service—I don't know about other papers—but at The Boston Globe you call up on the phone and you can get a free service that'll give you the news trivia and the sports trivia, which is a strange sort of thing.

But how did all of those things come to be in one thing that you call a newspaper? Now the ads and the news, that's understandable—the other things I understand less well. But my point is simply that the packaging of that particular set of information services in a format called the newspaper is kind of a historic accident, as is the size of the newspaper. The large size newspaper is an artifact having to do with presses and taxation practices in Britain in the late 18th and early 19th century where the taxes were on the number of pages and so the larger the page, the lower the taxes. What started it all was something that had noth-

ing to do with the details of the ethics or the content of the news, but was simply a matter of technology and taxes. It was cheaper to put things on large paper.

Now the packaging of information services takes strange forms. I remember last year talking to a group of Niemanns about the Tornillo case which was at that time just on its way to the Supreme Court. It's kind of interesting because no one had heard of it. I would imagine that publishers and editors might have been more conscious of it and you're damn lucky it turned out the way it did, but more about that later.

What kind of business is the newspaper business? When you look at the annual report of the Times Mirror Company—and I pick that more or less at random—you see the businesses that they're in: first, they publish some newspapers, but the report talks about newsprint and forest products, book publishing, information services, television broadcasting, magazine publishing, cable communication and directory printing. Directory printing, by the way, for the Pacific Telephone Company, so that the telephone business and the newspaper business are linked in yet another way. Now, in what way does the Times Mirror Company differ from the Dun and Bradstreet Company which runs credit services, credit ratings companies, but also the Reuben H. Donnelly Corporation which has many kinds of businesses, among them, the publishing of Yellow Pages and other directories for telephone companies; which also runs Corinthian Broadcasting which is a television broadcasting company. How does that differ from McGraw-Hill, which some of you may think of as a book publisher, but which lists in its annual report divisions dealing with books and education services, publications and research services, information systems, financial services (that's Standard and Poor) and broadcasting operations.

What I'm trying to suggest is that whatever the specific motivations for pulling those particular packages together, there lies underneath a deeper, long-run kind of trend that may—even though the more outlandish predictions of electronic newspapers or cable or whatever may not come to pass—say something profound about the likely future of all media; and that is, they're becoming more and more interchangeable and less and less distinguishable. This is based on one single, salient fact that the technologies which underlie the information services are becoming less and less distinguishable.

One facet of this is the fact that everybody knows what a telephone company is but fewer people know, although more of you do today because they're becoming more and more familiar in newsrooms, what computers are. I maintain that computers and telephones are indistinguishable from one another. If somebody wants to challenge me to get into the details, I'll be happy to go on at length. But for the moment, take it for granted that I can't tell a com-

puter from a telephone, and that in fact the only distinction between computers and telephones is the distinction between A T & T and IBM. This is not a negligible distinction but nevertheless is not found in a natural law, but merely in things like antitrust consent decrees, regulatory rulings and so on. Just as the difference between a computer and a telephone shades off, so the difference between newspapers and computers and telephones is, in principle, vanishing and some of you see this today with the smaller papers, more than at the larger ones.

Photocomposition with computer-aided devices of one sort or another is rapidly spreading among the smaller papers, those in the 30,000 to 150,000 range of circulation. I might add that its starting may have very little to do with the details of technology, and more with the distribution of unionization and management styles and so on. Nevertheless, computer-aided composition and other methods of technology are coming into use in newspapers: UPI editors work on computer consoles, not typewriters. The rising cost of paper is another factor that makes the trade-

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### ... How did all of those things come to be in one thing that you call a newspaper?

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off between doing things with paper and doing them electronically a more and more attractive thing. At a time when costs of practically everything are rising by ten to twelve percent a year, the costs of electronic materials, media, transmission facilities, etc., are dropping at rates like 100 percent a year. And are continuing to drop sharply. Not the prices, the costs. Prices and costs are two very different things and that's a whole 'nother story having to do more with public policy than with technology.

How do you tell the movies from television? You used to be able to tell very well. Movies were things that were done in Hollywood. Radio was done in New York, some in Hollywood. The ownerships were vertically integrated but they were integrated with things like theaters and not necessarily with newspapers, or other types of corporations. Today there's no significant distinction between a movie that's on celluloid and a videotape that's on some kind of magnetically coded mylar film or some other esoteric sound-ing technology. The distinction between television and movies which was once, for a brief period, a hard and fast technical distinction, much as the distinction between telegraph and telephone or telephone and computers was a hard and fast technical distinction, is more and more like the grin on the Cheshire Cat. It's there long after the reality and substance have gone. The institutions remain and may

hang on for a long time, but the pressures for merger, for interweavings, the competitions for old and new markets of new and old information services are there. The pressures to respond to a competition coming out of a strange quarter for services that once were restricted to a particular industry—because of technology or precedents and so on—are increasing all over.

My prediction is that at a greater or lesser rate, depending on the details of economic conditions, depending on details of legal and regulatory processes, over the long run the distinction between newspapers and telephone companies and computers, computerized services and television and movies and so on is going to be increasingly blurred. It is going to be harder and harder to tell one apart from the other on any basis other than tradition. What is likely to happen as some of these barriers break down? You've already seen some break, those of you who are in the arena. Those of you who have been involved in the copyright wars, for example, will fully understand what I'm saying.

Back in 1960 the Register of Copyright, a kindly old man, thought that it would be nice to update procedures since the Copyright Act had not been revised since 1909 when there had been some horrible misunderstandings by the Supreme Court. Back in 1909 the Supreme Court was asked to rule on the question of whether player piano rolls were copies and therefore subject to copyright like any other kind of copy. And the Supreme Court in its wisdom decided that the player piano rolls were not copies because copies, as every child knew and certainly Supreme Court Justices knew from reading the law, are things that ordinary people with ordinary means—and I don't know whether the Justices thought of eye glasses—can read without any intervention of any artifact. The player piano was clearly an artifact and therefore the player piano roll was clearly not a copy. That screwed up the music industry until about three years ago because it left things like records totally unprotected because they were like player piano rolls. And it was only about three years ago that the Congress finally managed to pass an antipiracy bill protecting the record against legal piracy in the light of the *White Music vs. Appollo* decision of 1909 where the Supreme Court in its judicial wisdom, but technical ignorance, decided that player piano rolls were not copies.

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David Sarnoff made a comment in a recent trade publication where he was asked the question, "What could one do to improve communications policy in the United States?" He replied, "Sir, that assumes that there is a policy to improve." Which is part of the story because it's all very fragmented. Maybe it's better out there being ignored and not looked at. Fourteen years of hassles over the Copyright

Act, which may or may not pass the Congress and has just gone through the Senate, to show that out of indecisions of the judicial side nothing can come but good for the lawyers; and as far as the media and their future in the hands of regulatory agencies that take ten years to make a decision on a simple matter, is perhaps not the wisest kind of a fate.

Now the newspapers are happy over the Tornillo decision which said yes, the editorial page is holy and there is no inherent right to reply. Yet I don't see newspapers getting very vocal about the continuing imposition of the Fairness Doctrine on television, which may have had a rationale back 1934 or even 1959, but doesn't make terribly much sense

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**. . . The Copyright act had not been revised since 1909 when there had been some horrible misunderstandings by the Supreme Court.**

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in an era where cable television can bring—not these crazy miracles of nationwide wiring, etc., but in areas where the spectrum is otherwise scarce—can bring into the electronic media the kind of First Amendment protection that you in the newspaper business take as a matter of right, and are accorded largely because the printing press is not the same kind of monopoly that the scarce electro-magnetic spectrum is. Yet while you are delighted about the Tornillo decision, you don't raise much of a finger over the suppression of the First Amendment in the broadcast media through this so-called Fairness Doctrine.

The fiction that newspapers are distinct from television and cable television, is just that—a fiction. If rights, First Amendment rights either of publishers or broadcasters or of the public are abrogated in the broadcast medium because of short-term economic self-interest, they will sooner or later disappear in the print media. At the moment, the print media are still one of the strongest bastions of the First Amendment, but it may not last much longer. Your brethren in the broadcast media and those who have cross-ownership think of First Amendment rights across the board, and not only on the newspaper side, and let the Fairness Doctrine rule on the broadcast side.

This may imply certain sacrifices like short-term revenues out of broadcasting. Now I don't mean the pipe dreams of a wired nation, because the cost of wiring the boonies may be more than any of us can afford or would care to pay for. But in urban areas where spectrum is scarce, where the demand is high, where mobile services for ambulances, taxi cabs, etc., are crying out for spectrum space, and where the economics of cabling look a damn sight more reasonable than they do out in the boonies—except in the real boonies

where there is no television and you've got the hills like in Western Massachusetts or Pennsylvania or Washington—that's the place to wire and those are the places that are not being wired. Why? Because they're uneconomic, because of the absolutely zany restrictions that the gerrymandering FCC puts on this in the name of some greater good, that boils down to protecting broadcast interests. It's all a very circular kind of thing, and I would urge you to ponder whether uniformity or application of the First Amendment and the long term survival of the First Amendment is, or is not, more important than short-term economic pains of transition in urban areas from over-the-air television to cable television.

Which brings me back to another element in the change: that one of the darlings of liberal thought is the notion that cross ownership of media is bad. Well, both cross ownership *and* control are bad, but the whole notion of whether things like cable television, or even newspapers—and let's get this back to Tornillo—may or may not have a common carriage aspect to them, is something that deserves more serious thought than it has been given. I would maintain that the common carrier in the press is the printing press, not the newspaper or the sheet of paper itself. And that one of the reasons why newspapers have enjoyed the protection of the First Amendment without more serious attacks than they have had, is that basically, in spite of economic barriers, printing presses and the post office have existed as a common carrier, making distribution possible—not easy—but possible. It has been tolerated for books, newspapers and so on to be objects of private property and protected under the First Amendment, essentially on the notion that it was economically reasonable, given the ubiquity of printing presses and post offices for others to enter and express different opinions, even though the economic costs might have risen.

Now in the broadcast area, especially in the over-the-air spectrum space, it has been difficult—until recently technologically difficult, indeed impossible—to crowd more and more stations into the media, but that necessity has disappeared. Therefore, the notion of distinguishing between a common carriage infrastructure and a First Amendment protected diversity of control over content and diversity of opinion is something that I think needs a good deal of careful thought, especially in the light of the fact that these barriers among hitherto technologically and institutionally distinct media are breaking down.

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The FCC over the years has, as many would say, become the captive of the industry that it regulates. It is fashionable to believe that the FCC, like other regulatory agencies, has regulated cable because it was in the interests of the over-

the-air broadcasters to throttle cable. Having let cable come in more recently, although with one hand tied behind its back, it now tries to protect this lame fledgling from competition from other quarters. But I think that's too facile and cynical a viewpoint. I think the FCC does that sort of thing largely because it can't help itself.

If you want to understand the real workings of the FCC I refer you to a marvelous article in the Yale Law Journal back last summer by Nick Johnson, written shortly before he left the FCC, called One Day in the Life. It becomes clear on reading that article that no human being can rationally act on all the business that's brought before the FCC on one agenda. Although I'm cynical in most things, I have one basic article of faith which is that rationality on the whole is better than irrationality; and rather than look for venality and stupidity in the FCC, I would simply look for a gross overload and for a Congressional intent that these issues had better be dealt with out there—however incompetently—than dumped back into its lap. Witness the 14 years' hiatus in the settling of copyright issues. In short, these issues are nobody's baby.

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I was asked earlier how I feel about the First Amendment—how I see it applying to kinds of broadcast information, news industries, the emerging media.

I believe in it very strongly and feel that it should be maintained. Let's get more specific. The notion that a broadcaster should be able to say anything he wants to, I think is consistent with the protections of the First Amendment. The Red Lion case, among others, balanced against that a notion that the hearer has some right to be protected, because after all there are only three or four channels; and if the owner of those channels—however much he says about being a public trustee and so forth and so on—is out for the buck and says what he wants to, etc., the hearers, listeners, the viewer, may not get a full range of opinion. Fair enough, so you have a Fairness Doctrine and even back in 1927 before that, there was legislation about equal time for political candidates and so on to balance that. Now that's very fair in appearance, but I would argue that under the conditions of scarcity that obtained in 1927 and in 1934, that was probably the soundest way to approach the issue. You could not let a few outlets be monopolized without some regard for the interest of the listeners as well as of the speaker. However, that situation has changed.

Now, what is the Congress doing in the face of the changed situation? It protects the speakers' right of the broadcasters by putting through bills to extend licensing from three to five years. Which is well and good, but doesn't

do much for the right of the listener by giving greater security to the licensee who may or may not face a hassle on Fairness Doctrine. As I am sure you know, there is a big discussion over the question of whether fairness cases should be decided as they occur or only at license renewal time. If they occur at license renewal time, everybody will have forgotten about them, etc. etc. So, in a sense, five years undoes some of the Red Lion thing.

My point is that the whole business is a very Byzantine and elaborate accommodation to a fact that no longer exists—namely, the scarcity of the electro-magnetic spectrum. Whatever the details of economics, when technology permits wiring at least cities or other densely habited areas, with

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### ... Too many are mesmerized with the notion of the wired nation.

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twelve, twenty, forty, eighty channels of cable television, the scarcity argument disappears. There is no major argument for limiting the rights of the speaker through fairness arguments because the rights of the listener can be served best through multiplicity of expression over different channels, as indeed they are through multiplicity of printing presses. My whole point is that there's been too little thought given to this; that too many are mesmerized with the notion of the wired nation. This is economically impractical. Too many accept the shibboleth of prohibition of cross ownership and regard as unspeakable an approach to common carriage. Broadcasting interests and newspaper interests with cable facilities are the only ones who have the capital to transfer investment toward a basis of common carriage for the infrastructure and open competition in leasing of channels.

My final plea is this: more recognition should be accorded the notion that investment transfers, as from over-the-air broadcasting operations in urban areas to cable, could provide in electronic media something of the much stronger—however flawed—First Amendment structure which we've become accustomed to in the print media. <sup>®</sup>

Gitt and his newspaper were misunderstood not only during their lifetime . . . but also after each had perished.

—James Higgins  
A Reporter Reflects:  
The York Gazette and Daily

# The Law, The Press and The First Amendment

*Editor's Note: On Friday morning of the October Nieman Assembly, distinguished members of the Bench and Bar joined the Nieman Fellows and Associates to discuss a hypothetical First Amendment case, moderated by Arthur R. Miller, Professor of Law at the Harvard Law School.*

*The case study and the transcript of the discussion, edited by Frank Swoboda, (national labor correspondent for McGraw-Hill Publications in Washington, D.C., and a 1974-75 Nieman Fellow under the Louis Stark Memorial Fund), follow an abridgement of Martin A. Linsky's introductory report on the New England Conference on Conflicts between the Media and the Law, held at Chatham, Mass., June 7-9, 1974. Except for Prof. Miller, participants are generally identified only as belonging to the "Press" or the "Law."*

**Martin Linsky:** For those of us who believe that these problems between the media and the law really have to be dealt with outside the courtroom, and that the development of solutions or understandings is a pretty important part of the business of all the professions involved here, not only was what we did in Chatham an exciting experience, but it is important that foundations, like the Nieman Foundation, focus some of their attention on these problems. . . .

I think it's fair to say there were four purposes that we designed at Chatham. One was to try to get members of the law and media professions to consider, outside of the adversary atmosphere of the courtroom, some of the issues of conflict between the two fields—not to resolve them, but just to consider them. And one was to raise the sensitivity level of people toward their own professions and the kinds of judgments and decisions that they were making which had an effect on the other profession. Third, to try to educate people about the other guy's thought processes, what he was worrying about, thinking about, agonizing about. And fourth, the most Machiavellian of all, to try to stimulate—to make the experience exciting enough to stimulate—people to carry it further, to take it back to their own places. The structure was essentially what you're going to observe and participate in today.

We had three sessions, each based on a different case study. They all raised some questions which seemed to be bothering everybody. They all touched on methods of acquisition of news media; they all touched, in one respect or another, on the decision whether or not to print.

I think we went into Chatham with certain assumptions, which I now, and increasingly so, believe to be true. First of all, that judges and lawyers and journalists don't understand each other very well. There really haven't been very many opportunities like this to talk about what the other business really is. Second, that particularly in the journalist's profession, there is a real lack of mid-career education. The pressure of the business is such that people don't have much time or place much priority on stepping back as the Niemans do, looking at what they're doing and trying to figure out whether there can be ways of doing it better. Third, that there is a need not only for exploring these issues and thinking about them and learning about them, but for doing it together. And fourth, and most important, is that if the judges and the lawyers and the journalists aren't willing to sit down and engage in this kind of dialogue and discussion, out of the courtroom and out of the adversary process, then the inevitable result of that lack of communication has got to be a diminution of the kind of freedom that the press in this country now enjoys.

There's been a tremendous follow-up to the Chatham experience and that's really not only what we hoped for there, but what I would think we would hope for here also. Specifically, The Washington Post and the Ford Foundation are now sponsoring a similar conference to be held in the early spring which will involve national media people who work in Washington. There is a similar conference being planned in Chicago. There's one being talked about on the West Coast. Doubleday is sponsoring, with the Ford Foundation, a similar conference in New York, which will relate only to the book publishing business, and the New England Steering Committee which came out of the Chatham Conference, chaired by Jim Thomson and Jonathan Moore, has applied for a grant from the Ford Foundation for a program next year which will involve a series of sub-regional conferences and an effort to participate in other meetings such as this one, to talk about law-media problems, to try to communicate some of the concerns that we have.

To say whether or not the Chatham Conference worked is impossible at this stage. I think that many would agree that there was plenty of communication and consciousness-raising, and there's been some follow-up, but the value of it in the long-term is something that's really very much open-ended.

**Arthur Miller:** This really isn't an exercise in determining who wins and who loses. Nobody wins and nobody loses. The technique is supposedly consciousness-raising, an attempt to get the disciplines represented around the table to talk to each other and articulate not only their positions, but what underlies those positions, how well they've been thought out and where the points of abrasion are and where

## Case Study

Ned Nosey is the chief investigative reporter for the Tombstone Titilator. In addition, he does a five minute "spot" on the local television station's KROC-TV, evening news based on the content of his daily column. As is true of all good investigative reporters, Ned has numerous sources of information through governmental officials, private investigators, credit bureaus, banks, and tipsters. His practice is to use these to the fullest and let the chips fall as they may.

Ned currently is covering the Tombstone City Council elections and has been profiling each of the candidates in depth. In the course of working on these stories, Nosey convinced his friend, Dagby Dolt, the manager of the Tombstone credit bureau, to provide him with a full financial report on Aphid, which showed his net worth, outstanding debts, and contained several unexplained "slow-pay" and "no-pay" entries. In addition, Nosey procured a copy of a two-year old investigative report on Aphid, which had been prepared for an insurance company, containing notes on an unidentified investigator's interview with an unnamed neighbor. These suggested that Aphid conducted frequent, loud parties attended by numerous bearded "hippie" types and that a distinctive, sweet aroma frequently emanated from his apartment. Nosey reported this information in a column on Aphid with comments to the effect that the candidate lacked financial responsibility and led the kind of dissolute life that might not be appropriate for a member of the city council.

In preparing a profile of candidate Bob Bumptious, Nosey had another of his friends, Deputy Sheriff Brutus Lascivious Clodde, search the local police records and, using a local computer terminal, make an inquiry on the FBI's National Criminal Information Center. This produced rap sheet entries showing that, as a teenager, Bumptious had been

arrested for reckless driving, but was never prosecuted, and had been arrested four years ago for "consorting with a known prostitute." The latter arrest apparently had been illegal and no criminal proceedings ensued. These disclosures by the Sheriff to Nosey violated state law and Department of Justice regulations. Nosey reported both of these arrests to his readers under the headline "School Board Candidate Charged With Reckless Driving and Linked With Known Prostitute" and without indicating any of the ameliorating facts. The article was accompanied by a reproduction of the "mug shot" of Bumptious in the Tombstone police rogues' gallery. Bumptious has now sued the City of Tombstone, the State, and the FBI for violating his civil rights by improperly releasing this police data. Judge Pettifogger has been asked to direct Nosey to testify as to his sources for the article.

Nosey's investigations of candidate Carl Cassandra revealed nothing of an unsavory character. However, he accidentally ran across a photograph in a 20-year old issue of the Babbitville Blade of a woman bearing a striking resemblance to Cassandra's wife. The picture was attached to a story on the trial of a woman charged with slaying her husband in a fit of passion. Careful investigation revealed that the woman in the photograph was indeed Cassandra's wife, that she had been convicted of manslaughter and served five years in prison, that upon her release 14 years ago she had changed her name and moved more than 1,000 miles from Babbitville to Tombstone to escape her past, that since her arrival in Tombstone she not only had lived a blameless life but had become a pillar of Tombstone society and a patron of numerous charitable endeavors. Nosey reported these facts as part of his column on Cassandra without editorial comment.

the points of accommodation are. So I am going to conduct this little session in what is euphemistically, I think, called the Socratic method of questions and answers.

Now, we're not interested in what the law is this morning—we're proceeding almost as if there is no law—as if we're making the system. Of course, from time to time some loose ideas of what the law is may creep in. We can't ignore *Tor-nillo*, we can't ignore *Sullivan* and other things like that. But by and large we're not interested in hearing what the law *is*. I think what we're interested in is what *we* think the

law should be and what we think the conduct of responsible media people should be.

The problem you have in front of you is admittedly a Rube Goldberg kind of thing. It would never happen in one "swell foop." But it has happened in pieces and is not a figment of some malicious law professor's imagination. I can give you citations for each and every element of the problem in front of you. But to get maximum pedagogical power we're going to look at it as a unit. What I'd like to do is address three broad themes. First, what is the legitimate

range of reporting techniques, and the other side of that coin, of course, is what levels—if any—the law should impose on those reporting techniques to make sure that they meet some minimum standards of “decency.” Second, what level of responsibility or second-guessing should a publisher exercise once a reporter has done his or her thing; and finally, assuming publication of something that arguably causes damage to people or institutions, what, if any, legal remedy should exist to try to restore some kind of equilibrium which may have been set awry by the publication of the article in question. We’ll start at the top, first by considering the various investigative reporting techniques reflected in the hypothetical problem. As an investigative reporter, what do you think about that?

**Press:** Well, I think I would have fired Ned.

**Miller:** For what?

**Press:** For incompetence. For printing material that was obvious where it came from, first of all.

**Miller:** What do you mean, “obvious where it came from?”

**Press:** Slow-pay and no-pay entries would indicate that he got right straight to the credit bureau records and he’s not supposed to—or at least it’s not considered polite. In most states it’s not legal, I believe.

**Miller:** Now, you’re telling me that as a reporter you would never go to a local credit bureau. . . .

**Press:** Oh, no. I’m telling you I would go. But I’m telling you I would not print it without masking it.

**Miller:** You’d mask it, then.

**Press:** I would mask it down. Absolutely right.

**Miller:** I see. Particularly if you thought the publisher would fire you for being sloppy about revealing your sources.

**Press:** No, because even if the publisher didn’t, you’d end up in a whole lot of legal hot water.

**Miller:** So what I gather you are saying is that despite the fact that you know it’s illegal to produce this information, you would procure it nonetheless. And you would mask it in such a way as to slide it past your publisher so he wouldn’t realize you had broken the law.

**Press:** Something like that, but not exactly. What I’m saying is that it’s perhaps illegal, but the information exists; and if the information exists and I’m able to make what I consider to be responsible use of it—

**Miller:** What *you* consider to be a responsible use—

**Press:** What I consider to be a responsible use of it. That’s right.

**Miller:** Yours is an existentialist approach. The information exists, therefore it is, therefore I can use it.

**Press:** That’s right. If I can get my hands on it.

**Miller:** If you can get your hands on it. And what will you do to get your hands on it?

**Press:** Well, I’d stop short of mugging, I’m certain of that.

**Miller:** How far short?

**Press:** Quite a bit.

**Miller:** What do you mean—quite a bit? You’ve already admitted you’d break the law. The Fair Credit Reporting Act says you can’t do that.

**Press:** I would call my credit sources on it.

**Miller:** What do you mean, *your* credit sources?

**Press:** I mean any source that I have in credit offices.

**Miller:** —Without regard to the fact that it violates the law.

**Press:** I’m not going to advertise that fact, however.

**Miller:** What about the arrest record?

**Press:** No, I don’t believe in printing an arrest record.

**Miller:** Why not? What’s the difference between the financial data and the arrest record?

**Press:** Because . . . well, I didn’t say I’d print the financial data—I would print some items, perhaps, from a credit record. . . .

**Miller:** You’re distinguishing between what you can get and what you should publish.

**Press:** My distinguishing is this: I don't believe that reporters should print slow-pay or no-pay entries from credit records. What I'm interested in when I go to a credit record is collateral information, and I don't consider that reliable. I consider that a lead.

**Miller:** A lead like the business about marijuana smoke?

**Press:** That might be a lead. I might go to a neighbor and ask questions.

**Miller:** —A neighbor and ask. Then, would you publish?

**Press:** No, I'd have to look at it from the total picture. I'd have to go to several neighbors.

**Miller:** —Several neighbors.

**Press:** I'd have to go to see if perhaps there were police records on them.

**Miller:** But you just told me you don't want arrest records.

**Press:** I don't want arrest records, but if there were police calls or records regarding interviews with people, or if there were any kind of records to back up the fact that a neighbor had noticed suspicious activity, that there had been something illegal going on, I might consider it a little more strongly.

**Miller:** I'm interested in the distinction you're drawing between using the credit records as a lead and ignoring the arrest record.

**Press:** The distinction between arrest records and credit records, in my mind, is that I've seen a number of bad arrests made. An arrest has no legal weight in my mind. I can be arrested for anything. People are often picked up—or were picked up in the past—on suspicion alone. I think if there were some sort of adjudication I would be more interested in the record.

**Miller:** Well, what kind of adjudication is there in a credit record?

**Press:** Well, there is none. . . .

**Miller:** What justifies you using—

**Press:** But I'm also not using slow-pay or no-pay records.

**Miller:** But you're using the marijuana smoke as a lead.

**Press:** No, I'm telling you that the information exists, that there's something that draws my attention to the report. I can't start exercising prior censorship on my mind. If my mind leads me in a certain direction, I follow it until I think that it's either not worth pursuing or it's a minor matter.

**Miller:** So your thesis is any kind of information that exists you'll go after.

**Press:** Any kind of information that either comes to my attention or that I believe I can get without seriously—

**Miller:** *Seriously* violating the law.

**Press:** No, no. Seriously impairing my liberty, for one thing.

**Miller:** *Your* liberty. In other words you don't care what the nature of the crime is as long as you're not caught with your hand in the till.

**Press:** You're making it a little more harsh than it is.

**Miller:** Well, I'm only giving you back your words. I have not seen any limiting principle yet.

**Press:** Well, I don't have a limiting principle in my desire or my attempts to follow information. I think you have to go on each case individually. Obviously laws were broken in the pursuit of the Watergate matter, for instance. Grand jury information was accepted and printed in some respects. But in that case you make a decision because, it seems to me, you weigh the effects.

**Miller:** *You* weigh!

**Press:** Yes, I weigh. Absolutely.

**Miller:** Ever watch "Mission Impossible"? You know the voice coming from the tape, "When conventional law enforcement methods have broken down . . .," then we send in the assassination squad, eh? But the end justifies the means. Their judgment is that it's narcotics, so we can kill.

**Press:** I think that's the judgment we have to make.

**Miller:** I see. And who gave you that power to make that judgment?

**Press:** I think some of it's inherent in the idea and the notion of the free press. In other words, some of it is inherent in the First Amendment.

**Miller:** Let me ask this judge: how do you react to this?

**Law:** I'm just thinking that he's in the position of the conscientious objector who doesn't agree with the draft law, he has no religious scruples, but just doesn't believe that he should be allowed to serve in wars. Under the law he is put in jail. That's the price he pays for disobedience.

Now the reporter claims a right to disobey a law that he thinks infringes on freedom of the press. Maybe he's right because maybe our laws have not yet reached the point where they pay enough respect to the press as an institution. But if you just ignore the laws you don't like and use your own judgment about when to transgress, that's a bad principle for people to follow in general.

**Miller:** And you think the law should be free to punish on the basis of his bad exercise of his judgment?

**Law:** I'm not sure what the status of this law as to credit information is, but I'm assuming that here is a law in the state that says it's a crime.

**Miller:** Yes. Or the more obvious example is the release of the criminal offender record information which in Massachusetts, and a number of states, is a crime. It's a misdemeanor.

**Law:** Then I would say that if he transgresses, he should pay the penalty and perhaps as a martyr use his punishment as the basis for persuading other people to change the law. That's the approach we enforce and follow with regard to disagreeing with the tax laws or disagreeing with the draft laws.

**Miller:** But I gather you feel you've got the prerogative, sitting on the bench, to sanction a newsperson who has exercised a judgment that the end justifies the means; namely, I'll violate the law in order to get a story that I think the public should have.

**Law:** That I have?

**Miller:** —The power to sanction him for doing it.

**Law:** I may not like it, but I think I would have no other course but to say okay, you disobeyed the law and that's it.

**Miller:** (To the reporter): I gather you're ready to go to jail. We've already indicated you've taken evasive action.

**Press:** Obviously I know that I have broken a law if I am caught doing this.

**Miller:** Ahhh. There is no law unless you're caught. Is that the code of the copy room?

**Press:** Well, no, that's my particular way of looking at it because, realistically, we've all broken laws or frequently have broken laws.

**Miller:** Because I drive too fast on the Massachusetts Turnpike, you can go rip off a credit bureau.

**Press:** That's not exactly it.

**Miller:** Any of the other media people have any reaction to this?

**Press B:** I would never use that sort of credit report because they're notoriously inaccurate.

**Miller:** Not even for a lead?

**Press B:** No.

**Miller:** You would never—

**Press B:** I wouldn't go to the credit bureau in the first place. I think that's pure garbage.

**Miller:** What would you get? Would you get arrest records?

**Press B:** I'd look for convictions.

**Miller:** You'd look for convictions. You'd go down to your friendly neighborhood sharp and say what have you got? An Aphid or Bumptious? Or Cassandra?

**Press B:** Well, I think that if somebody had been convicted. . . .

**Miller:** Would it trouble you that it would be against the law for that policeman to give you that data?

**Press B:** Well, is it illegal to disseminate conviction records, too?

**Miller:** It is illegal in a number of states and I hope in the near future across the nation—to disseminate anything from the national crime information centers other than to a law enforcement agency.

**Press B:** Well, I think that if somebody had been convicted of something serious, he'd be in the clips, right?

**Miller:** It might be in the clips.

**Press B:** I could look in the clips.

**Miller:** Yes. But suppose this is somebody who had para-

## Program Nieman Assembly

October 24-26, 1974

### Thursday October 24

#### 17 Quincy Street, Cambridge

6.00 p.m.

Registration and Cocktails

7.00

Dinner

*Opening Remarks:* James C. Thomson Jr., Curator, Nieman Foundation

*A Welcome:* Dolph C. Simons, Jr., President and Publisher, The Lawrence (Kan.) Daily Journal-World

*A Greeting:* Richard H. Leonard, Editor and Vice President, The Milwaukee (Wis.) Journal

*Address:* Anthony G. Oettinger, Professor of Linguistics and of Applied Mathematics

"Merging Media and the First Amendment"

### Friday October 25

#### Harvard Faculty Club, 20 Quincy Street

9.00 a.m.

Coffee and doughnuts

9.45

Report on the Chatham Conference on Conflicts between the Media and the Law: Martin A. Linsky, New England Conference coordinator

10.00

Discussion of hypothetical First Amendment case: Arthur R. Miller, Professor of Law

#### 17 Quincy Street

12 noon

Cocktails

1.00 p.m.

Luncheon

*Remarks:* Derek C. Bok, President, Harvard University

*Address:* Floyd Abrams, Attorney (Cahill Gordon & Reindel) who has represented The New York Times, NBC, Random House  
"Judges and Journalists: Who Decides What?"

#### Penthouse, Holyoke Center, 1336 Massachusetts Avenue

6.00 p.m.

Cocktails

7.00

Dinner

*Speakers:* Emily D. T. Vermeule, Professor of Classics and of Fine Arts  
"The Press and Cyprus"

Henry Rosovsky, Dean of Faculty of Arts and Sciences  
"Whither Japan?"

### Saturday October 26

#### Harvard Faculty Club

9.00 a.m. to 12 noon

Informal Brunch

chuted into the jurisdiction and even your files don't carry it. I want to know what you'd do. I don't want you to fight the hypothetical, so to speak. Would you go and, through friendly persuasion or a little bit of arm twisting, coerce or get data from a police agency that the law said you weren't entitled to?

**Press B:** You mean get the police to run a computer check on somebody?

**Miller:** Yes.

**Press B:** I don't know.

**Miller:** You don't know. But you seem almost willing at least, to violate the law to get some data. How do you justify that? How do either of you or any of the media people here justify violating a law to get data? It is against the law either to disseminate or to receive criminal offender record information in a number of states. And it is against the Department of Justice regulations, the FBI National Crime Information Center to do it. So there's no doubt there's a violation of law.

**Question:** Now, if a police officer comes up to you and says Miller, here's an arrest for you. . . . ?

**Miller:** He's violating the law.

**Question:** And you're violating the law if you listen to him?

**Miller:** Well, there's no case like that, but if you take it and use it, you're clearly violating the law. And clearly if you go and solicit it, then you're violating the law.

**Question:** Well, who does have access to this information?

**Miller:** The criminal justice system. That's who generated the data and that's how it's used—and perhaps in some states for licensing purposes.

**Question:** But why is it assumed that the criminal justice network, or whatever you want to call it, is a better guardian or repository of this information than other—

**Miller:** I didn't say that. The legislature said that. The Congress has made a social decision that this data is to be used for a single purpose, and now I hear other people are willing to violate that social legislative judgment in the name of instinct, or importance of the story, self-declared. . . .

**Unidentified voice:** For progress. . . .

**Miller:** Sure, for progress. Or justice, sure. My kind of justice, his kind of justice. . . .

**Law:** Is there any member of the press who believes that any such law would violate the freedom of the press?

**Voice:** Yes.

**Law:** Let's open that issue, whether we believe that the law should not be the law.

**Voice:** Absolutely.

**Law:** Or at least is it unconstitutional because it is limiting. And in that case, we're on to the question of whether the acquisition of news is to be protected the same as the publishing of news.

**Voice:** I have a question. The person with the conviction record supposedly has been convicted under public circumstances in a public trial, or at least in a condition of law. It's a matter of history.

**Miller:** And, there are public records.

**Voice:** It's reduced to writing by members of a society that have been paid by other members of the society to do their work for them. This is a societal function.

**Miller:** Oh. You socialize the data. Anything written belongs to the public.

**Voice:** I'm coming closer to that point of view.

**Miller:** Ever ask your publisher whether he's in favor of the copyright law? Under your principle, I can reprint The New York Times or your paper.

**Press:** I want to know what the difference is if you're a court reporter and you're sitting there when Bumptious is convicted—supposedly of drunken driving—what's the difference between standing there when he's arrested and ten years later going back and saying Bumptious has been arrested?

**Miller:** You can't distinguish between a court reporter and a police officer?

**Press:** You know it's all the same, it's published—

**Miller:** It's all the same?

**Press:** When it happens.

**Miller:** Oh, I see.

**Press:** So why can't it be public after it happens?

**Miller:** Are you willing to go and wheedle information out of a grand juror?

**Press:** If I can.

**Miller:** Out of a grand juror.

**Press:** If I can. If I find one, yes.

**Miller:** Out of a grand juror.

**Press:** Anybody who will tell me anything. I will listen.

**Miller:** You will listen. [To Judge.] Are you going to let these people run around and twist arms of grand jurors or jurors?

**Law:** No.

**Miller:** What are you going to do?

**Law:** I'm going to try to protect the judicial proceedings.

**Miller:** How?

**Law:** Try to issue an order which does not unduly restrict the press but which does protect the process.

**Miller:** But you're going to try to stop them from getting data out of a grand juror. Right? How do you feel about that? You ready to go to jail on a contempt citation?

**Press:** If it's something that's important enough to me, yes.

**Miller:** Well, how do you know whether it's important until you twist the arm?

**Press:** Well, the thing is that you have a certain set of values.

**Miller:** I see. You're the self-appointed avenger, right?

**Press:** For me? Yes.

**Miller:** Not for you—you're avenging in the public press. You're avenging at the expense of other people.

**Press:** If it's important enough, yes.

**Miller:** In other words, when I buy a newspaper I'm supporting your subversion of the judicial process.

**Press:** Basically, yes.

**Miller:** You think that's good?

**Press:** Otherwise, who'd know anything?

**Miller:** Well, we have a lawful process known as a trial. It's a public trial.

**Press:** But everybody can't be at a public trial and everybody's not going to go down and ask for the transcript. So somebody has to tell. And that's us. And anyway I can tell, I'm going to tell.

**Miller:** In other words, you have a veto power over any social judgment by a legislature that certain kinds of data are unavailable.

**Press:** Yes. If I'm willing to take the consequences of exercising that right, yes I do.

**Miller:** In other words, going to jail.

**Press:** And that's a personal decision that every one of us makes.

**Miller:** I see. Anybody dissent from that in the media?

**Press:** I want to add a qualifier. I think it's important to judge each case individually and decide when you're going to do something, for what reasons you're going to do it.

**Miller:** And in the hypothetical case, what lines would you draw?

**Press:** You mean with Tombstone City Hall?

**Miller:** Yes. Any lines?

**Press:** First of all, I don't think any of these things are serious enough to spend more than a half an hour worrying about.

**Miller:** —That a city council candidate smokes marijuana—not important enough?

**Press:** No, I don't think that's important enough.

**Miller:** That a city council candidate has got a long history of emotional instability?

**Press:** Well, we've got another question there. That's another question.

**Miller:** Why?

**Press:** Well, because that bears—

**Miller:** Marijuana up, mental health down.

**Press:** I believe that, first of all, you have to judge whether or not what you're looking for impairs his ability to hold office or not, or seems to impair his ability to hold office, or to serve in the function that he's running for.

**Miller:** Yes.

**Press:** And I don't think that there's any reasonable evidence around that shows that marijuana necessarily impairs his ability to hold office. However, severe emotional—

**Miller:** Severe, who said severe? I said a history of emotional instability. What do we mean by instability? You know what instability is?

**Press:** I'd make up my mind on that as I went along. You'd have to look at it and see.

**Miller:** *You'd* make up *your* mind.

**Press:** That's what the First Amendment means to me.

**Press:** Forgetting that, you know that poor Nosey is just a reporter and somebody has to make an initial decision—that's not to say that Nosey's initial decision is going to stand. But somebody's got to decide something somewhere. And unfortunately, Nosey's a reporter doing the story, the first one in line.

**Miller:** In other words—

**Press:** That's not to say his decision is irreversible or necessarily right.

**Miller:** In other words, you pass the buck up to the publisher.

**Press:** That's the way the system works.

**Miller:** That's the way *your* system works.

**Press:** That's the way every newspaper system works.

**Miller:** Well, what I'm trying to get at is what gives him the

right. He says First Amendment. The First Amendment gives him, this Renaissance man, the decision, initially, to gather the data. Now we pass the buck up to some publisher as to whether to publish it or not. Then we pass the buck over to the judges in terms of whether to sanction or not. Right? That's the system. Question: is it a rational system?

**Voice:** No.

**Miller:** Why not?

**Press C:** The whole gathering of information in this particular process is predicated on breaking a law that's supposedly been passed to promote the general good, and nothing is rational that forces someone to violate a law protecting the general good in order to serve the general good.

**Miller:** Right. Now what do we do about it?

**Press C:** I don't know.

**Miller:** We've got rights in conflict, eh? The people who made the decision that criminal justice information should not circulate with gay abandon, obviously were doing something inconsistent with your rights under the First Amendment. But you still think that you can probe by violating the law, subject to what Judge Coffin or Judge Abrams or Judge Kaplan are going to do to you. Now, let's look a little more carefully at our standards. One reporter says he'll report mental health data.

**Press:** No, I didn't. Now don't say that. I said, I would consider it. I would investigate it more closely, to determine how I think it bears upon his ability to hold office.

**Miller:** But you'd go get it.

**Press:** I might go get it. But so much information comes through the hands of people who work in news media anyway that's never used, that that's really—

**Miller:** It's safe in your hands, eh?

**Press:** I'm saying it's far safer than it might be stuck away someplace and never used, if you're going to leave the decisions only to the courts.

**Miller:** But suppose Judge Coffin issues a subpoena against you after reading this article and says hey, Ned, what are your sources?

**Press:** I wouldn't tell him.

**Miller:** You wouldn't tell him.

**Press:** No.

**Miller:** I see. It's safe with you. It's really safe. I can put my trust in you. You've got a lot of sort of anarchists if that's the way the system works, you know. What the hell. You're going to go to jail—you're going to go directly to jail and you're going to sit in jail for the rest of your brilliant career.

**Press:** I'm going to get the best lawyer I can to get me out.

**Press:** Mr. Miller, has anyone in this group besides me ever had this trouble of being subpoenaed?

**Press D:** I've been subpoenaed before a grand jury, yes.

**Press E:** Were you cited for contempt?

**Press D:** No. Because the court saw the wisdom of not making me testify.

**Miller:** (To Judge): Would you ever cite a reporter for contempt for failing to reveal sources?

**Law:** Yes. As a matter of fact, I think we have a decided case in our court. This relates to discovery, but of course the principle is the same, when we have required the reporters to reveal their sources on the same basis as anyone else does. I must say that I voted—I think I voted on that judgment—but whether I did or not, it was one of the most delicate things I've ever done.

**Miller:** Now, what standards do you use?

**Law:** The general law.

**Miller:** The general law. Something you learned at the Harvard Law School?

**Law:** No, I mean as to discovery, which was the precise question before the court, we used your text.

**Miller:** My text. I haven't been in the real world for 15 years.

**Law:** It was a libel case and it became relevant to find out what the sources on which the reporter acted. As a matter of fact I think the pleadings on the case suggested that the defense that was being offered turned on the trustworthiness of the reporter's sources of information.

## Associates Attending Nieman Assembly

William Attwood—President and Publisher, Newsday (N.Y.)

H. Brandt Ayers—Editor and Publisher, The Anniston (Ala.) Star

Arthur and Morley Ballantine—Editors and Publishers, Durango (Colo.) Herald

Barry Bingham, Jr.—President and Publisher, Courier-Journal and Louisville (Ky.) Times

Betty W. Carter—Publisher, The Delta Democrat-Times (Miss.)

Barnard L. Colby—Publisher, The New London (Conn.) Day

Donald P. Doane—Associate Executive Editor, U.S. News and World Report (D.C.)

Alphonse Frezza—General Manager, Malden (Mass.) Publications

Loren F. Ghiglione—President and Publisher, The Southbridge (Mass.) Evening News

John Hughes—Editor, The Christian Science Monitor

Sidney H. Hurlburt—Managing Editor, Newburgh (N.Y.) News [representing Gannett Newspapers]

Walter E. Hussman, Jr.—Publisher, The Arkansas Democrat

Thomas Kearney—News Editor, The Keene (N.H.) Sentinel

Richard H. Leonard—Editor and Vice President, The Milwaukee (Wis.) Journal

K. Prescott Low—Publisher, The Patriot Ledger (Mass.)

Bruce H. McIntyre—Vice President and Editor, The Oakland Press (Mich.)

Charles P. Manship, Jr.—President, The State Times and Morning Advocate (La.)

J. Edward Murray—Associate Editor, Detroit Free Press [representing Knight Newspapers]

Richard P. Sanger—President and Editor-in-Chief, The Wilmington (Del.) News-Journal

Dolph C. Simons, Jr.—President and Publisher, The Lawrence (Kan.) Daily Journal-World

Robert W. Smith—Publisher, The Minneapolis Star Tribune

H. L. Stevenson—Editor, United Press International

Jack Williams, Jr.—President, Publisher, Editor, Waycross (Ga.) Journal-Herald

**Miller:** You feel comfortable second-guessing an editorial decision?

**Law:** Why, certainly.

**Miller:** Certainly. Something in your background makes you feel comfortable about that?

**Law:** Well, I found it very difficult to distinguish this kind of a case from any other kind of a case in which discovery was sought.

**Miller:** And the standards should be the same as against the press.

**Law:** So we seem to think. I must say that it's a delicate question. It may be that in cases where discovery is sought against a reporter there should be more of an effort to discern whether the source is really essential to the trial of the case. That is a factor that plays its part in any applications of discovery, but in the case of a newspaper reporter, perhaps there ought to be a more sedulous inquiry into that subject. But I would find it very difficult to distinguish the case of a newspaper reporter from any other case, when you're in a litigated proceedings.

**Miller:** —See, you're common folk. A reporter is just another member of society as far as the bench is concerned.

**Law:** Now anybody who wants to be martyred can, of course, burn at the stake.

**Miller:** Judge, do you dissent, agree with your colleague?

**Law:** Well, we of course had the problem and we didn't come down in the same posture, quite, that his court did. We did give the press some little—but they claimed inadequate—protection. We said if it's the only source and it's essential (this was in a criminal court) to the determination of guilt or innocence we would require the reporter. Not otherwise.

**Miller:** Would you draw any distinction in terms of whether the source violated law? In other words, if the data comes from a police officer who committed a misdemeanor?

**Law:** I don't think within that proceeding, no, I don't think so. No, I think you'd view that separately. I think one of the things that came clear for me and perhaps for others here is that one of the reasons we don't get too much of a dialogue is that when courts get a problem, it's already a problem—we don't make advance decisions. We have to

take the proposition that's handed us. And we are concerned with the litigant and not with general propositions. The general propositions are constantly tested by what we have to do in the court in favor of individuals, and this makes us come at it almost from the opposite side. We may reach somewhere near the same results but I think this makes it harder to have a dialogue.

**Miller:** (To Press): Does it trouble you at all that these people on their high platform and in their black robes are making these kinds of judgments about what you're doing?

**Press E:** Well, it certainly does. It also troubles me that you've not made any distinction yet between the gathering of the information and the actual use of the information.

**Miller:** Now tell me about that, if you want to segue into part two.

**Press E:** Well, I would agree with my journalistic colleagues that there should be an unlimited right to seek the information. Just as you can as a private citizen, if you want to, go down and try to convince the sheriff to hand over those records to you. Why shouldn't you be permitted to do that just the same as somebody who has "newspaper" on a button on his—

**Miller:** You know you've got clout that I don't have.

**Press E:** Not necessarily. But clout aside—

**Miller:** Really. A police reporter in a community doesn't have clout with the sheriff?

**Press E:** Well, he may have more than the individual citizen, but my point is that the individual citizen should have this same right to request the information.

**Miller:** But you go down there, or some of your investigative reporting print-media colleagues go down there, put your arm around the sheriff and say, Say Joe, you're up for reelection this year aren't you? You know our paper supported you last time out, how about a few arrest records? Can I do that?

**Press E:** Of course you don't have the clout, but you have the right to request that kind of information.

**Miller:** To solicit a breach of the law?

**Press E:** Suppose you, as private citizen, knew that Barney Bumptious had been involved in the kinds of things he is

alleged to have been involved in here. Nobody else knows that. What do you do with that information as a private citizen? Do you sit on it? Do you go to a newspaper and say I would like to inform you that this is a lead you might want to pursue about somebody who seeks to be a public servant? Or do you go to the sheriff's department and say, I would like to confirm that ten years ago Barney Bumptious was involved in this particular criminal or civil proceedings.

**Miller:** Right. So you would justify just going down and coercing the police—

**Press E:** Coercing is your word.

**Miller:** Yeah, well, what would you describe putting your arm around the sheriff and reminding him that he's beholden to your paper for reelection? Friendly persuasion?

**Press E:** Well, I'd call it blackmail.

**Miller:** Blackmail—Blackmail—Blackmail. Would you break in?

**Press E:** No, I would not go that far.

**Miller:** How do you distinguish the two?

**Press E:** Well, I'm not saying I would use blackmail either. Or break in. I say that I would make the request. Now if he seeks to volunteer the information and passes it on to me, then I have the problem of what do I do with the information. I'm guilty in some states because I have received the information, right? He obviously is guilty because he has released it. Is he guilty of the same kind of crime if he goes home and says to his wife—a private citizen, by the way—in going through Barney Bumptious's records today, I discovered that ten years ago he was involved in some kind of criminal proceedings? Now where does that leave her in terms of the law?

**Miller:** Technically, there's a violation. But if you can't distinguish between a bedroom communication and the front page of a newspaper, you're in the wrong business.

**Press E:** But you're not distinguishing yet between my point about having the information and using the information.

**Miller:** All right, we'll get there. We'll get there because to determine the legitimacy of your claim let us collect everything, that is, maximum input. We'll control the output at the publishing decision-making level. I think it is fair to let

members of the legal profession know the length to which the press is willing to go to gather all the data. Would you set up surveillance on somebody?

**Press:** Yes.

**Miller:** Yes. —Set up surveillance on somebody. Would you tap a telephone? Yes! Right. Course you would. And you would, of course, distinguish yourself from the plumbers.

**Press:** No.

**Miller:** No. In other words, you're at the same level as the plumbers?

**Press:** In this instance, yes.

**Miller:** If you had the feeling that Daniel Ellsberg was evil to society, you'd break into Dr. Fielding's office, wouldn't you? Just the way they did.

**Press:** I suppose I would.

**Miller:** Any reaction from the bench or bar?

**Law:** Yes, I think that's going much too far. I certainly think that there is a level that the press should not go beyond.

**Miller:** Can you define it? As a lawyer, can you define it?

**Law:** I find that very difficult to define and I can't say that I can.

**Miller:** Can any member of the press define the level beyond which they think their profession shouldn't go—break in, tap, surveillance, pressure?

**Press:** These things are defined largely by tradition, I think. I think traditionally speaking, most newsmen would not go to a break-in, and I think, perhaps, going to a tap might be beyond what most newspaper journalists would go to.

**Voice:** Would you ask for a show of hands on that, Mr. Miller?

**Miller:** What?

**Voice:** —From the press on whether we would tap or break in.

**Miller:** Is there anybody here who would tap?

**Voice:** I might.

**Miller:** And just to get a comparative, how many would never tap, never. Okay, so the substantial majority at least is against tapping. Now let's go on . . . because I think we're at a cross-over point, maybe I'm wrong. Several of you in media have said, "Let us gather everything because we will exercise the judgment about which portion of it should be published." Now, first I want to know what kind of controls do you as a publisher exercise over your reporters?

**Press F:** Well, we tell them to go out and get the story, "go and get it." We don't tell them to go and use any illegal means. I think you've got the whole thing mixed up. I think the reason for the First Amendment is to protect the citizens of the U.S. and, therefore, the things that are appropriate to the citizen become appropriate to the press. And I feel that as a citizen I have a right to know everything about a candidate that I have the time to find out. And because I don't have time to find it out I expect the press to find it out for me. And they know how to find it out. And they go and get it. And I want my reporters to go out and get everything that they can possibly get about the candidate if that office is important.

**Miller:** —If the office is important?

**Press F:** Well, all offices are important. But I don't think it's really important if the dog catcher had certain things—

**Miller:** Oh, you'll decide that—

**Press F:** Well, I'm afraid I do.

**Miller:** You say 'bring it in'—wheat, garbage, chaff, anything—all contributions gratefully accepted and we'll sift this out. We'll tell the people what they should do.

**Press F:** Yes. Right. I will.

**Miller:** And it doesn't bother you that other people have made legislative judgments that certain kinds of data should die?

**Press F:** No. And I think I have a perfect right to protest that by my action.

**Miller:** By your *action*?

**Press F:** Yes, sir.

**Miller:** Civil disobedience?

**Press F:** Yes, sir. I believe in it.

**Miller:** Civil disobedience. And you're willing to take the cross?

**Press F:** Yes, sir.

**Miller:** Okay. Back to the question of restraint on your reporters, I gather you have none.

**Press F:** Well, we certainly do.

**Miller:** What?

**Press F:** We expect them to go under the laws—to observe the law. But if the law is unfair in our estimation—and this is what every citizen has to decide, not just the press. If we decide that the law is unfair and we can't change it right now through the legislature, I think we have a right to civil disobedience and we'll take the consequences.

**Miller:** Okay. Your proposition then is you send the reporters out, tell them "go out and get it under the law—footnote: those laws we like."

**Press F:** Get it under the law. And—

**Miller:** Under the law?

**Press F:** Yes. But listen: when you get the business of not being able to publish a judicial report four years later, this is a sin against the citizens of the United States, and I think the press should do something about it.

**Miller:** What about that, judges? What about that?

**Law:** I don't know what a judicial report four years later means.

**Press F:** Well, I mean, if I can't go out as a reporter and get a story that says that so-and-so served time in the penitentiary—

**Law:** You can go to the penitentiary to get the information.

**Press F:** They say we can't.

**Miller:** You can go to the public records, but there is additional information in the institute.

**Press F:** But why can't the public reference library give it to me? And in this case it's the police court records. Why can't they just put it on the computer and give it to me? The way that the librarian will do it?

**Miller:** What you are suggesting, I take it, is that the law has not made it easy for you to get data.

**Press F:** That is correct.

**Miller:** Because the law, in its own bizarre system of resource allocation, thinks that a dollar spent on a judge to handle the five-year back-log is a wee bit more important than providing records readily accessible to you.

**Press F:** But the citizens have a right to know.

**Miller:** But what we are talking about is not what you can get as a matter of public record. You can get the conviction as a matter of public record—

**Press F:** No.

**Miller:** What we're talking about is the criminal justice information in the computer that doesn't deal with conviction. It deals with arrest.

**Press F:** I'm not interested in arrest. I think that's unfair. I've been arrested.

**Miller:** How is the decision made which of the information is published? How do you decide?

**Press F:** Well, I think I try to decide what the citizen needs to know, and the citizen is me, and the only judgment that I can make is based on my own judgment. That's what happens at the polls and I think that's what the press has to do. It has to decide which information it feels is pertinent.

**Miller:** Okay, and what standards do you use?

**Press F:** Well, I hope I'm using good high standards—

**Miller:** Good, high standards. . . .

**Press F:** All right. I hope that I'm thinking in terms of what is pertinent to the particular matter that is under consideration, and if the information will help the person to make a judgment, well, then I think that information should be put before the public. Because *that* is what freedom of the press is for.

**Miller:** A candidate's financial condition? The fact that he's married to a woman who was once convicted of manslaughter?

**Press F:** I don't think what his wife does is important.

**Miller:** So you wouldn't publish that?

**Press F:** No. And that was quite a while ago, besides.

**Miller:** Yes. Yes. But one paper did publish it. So, I want to know—maybe your standards are higher than others, but don't you think that society should get any second guess at your standards?

**Press F:** They do. Every day.

**Miller:** Every day?

**Press F:** *Every* day.

**Miller:** Do they? In what way?

**Press F:** They either buy me or they don't buy me—the paper.

**Miller:** Oh. Competition.

**Press F:** No. No. We don't have competition.

**Miller:** Does that help Mrs. Cassandra, who's now ostracized in the community?

**Press F:** No. I think she has a very legitimate suit. We weren't talking about her at this point, though. We were talking more about this other man, whoever he is.

**Miller:** Would you publish the story about Mrs. Cassandra? The fact that she was convicted of manslaughter fifteen years earlier?

**Law:** No, I would not.

**Miller:** You would *not*.

**Law:** That's correct.

**Miller:** Is there anybody in this room who would publish it?

**Law:** I can think of only one circumstance. That is if the candidate was running on some kind of law and order platform which, in and of itself, made his wife's prior conviction

relevant as a way of exposing the fact that he either doesn't mean what he's saying or what he's saying doesn't make sense.

**Miller:** Then you think there's a rational nexus between the fact that a man believes in law and order and that he married somebody once convicted of a crime?

**Law:** I think that if a candidate runs for office on a platform which includes, for example, harsh sanction for manslaughter, and continued reporting of everyone convicted of manslaughter to parole officers once a month, it is harsh on the wife, but relevant for the public to know.

**Voice:** You have to assume that he knew she had been convicted, which is not necessarily so.

**Law:** Maybe that is another thing that ought to go into an editor's decision as to whether to print it. What I'm saying is that there are circumstances under which it could be printable, as far as I'm concerned.

**Miller:** What about marijuana? One reporter says that's not relevant, though he would say that mental health information is.

**Law:** He's softer on marijuana than I am. I can conceive of circumstances in which a candidate runs on a platform of making everyone who uses marijuana go to jail for ten years, and then I think it couldn't be more relevant than to find that out.

**Miller:** And if a candidate says nothing about marijuana?

**Law:** Then I would think it would probably not be very interesting or relevant.

**Miller:** Not interesting. Not relevant. What if the candidate were for the U.S. Senate? Not city council. Or school committee?

**Law:** I would say it might be more relevant for a school committee candidate than a U.S. Senator. These are judgmental matters and they should be judgmental.

**Miller:** Now, how is society supposed to be assured that the press will exercise this kind of discretion?

**Law:** I don't think society can be assured of it. I think we've just made a decision that the place to put that power is in the press rather than in the government. And it's worked pretty well.

**Miller:** Remember when Arthur Bremer allegedly shot Governor Wallace? CBS, for those who may have forgotten, went to Milwaukee where Bremer had come from, got into Bremer's apartment, and on national television showed Bremer's report cards for public school. Now how about that for an editorial decision?

**Law:** That strikes me as probably not very good journalism.

**Miller:** Not very good. Sometimes the media makes mistakes, right?

**Law:** Sure.

**Miller:** Then why shouldn't we hold them accountable?

**Law:** They are accountable in the sense that was raised, every day when they publish, and in *some* sense—in some limited sense as I would hope—they're accountable in law.

**Miller:** How? Let's get a judge.

**Law:** I'm waiting for the answer to that one, too. It seems to me that the journalism position is that they have the one organization not accountable except in terms of libel, as I understand it. But if everybody in the U.S. suddenly declares themselves to be journalists, what happens then? Do you all violate the law?

**Miller:** That's right. I drive on the highway. I decide how fast I go. My freedom of expression.

**Voice:** How does the lawyer advise his clients? Does he advise them in terms of the law on the books, or in terms of some higher law?

**Law:** Well, I hope one includes the First Amendment as the law on the books.

**Law:** Yes.

**Law:** And if one does, I'd try to put it into my equation as to what the law is. I don't give them, unless they ask—and sometimes they do—moral advice on whether this is the case they ought to go to jail on.

**Law:** But I understood some of the things you were saying as appealing to a different kind of a law, that is to say you, on occasion, will advise violation of the law.

**Law:** I didn't say that.

**Law:** But it certainly is the implication of what you said.

**Law:** I can't say that I ever—I'm not sure I would say—but I can't say that I ever have advised violation of the law. It seems to me—and now we get a little bit towards what Professor Kaplan indicated for us that we shouldn't get into—that the First Amendment protections are so great and the areas of uncertainty so narrow, that one can pretty easily, in most instances, tell the press that they can go ahead and do what they're likely to want to do. These situations that are hypothetical today are not terribly real, in terms of my clients in any event. So I can't comment on a personal basis.

**Law:** I'm not trying to press you personally. In a general matter, how do you vote?

**Voice:** How could you hold CBS accountable for attempting to televise the report cards? There might be a way to hold them accountable by law. How could that be done?

**Law:** I don't think there's a way to hold them accountable at law for doing report cards. That may be bad journalism, but that may have to be something that we have to live with.

**Voice:** Why should we live with it?

**Law:** We live with bad judicial decisions.

**Miller:** That's right. Well, does that mean that there should be no mechanisms for raising standards and assuring standards?

**Law:** Seems to me that that raises the question of whether the journalism profession wants to establish internally some kind of standard.

**Miller:** Does it? One publisher is going to make decisions on an ad hoc basis.

**Press F:** Well, who's going to make the rules?

**Miller:** I'm asking you that.

**Press F:** State legislators?

**Miller:** Is that the best you can come up with?

**Voice:** You seem to be looking for an automatic thing where a question comes up, you push a button, and you've got an instant decision in each case. And that's not the real world.

**Miller:** What is the real world?

**Voice:** Where you make judgmental decisions.

**Miller:** Reparable to no circumstance?

**Voice:** Unless you want to have elected editors and publishers whom you can hold accountable at the polls or some other way, I see no other way to do it.

**Miller:** There's no other way to do it?

**Voice:** —That's on the individual judgmental basis, and you just have to hope that the editor is as wise in his decisions and as restrained as a professor or a judge or a doctor. . . .

**Miller:** Or the President of the U.S.? I mean, we're just supposed to have faith, huh? . . . When no other profession in society thinks that way?

**Voice:** Oh, we have faith in the other professions of society. It's not an automatic mechanistic society. . . .

**Miller:** Yes, but the legal profession imperfectly tries to regulate itself; it licenses itself. At least there is an attempt at self-regulation. Have you ever taken a reporter's pen away?

**Press:** I've not allowed something that a reporter gathered to be published.

**Miller:** Yes. But have you ever taken a reporter's pen away? A reporter's license for the writing profession?

**Press:** We've fired reporters.

**Miller:** For what?

**Press:** For incompetence.

**Miller:** You had a standard.

**Press:** Yes.

**Miller:** Some of these things [in the hypothetical case] were done this year—this year in this country. How do we hold your profession to standards?

**Press:** Who's we?

**Miller:** Well, I'm willing to start with review. You ask the professional journalists.

**Press:** We, exactly. But if you acquire a reputation for inaccuracy, unfairness and low blows, sooner or later the readers lose confidence in you and this after a while is reflected in lower circulation and drop-off of ad lineage, and all kinds of funny things happen to you.

**Law:** You're not in the real world. What happens in the state that's dominated by the Manchester Union Leader? I'm a public figure in that state and I will tell you, sir, that this story happens every week. And I think that what we're talking about does not relate to people who were probably chosen to come down here because of your intellectual capacities and your standards, and you're not the usual journalists . . . they're the ones that are.

**Voice:** Well, I just don't know. New Hampshire is beyond me.

**Law:** As I listen to all of you talking about setting your own standards, that's wonderful. You're all a very nice group of people, but the problem is that the standards you're talking about are quite often set by people who give not a damn for the law and will break in and will wire tap and will invade the grand jury and will, in fact, tear down the constitutional rights of all the other citizens because they're hiding behind the First Amendment. That's what we're talking about.

**Miller:** As a chief law enforcement officer, what would you do?

**Law:** What do I do? I'd prosecute.

**Miller:** Have you had many cases?

**Law:** I've had one.

**Voice:** Out of all these abuses?

**Law:** Well, of course, most of the abuses are hiding behind The New York Times case, in our state, which I happen to think in the long run will prove to be a disaster for the free press of this country because the counter force is going to be the attempt to put more restrictions on the press because of the abuses in some places. And we have a lot of law suits in the—

**Voice:** You just said that most of the cases were within the law.

**Law:** We're talking about two different things now. We're

talking about one, within the law in terms of criminal law, and second, in terms of the kinds of discretions.

**Miller:** We'll get to the question of legal sanction, but let's stick where we are now. [On one hand we have] sort of a Werner von Braun philosophy. It's not my department. My department concludes that what they do in New Hampshire is, I couldn't care less—or in Ann Arbor or Saskatchewan. Is that a responsible position?

**Press:** Oh, I care, but there's nothing I can do about it.

**Miller:** Nothing you can do about it—

**Press:** Well, what influence would I have over William Loeb?

**Miller:** You could print.

**Press:** You could print the story that's happened. When newspapers have stepped out of line and television stations have stepped out of line, they become subject to publicity themselves. And that's as big a restraint on a lot of us as anything I can think of.

**Miller:** Assuming there's competition, right.

**Press:** Not only assuming there's competition. As we get closer and closer to a nation-wide information network, a misstep anywhere in the country can get you into hot water nationwide in publicity terms.

**Miller:** You don't believe, I gather, in the British press council system.

**Press:** Ah, it seems to work for them. There are a lot of things about freedom of the press that wouldn't work over here. We have an international council here.

**Miller:** Powerless, though.

**Press:** It's got no teeth, but it's got a little publicity power. I don't think we really needed it. . . . It's up to the individual newspaper in different communities. I think you've got a whole new breed of people getting into this profession.

**Miller:** I see. It's sort of an evolutionary effect.

**Voice:** It seems to me that inadvertently you've picked up a wrong impression—I hope it's inadvertently—when you talk about the other professions regulating themselves. They aren't doing it on a national basis. Some little doctor or lawyer, let's say in North Dakota, can commit outrageous

things and the Bar of New York State or New Hampshire won't give a damn about it, really. It seems to me that it's on the state level that you have to have the important journalistic standards.

**Miller:** Well, where are they?

**Press:** Minnesota, for one. We have a state press council which is and has been very effective. But I would argue against a national council such as that.

**Miller:** Why?

**Voice:** Because the country's too damn big.

**Miller:** Too damn big. And standards are different in different parts of the country.

**Voice:** That's true.

**Miller:** Certain parts of the medical profession are self-regulated nationally.

**Voice:** Yes, but certain parts.

**Miller:** To use the phrase over here, it's evolutionary, it's developing. We're developing a national bar exam in the legal profession, for accreditation.

**Voice:** Moreover, there's a move afoot to computerize lawyer disbarment records and make them nationally available.

**Miller:** Does anybody around the table think that self-regulation's going to work or should be tried?

**Press:** Yes.

**Miller:** How? I mean, who. Give me a model.

**Press:** I like the state press council context.

**Miller:** Who'd be on it?

**Press:** I think it should be broadly representative. . . .

**Miller:** Of what?

**Press:** Of the community as a whole. . . .

**Miller:** The *entire* community?

**Press:** Yes.

**Miller:** That is, beyond the media.

**Press:** Yes, sir.

**Voice:** In Minnesota the chairman is a judge of the state supreme court. There are representatives of the media, the large newspapers and small newspapers and so-called public representatives. And you can quarrel with public representatives, but it's the best we've got. I mean, presumably responsible high-principled people like the League of Women Voters, School Board Association, and things such as that.

**Miller:** Does it work? In your judgment?

**Voice:** Yes.

**Voice:** With the sanctions what can it do?

**Voice:** The sanctions so far are—well, they're voluntary. If there is a complaint—there was a complaint against the Minneapolis Tribune acting irresponsibly in releasing, in publishing information in a kidnapping case. The case was heard by the hearing committee of the state press council and the requirement is that the offending newspaper publish the proceedings whether they're favorable or unfavorable. In this case, the state press council held against the Tribune. The Tribune published the whole of the proceedings, verbatim. The sanction is one of publicity.

**Voice:** How would your press council have handled a Cassandra situation? This one disturbs me more than anything else because in that particular case you have no violation of law, you have absolutely true facts, you have no editorial comment.

**Voice:** Had the case been brought to the press council, I think the press council would have cited the newspaper for irresponsible action.

**Voice:** On what?

**Voice:** If they had discovered or thought that it was irrelevant.

**Voice:** Is it ever irrelevant to kill another human being in a criminal way? What I'm saying is, is this the kind of information that should ever die in a civilized society? . . . Because what you're assuming ahead of time is that the public's reaction to this story is going to be an unfair reaction. They might admire the woman.

**Voice:** My feeling was that if I had been the editor, I would not have published the information.

**Voice:** But why not?

**Voice:** Because I felt it was probably irrelevant.

**Voice:** Well, what standards are you going to give, except the editor's standards?

**Press:** Well, if Mrs. Cassandra were the candidate, I think it could be a different situation.

**Voice:** We've had a number of instances nationally where the irregular behavior or unhappy mental health of the wives of candidates and officers has not been published.

**Miller:** Yes. Now, are you willing to allow a press council-type organization to set a standard like that?

**Voice:** No.

**Press:** Well, I believe in the press council. There has to be some way of bringing standards up. I think that a press council is a way that you can work on a limited basis either on a community or a state, and perhaps there is one to work on specific things. I don't think there's anything wrong with that, but I don't want censorship coming from without the industry. I want the censorship to come from something that the industry has agreed to.

**Press:** When you get into the area of broadcast journalism you have what perhaps approaches a national standard more than any other form of the business. Standards set by the Federal Communication Commission, which looks into the renewal of licenses of radio and television stations on a three year basis, examines the record of the stations to see if they have performed at least in a quantitative way, providing certain kinds of programming. Beyond that, you have what is known as the Fairness Doctrine, which, I suppose is the only kind of national standard of the sort that I know of.

**Miller:** Would you advocate that for your print colleagues?

**Press:** I would not. I don't advocate it for broadcasting.

**Miller:** I see.

**Press:** The Fairness Doctrine as a national standard, it seems to me, is now causing more problems than it solves. And the NBC pension program, I gather, is one of the best examples of that.

**Miller:** Well, now let's shift to find out what you're going to do for the poor person you maim in your column. Let's

take a case like one of the hypothetical ones. You publish the story about Aphid smoking marijuana. All right. And you got the data, you tried to verify it—let's say one or two ways—but you publish the story and he comes in and he demonstrates that they're talking about a different Alex Aphid. Just a simple name confusion problem. What should the media do for Mr. Aphid at this point? Print a retraction? In the same type and in the same place as the original story?

**Voice:** No.

**Miller:** Why not?

**Voice:** Not newsworthy.

**Voice:** The law requires that in Minnesota.

**Miller:** Why not in the same place and in the same type?

**Press:** Well, the way we handle that is to put them in the same place. We have a number of retractions every day.

**Miller:** . . . The election is two weeks away, you have just maimed Alphid. What are you as a responsible journalist going to do for him?

**Press:** I've already told you. Print a retraction and put it in that portion of the newspaper that's always reserved for retractions.

**Miller:** I see. Back under the sort of legal notices. John Smith having left my bed and board I'm no longer responsible for his debts. P.S. Alex Ahpid doesn't smoke marijuana.

**Press:** Well, the answer obviously is no.

**Miller:** No. No. That's responsible journalism?

**Press:** I'm sorry you're asking. I can't respond to your question.

**Miller:** Suppose Aphid comes in and says I demand not only a retraction but I demand that all the facts relating to the question whether I smoke marijuana or not be printed.

**Press:** Well, the retraction that I would print would be one that is stylistic of my newspaper, which is simply to say that the paper reported erroneously on Tuesday of such and such.

**Miller:** One line, after devoting two and a half columns.

**Press:** Exactly.

**Miller:** And you'll make that decision.

**Press:** Yes.

**Miller:** Do you have anything against, let's say, a legal principle that gives a right of reply in a situation in which it's clearly erroneous?

**Press:** Yes, because then I think we would be giving up a right and a responsibility that belongs properly to the press.

**Miller:** Who says so?

**Press:** The First Amendment.

**Miller:** First Amendment. I keep hearing that. The First Amendment and you'll decide whether to give a reply or not.

**Press:** Well, not if the decision is made outside the whole dialogical community. I mean, it's not as if I'm sitting here alone, without reference to a whole group of colleagues and to a whole tradition and a whole history of fairness and so forth. So in that sense, yes. *I* would make that decision.

**Miller:** *You* would. [To another] What's your policy on replies? Or retractions?

**Press:** Again, we have a state law that's not merely a matter of newspaper policy, but you are given three days in which to publish a retraction or correction in the sense and location the original story ran. Normally speaking, we do what I suppose some of the others do in writing corrections on the same page everyday. And you may print on the front page of the section a story that was on the third inside of the third section, for instance. So it works both ways.

**Miller:** Works both ways and if somebody came in and said, now look, you got that story all fouled up and I would like to give you a few paragraphs reciting the facts—

**Press:** Personally, I'd have no problem with that because I really would welcome his statement and I'd publish it.

**Miller:** You'd publish it. [To another.]

**Press:** Yes, if it was something that needed elaboration in the first place. I'd go farther if we were going to have a retraction. We would first have to summarize what the original story was for those readers who may not have read

the other paper. Normally if you wanted to expound a little bit, we'd say write a letter to the editor. As a matter of fact the readership of the letters page is very very high, indeed, that's what they usually do. And then they put it in their own words. Your story was this, that and the other thing and these are the facts. Now, of course, if they go on for 800 words we tell them to hold it down to a certain length. That's the best place for it.

**Voice:** And I think an important point here, too, is that not only do you print retractions, but if Bumptious, or whoever we're talking about here, is a candidate for public office, . . . after we print the retraction or whatever he wants, he can come into the newsroom every day of the week with a 50-page handout and say, here, I have a statement that this newspaper's unfair and biased; and we run that story repeatedly, day after day. Joe Bumptious can just rip into the press. He's getting his retraction not only once, but as many times as he wants to.

**Voice:** I just wanted to add that there have been several references to state laws and there have been no signs that the press views these laws as illegal or interfering with the press.

**Press:** Well, if we have such a law about retractions in Arkansas, I'm not aware of it.

**Voice:** These relate to the liberal statute.

**Voice:** It only shields you from a libel suit if you decide not to retract and he goes ahead and sues in court.

**Miller:** Why, with all of this good will around the table with regard to retractions, is it that Tornillo had such difficulty with the Miami Herald?

**Voice:** A lot of it's standard.

**Voice:** Well, it's an entirely different case.

**Voice:** He wanted to dictate the manner in which his response was to be presented.

**Miller:** Well, someone just said his people will publish the statement as it comes in from Aphid or Bumptious.

**Press:** I think most editors would do their best to set the record straight, but when a guy comes in with a demand and says I want to be on such and such a page—

**Miller:** A demand—

**Press:** —And be in precisely this form, then you would say, well, see our lawyer.

**Miller:** What bugs you about the demand? I mean, here's somebody you hurt. You do realize you've hurt.

**Press:** We do realize that and we recognize that we are responsible for the editing of the paper.

**Miller:** I see. It's a virility thing, huh? A virility thing—I'm the editor.

**Press:** Look. This guy's running for public office.

**Miller:** And that gives you a right to do what?

**Press:** That gives you certain rights to do certain things that I may not do to any citizen who walks into the newsroom.

**Miller:** Now remember we are talking about an admittedly false statement—an admittedly false report.

**Press:** But that's the chance that he takes when he runs for public office. He puts himself out there in the arena to be attacked or patted on the back. And he should know that when he runs for public office, it's possible that he's going to get libeled, slandered, and generally have his reputation assassinated.

**Miller:** I see.

**Press:** Well, yes, he's liable to, but the press does have an obligation, it seems to me, to correct it. I think that the problem with saying we'll print anything is that we may be compounding the error by printing his reply which may be full of inaccuracies itself. We have to edit his reply.

**Voice:** Exactly.

**Press:** And make sure that it, in itself, isn't slanderous about the paper or about this opponent, etc. If he confines himself to just responding to the false information we disseminated, fine. But some of these people come in and they'll use this as a platform to make all kinds of other charges which then we have to respond to. There's no end to it. As you pointed out, he'll come in every day. It's free space for them. They don't have to buy it.

**Miller:** Judges, do you see any place for the law in this reply area? We are talking, not physically about a man who has put himself on the block because he chose to run for public office—what we are really talking about is the legitimacy of the political process. We are talking—at least in

part—about not making the risk of candidacy so onerous that we scare some very qualified people out of public office and, I take it, it's your duty to make sure that the public has all the information necessary to make a decision about which lever to pull on election day, and I take it that responsibility means accurate information. What can the law do here?

**Law:** Well, do I hear overtones of a phrase that has been bandied about by our supreme court to the chilling effect that being a candidate for office is an interference with the democratic process?

**Miller:** Don't you think that's on the scale?

**Law:** It probably can be. I do think that candidates are necessarily putting their public records, and perhaps their private lives, on the line and I don't see anything wrong with that. I think again we come down to fairness and I'm not sure that the law's very good at adjudicating fairness in a context like that. It may set standards, minimal standards as to time, as to relevance, but fairness is something that the law often isn't very good at.

**Law:** I am not absolutely shocked by a law that would require the newspaper to publish retractions.

**Miller:** Well, we have, I think, expressed some doubt as to the ability of the law to make a good judgment in individual cases about this.

**Law:** Well, I would share that concern. But I think it would not be impossible to imagine a law that would set minimal standards and then let nature take its course.

**Miller:** You have any feel for the kinds of things about minimum standards?

**Law:** Well, I think that this is something again where press and law get kind of mixed up because I hear publishers and editors talking about judgment—the exercise of their judgment. Unfortunately the one thing the law is dedicated to doing is to deprive even judges from exercising judgment. This is absolutely true. It always operates in the area of expressed standards. What *we* think about good and bad is not generally even relevant. We have to go by standards that are set by law whether we like them or not. And this is the way the democratic law operates because anything else necessarily degenerates into autonomy.

**Miller:** Well, that again suggests that the question is whether the media should be immune from standards which

the law applies to architects and engineers and doctors through civil litigation and all the rest. Should the press be exempt from legal standards with regard to the fairness of the reporting or the right or reply?

**Law:** No.

**Miller:** Any role for the lawyer?

**Law:** None.

**Miller:** Why?

**Law:** Because the law is enforced by judges who themselves can make mistakes and who are themselves in a sense the government, because I *think* that the First Amendment has wisely committed to the press the decision-making powers with the risk of abuse of those decision-making powers.

**Law:** I'd like to say a word about whether judges can exercise judgment in this area. It seems to me that the Supreme Court in the question of whether to force reporters to reveal their sources has left it largely to judges to exercise their judgment as to whether it's necessary or desirable in a particular case. Judge Coffin has written an opinion, for example, in which he said that the court in its discretion would not force someone to answer certain opinion questions to a grand jury investigation. But there really is a great deal of judicial judgment, judicial discretion, still allowed—it would seem.

**Miller:** Should it make any difference whether there's a law or not?

**Law:** Well, I agree that if it's wholly a matter of a court coming out with some standards, I would think that would be very hard to accomplish.

**Miller:** But then if you talk about the legislature you run into another problem, and that is the real government. You people aren't really the government.

**Law:** Well, there are legislative standards, but they ultimately are going to be decided by judges as to what they mean and when they're applicable. And whether they can be applied. The real meaning of those standards and whether there should be any, of course isn't legislative judgment.

**Miller:** But are any publishers here concerned about legislation on minimum standards? Something called election fairness? Why?

**Voice:** Because I don't think the legislature should spell it out. I'd rather leave it to the outcome of civil actions.

**Miller:** What about those civil actions?

**Voice:** Well, they're going to take place before fallible judges, but I'd still rather take my risks with the fallible judges than with the fallible legislatures.

**Miller:** Yes, I expect the standards which are minimal will be applied by judges. You'd rather run the risk of civil liability than the risk of minimal standards of, let's call it fairness, in political campaign reporting.

**Law:** Well, I feel there is no place whatsoever for legislatures to impose any kind of standards on the press. . . . The risks are just too great. I think that the case law in the area of libel needs very substantial overhaul, and I think that if it is not overhauled, the press will be the loser. That's a theme which I have said many times.

**Voice:** But isn't that a legislative sanction if you try to amend the libel laws?

**Law:** No, I'm talking about the case law. We do have case law in the area of libel. I do believe there ought to be libel . . . I would be shocked if any legislature attempted to set forth these standards, because I think they'll be a very bad first step.

**Voice:** I quite agree, but I think you're under the same problem when you're trying it in the issue of libel.

**Law:** If your position is that of course there shall be no sanctions and that there just shall be a field day, well, of course, I disagree with you.

**Voice:** You've referred to the regulation of architects, for example, in the same breath with the regulation of the press; and I'd like to suggest a philosophical point that the press deals, presumably, with ideas behind the hard news or whatever you want to call it, today. It's infinitely more dangerous to the society to tamper with the free flow of ideas than it is to require that architects know the stress levels of floors.

**Miller:** Or bridges . . . It's more dangerous to society to try and regulate the flow of ideas.

**Voice:** Infinitely.

**Miller:** Well, how about the regulation of damage remedies for the misuse of ideas by the press?

**Press:** As I say, I'm willing to submit to the courts in libel proceedings and damage proceedings such as that, on a case by case basis.

**Miller:** You say you're happy with the case *libel* laws knowing of course, what is referred to about the current status of the libel law?

**Press:** No, I didn't know that until he said it.

**Miller:** I thought *every* journalist knew about the Sullivan case.

**Press:** Oh, the Sullivan case. I didn't know he was referring to that.

**Miller:** It's a field day. Isn't it?

**Press:** Yeah, it sort of is.

**Voice:** Well, you seem to be grasping for a perfect society in which all of these things will be charted in advance, and I don't think that's within our grasp.

**Miller:** So we'd better not try to improve it.

**Voice:** Well, we can improve it, but not perfect it.

**Miller:** How would you improve it? I want to see if there's any way we can make the press accountable. Or do you believe the press should not be accountable? *No* prior restraint. No right of reply.

**Press:** Nobody said anything about reply. We're perfectly willing to give them their day in the paper.

**Miller:** Yes, on your terms.

**Press:** Right.

**Miller:** If *you* feel like it, in *your* type font and *your* placement and with *your* words and *your* editorial control over what they want to say. Sure, you're all for it. You've got all the chess pieces.

**Press:** No.

**Miller:** Gee, legislature, minimal standards, judicial minimal standards. . . .

**Voice:** When does the litigant go into court on his own terms? When does he address the legislature on his own

terms? When does he see the governor on his own terms? When does he do anything in a free society on his own terms?

**Miller:** Well, I report again that every other unit in society—almost every other unit in society—is subject to some kind of standard.

**Voice:** I disagree strongly.

**Miller:** They're either licensed or can be held in damages for negligence, not willful and wanton disregard of the truth which is what *you* people operate by.

**Voice:** They very often do not operate to the public interest.

**Miller:** Say that again.

**Voice:** I've seen many bar proceedings and they very often do not act in the public interest in my estimation, and I wouldn't hold the bar or the AMA or any other such professional group up and say that that's a model for the newspaper.

**Miller:** We should reduce it to the lowest common denominator?

**Voice:** No, I didn't say that, but I don't want to hear you idealizing the AMA or the ABA.

**Miller:** It's imperfect but it's something.

**Voice:** *Very* imperfect.

**Miller:** (To press) What would you do?

**Press:** In any one of these three cases, I would print an extended story because I think that the activity of the news organ was so grievous in regard to the person involved that they have an extra responsibility beyond just saying you were wrong. If you err in any material fact in a story, in my estimation, you do have a responsibility to try and correct that error.

**Miller:** But not legally enforceable—

**Press:** Again, I'm willing to submit to a certain loosely defined set of legal remedies; however, don't pin me down in advance. No, I prefer to say that I think responsible journalists begin to regulate themselves in this regard and they will continue to regulate themselves. We're human beings, we know when we've done something wrong, and I would say

that either we regulate ourselves or eventually we're going to be regulated. And we know that.

**Voice:** It seems to me the whole thrust of the First Amendment is that it contemplates misuse of the press. And that it's better for a society to tolerate some misuse of the press than to try and regulate the whole thing.

**Miller:** How about regulating the people. How about the damage remedy, for example?

**Voice:** May I ask one question, now? To the extent that The New York Times and Sullivan has been introduced, is the conception here that that excludes any resort to legislative standards of what might be recklessness?

**Miller:** Well, we'll ask.

**Voice:** My opinion is that it does not.

**Miller:** Does not.

**Voice:** I don't think it does, but I don't think they're sure.

**Voice:** Well, that's another question.

**Miller:** One of our guests from the legal profession doesn't think this should be legislative. Another said that he didn't think that the judiciary could act without legislative direction.

**Press:** The distrust that I hear expressed here, is not so much with legislative standards but with legislators. I shudder to think what would happen to the press in Arkansas if the general assembly were given the freedom to set the standards.

**Voice:** Isn't there then a judicial check in terms of whether the standards exceed the limits permitted by the First Amendment?

**Voice:** Absolutely.

**Voice:** So that you have, then, a combination of the legislature working with the judiciary to accomplish the formulation of standards consistent with the First Amendment?

**Voice:** Aren't we here because we don't agree?

**Voice:** But once the legislature sets the standards you are given a fairly limited context within which to work, right.

**Voice:** What is the difference between judges and legislatures?

**Voice:** In some cases, nothing.

**Miller:** [To the Bench] You have a reply?

**Law:** To the question?

**Miller:** Yes, what is the difference between judges and legislatures?

**Law:** In some places the judges are not elected. That's all I can tell you. But I don't believe it's important whether there's a difference. It seems to me that to the extent that they both have functions imposed upon them to represent public welfare and try and promote it, that it lies within their legitimate functions to attempt to do it. And in this area, it seems to me that the Supreme Court has said that there is a certain answerability through libel. At least it seems to me that the implications of a right of reply law relevant to libel have assumed that otherwise it would be unconstitutional. And so, I return to the point that if the press is not willing to set up its own standards, to allow them to become the law; then I share the opinion that the legislatures and the courts are *going* to do it.

**Voice:** Do you say national? The press should be nationally—

**Law:** If it's done by legislatures and courts, it's going to be state standards.

**Miller:** A sort of standard or guidelines or model or code of conduct.

**Voice:** Code, yes.

**Miller:** Let's focus a minute on the existing notion that the media could do what it wants as long as it doesn't engage in willful or malicious lies. Do you think that's an appropriate standard for the media? If I drive my car negligently—just negligently—I'm liable in damages to the person I hit with that car. But the media is permitted to engage in conduct up to wanton and willful.

**Law:** I think that's because, as the Supreme Court has said, we want a vigorous and uninhibited press and we don't want you vigorous and uninhibited on the highway.

**Miller:** As they say in Brooklyn, "touchy."

**Press:** There's another sort of underlying implication here that the press are a bunch of rabid dogs that need to be chained up, when in point of fact they're mostly tame pussy-cats. Actually there's no great vendetta going on in the press to get politicians and other innocent public servants. Very little of that actually does happen. But what about the press? Doesn't it deserve a little protection sometimes, too? We mentioned, for example, the national news council. It does exist in this country, and about a year ago, I think, our former president made a speech on television attacking the vicious, slanted, distorted press. The national news council then wrote Ron Ziegler and said we'd like to have specific examples so we can follow these up, and chastise those papers and networks. There was one reply saying we've received your letter, thank you very much, but there hasn't been a reply since. Well, the question's now moot or mute. But what about that? The public, politicians, everyone is free to denounce, attack and vilify the press. Don't we have our rights too?

**Miller:** Isn't that free speech? Who's in the best position? You vis-a-vis the government or Mrs. Cassandra vis-a-vis the Tombstone newspaper? We're talking about power blocks.

**Press:** As of right now, I think we're in a better position; but if the government were given the kind of legislation that has sometimes been proposed, we could be in a pretty bad position.

**Press:** And the networks are in a worse position than the print media, because of the FCC, for example.

**Press:** May I add something here? It seems to me that with so many of these issues, when you look at them in the context of what actually has been the case, we're talking about the right or the freedom or the responsibility, or whatever, the press should have to publish this or that information. But look where the actual abuses have been. It was not the press, in fact, who broke into Dr. Daniel Ellsberg's psychiatrist's office. It was not the press, but the vice-president of the country who was convicted, or pleaded guilty to a felony.

**Miller:** You're following the ancient principle that the best defense is an offense. Does the fact that there are really bad people out there, bad lawyers, rotten lawyers, bad judges, rotten judges, incredibly incompetent doctors, justify the hear-no-evil, see-no-evil, about the press?

**Press:** The answer is, simply, that I believe it is my responsibility under the particular and unusual role that the news and the press have in this country, to attempt to get at the

truth. And I emphasize that. We're not talking about a vindictive thing here, but to get at the truth, and to verify it and cross-verify it as much as possible, and then to state that truth, and state it as fairly and accurately as I know. And that's the only standard I can give you personally at this point.

**Miller:** The question is whether you're going to tolerate society holding you to that question?

**Press:** Yes, I'd have to stand by that. You know, I'll do my best to give training and to give freedom, then, to members of the press so that they hold to as responsible a standard as that. But anything more than that, and I'm afraid you're undermining the First Amendment.

**Miller:** And the First Amendment is the only social value that exists?

**Press:** Okay. Obviously there are conflicts that arise when you come to the right to trial, or any other right that I can think of—the right of privacy. All these things cause conflicts, but other than working them out on an individual basis, whether we do that with laws or judicial decisions or in-house monitoring or any other way of working them out other than by individual cases—trying to set any magic rule is not going to work, in my estimation. I shy away from sitting here and trying to determine in this ivory tower a rule or a set of rules that's going to cover every situation, just as I cannot say, I would never tap a telephone. Although I think it's probably one of the most scurrilous things I can think of. I've worried about my own being tapped and I don't like the idea. But I would never say that I would never tap a telephone because I believe that, under some outlandish circumstances, there is a public good to be served in the end by a member of the press tapping a telephone. I can see where it could happen.

**Voice:** But I take it you would accept the proposition, because I heard you accept it before, that there should be continuing development of communal attitudes on these issues. You should be talking to each other.

**Voice:** There ought to also be public access to this whole channel, and there ought to be legal access to it. We ought to take into consideration all sorts of things. We ought to be, as members of a profession, as close to these issues as we can. We ought to go to more things like this, perhaps. We ought to think about these issues a lot. But I don't think that necessarily means we ought to try and decide we're going to make a law in advance. Because I don't think that the examples we've had—the AMA, the ABA—of legal or in-house sanctions, have necessarily worked all that well.

**Voice:** I'd like to ask a question. I want to know, in the opinion of anybody here, what gives Mrs. Cassandra, for instance, any more right to redress through a regulatory agency than say a patient who has died because the doctor was incompetent? The patient who died can't seek any kind of redress at all, and the doctor will probably operate on somebody else. So what makes Mrs. Cassandra any different from a dead patient?

**Voice:** Well, if a patient has been injured by a doctor, he can sue the doctor.

**Voice:** A dead patient?

**Voice:** Mrs. Cassandra can sue too—

**Voice:** Under very different legal standards. The newspaper is protected against a much wider range of negligence suits.

**Voice:** The doctor who maims the hand of a violinist is held to a standard. You, who maimed the career of a politician, let us say, are held to a different standard.

**Voice:** No, I don't think that's true.

**Voice:** Mrs. Cassandra goes into a mental institution as a consequence of the renewed publicity—that's the kind of case we're apt to get. And it's established there's a causal relationship and she's confined to a mental institution for the rest of her life. That's more like the doctor case.

**Miller:** Are you saying that she has, or her husband, or the family, has no recourse to legal action against that publication?

**Voice:** Well, I think they do have, under existing law, don't they?

**Voice:** Under very difficult and, heavy standards.

**Press:** Well, I would maintain that it's very difficult and heavy for most people to get redress from their doctor or their lawyer.

**Law:** No. The legal standard is just quite different, in terms of accountability.

**Press:** Well, that's a decision that you've made. But in actuality it doesn't work out that easily. In other words, we're into an area where we'd have to find cases and examples,

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Hon. Sidney Wernick — Justice, Maine Supreme Court

but I don't think most people have any more recourse for redress from their doctor or their lawyer than they do from the newspaper.

**Miller:** Is that true or false?

**Law:** The standards are different in law, with respect to suits against doctors, and suits against newspapermen, yes.

**Miller:** Before we break for lunch, any last requests?

**Voice:** I think the most uncovered angle in this story is Judge Pettifogger—

**Miller:** We heard two judges talk about enforcing the obligation on newspaper people to disclose sources, and nobody around the table took them on.

**Law:** I'd like to draw a line between seeking that information illegally or using it if it happens to come to me.

**Miller:** The point being made is that the legal system at least makes an attempt to exclude, and it's got rules of exclusion. In any event, it is now lunch-time, and I would simply thank you all for your stimulating participation. This was just an exercise, no personal slights. ~

## Judges and Journalists: Who Decides What?

*Continuing the series of transcripts from the October Nieman Assembly is the Friday luncheon address by Floyd Abrams, attorney with Cahill Gordon and Reindel in New York, who has represented The New York Times, NBC, and Random House.*

*These proceedings have been edited by John N. Maclean, Nieman Fellow '75, and Washington correspondent for the Chicago Tribune.*

I appreciate this opportunity to discuss with you my views about the continuing and growing conflict involving press and law—and journalists and judges. I suppose I should preface them, in this era of post-Watergate morality, by first advising you that I do not come to you either as a scholar, or as someone who has happened upon this area in a purely contemplative spirit. Indeed, I have represented clients which have been involved in cases which have raised issues which I will be discussing. And, while I'm not going to talk about specific cases in which my clients have been involved, they are surely affected by the cases which I will talk about.

I also should say that I came to most of the views that I hold in this field after first having come to represent media clients. That is to say, my views are the logical culmination of what representation of media clients led me to say. That is, I understand, not exactly the most intellectually defensible way to come to views about anything. On the other hand, if Oscar Wilde's observation is correct that the value of an idea has nothing whatever to do with the sincerity of the person who expresses it, I hope you will give me the due of accepting the proposition that however I came to these views, they are mine.

I thought what I would do today is to talk with you about a few recent cases which have arisen in the courts which have given me particular qualms. In doing so, I don't mean to suggest in the slightest that the conflict between the law and the media, between judges and journalists as I called it in my title, is the only conflict involving journalists and branches of government—of course it's not. We have been through a few hundred years in which journalists and Presidents, and journalists and Congress have had continuing disputes and debates. It was, after all, not Nixon but Jefferson who said, "Nothing can now be believed which is seen in a newspaper"; it was not Nixon but Wilson who wrote to a friend, "Do not believe anything you read in the newspapers. If

you read the papers I see, they they are utterly untrustworthy. . . . The lying is shameless and colossal"; it was not Richard Nixon and John Mitchell who, in response to harsh press criticism, attempted to twist an innocuous law relating to the protection of harbor defenses from malicious injury into a federal criminal libel law for the sole purpose of jailing a prominent publisher. That sad distinction belongs to President Theodore Roosevelt and the United States Attorney Henry L. Stimpson.

I come to this subject in a peculiar way. I had written an article in June responding to a piece by a distinguished federal judge, John Bartels. Judge Bartels had argued at some length that the contempt power ought to be used or be available for use more frequently by judges against

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**It was . . . not Nixon but Jefferson who said, "Nothing can now be believed which is seen in a newspaper."**

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journalists who transgressed what Judge Bartels believed to be the proper bounds of journalistic behavior, given the Sixth Amendment strictures requiring fair trials for individuals.

Specifically, what Judge Bartels was talking about in his article were those newspapers, including a client of mine, which, on occasion, published the prior criminal records of individuals then before the court and accused of a crime. One of the things that I wrote in my response was that it would be "tempting for judges and lawyers to seek to carve out of the First Amendment areas in which they believe the public is little served by publication but much harmed by it." "Judge Bartels," I wrote, "thus concludes that there is no significant benefit to the public when the press makes reference to the alleged criminal background of a defendant. With respect, however, that begs the critical question which must be decided first; *who decides* whether the publication of a particular article will or will not benefit the public?"

I wrote that, and then about two days later I read what Mr. Sinclair had written on behalf of President Nixon in one of his briefs in the Supreme Court in the Tapes case. A part of his brief said, "The central point at issue here is not whether the President's judgment in this particular instance is right or wrong, but that it is his judgment. In exercising that discretion, vested in him and in him alone, the President may make a mistaken assessment of what serves the public interest—but courts also on occasion make mistakes."

Mr. Sinclair was arguing, of course, in support of the position of the dissenting judges in the decision in the Dis-

trict of Columbia Court of Appeals Circuit, who had started their dissent by saying, "The single issue on which I part company with my five colleagues is in the shortest term, 'Who decides?'"

I trust it will be obvious that I do not cite Mr. Sinclair to demonstrate the similar depths to which he and I will go to defend indefensible positions. Of course, former President Nixon made no claims of First Amendment protection. And it does seem to me that the situation in which the press finds itself, vis-a-vis the courts, and that of a President, vis-a-vis the courts, is in many important ways, different. But it did focus in my mind the issue which arises again and again: Who decides? Who makes what kinds of decisions? Where does the press fit in? Where do the courts fit in? Let me put before you three recent cases which I think help to focus the issue and which have given me a particular sense of dismay.

In a case decided in July of this year, a 21-year old rape victim in Washington sued The Washington Post for invasion of privacy. The Post had printed a news article which contained her name, address and age. The Post moved to dismiss the action on First Amendment grounds and the trial court denied the motion holding that the Post article—and I'm reading now—"was not constitutionally protected

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**"The President may make a mistaken assessment of what serves the public interest, but courts also on occasion make mistakes."**

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speech." In good part the court's opinion was based on the proposition that the name and address of the rape victim were not "newsworthy facts because the value to the public of the publication"—this was what the court said—"lies primarily in the fact that the rape took place and little, at all, in the identification of the rape victim."

In another case decided in August of this year, the Court of Appeals for the Third Circuit, sitting en banc with nine judges, considered the question of whether a trial judge constitutionally could restrain the Philadelphia Inquirer from publishing the fact that the individual who was on trial in Federal Court was then under indictment for murder and conspiracy to commit murder in related cases. The majority held, on procedural grounds, that the court's order could not withstand constitutional scrutiny in that the press had not had a proper opportunity to appear and respond and had not had adequate notice. Two of the judges, however, dissented, saying: "I am persuaded that the public interest here was already satisfied. . . . The subject matter of the restraint . . . was not critical to a complete reporting of the immediate courtroom events [and] the

subject matter related to indictments, which are merely accusations, not judicial determination of guilt."

The third case deserves a more elaborate statement of what it was about. It was the ABC case involving a documentary called "Fire," prepared to be telecast on the Monday after Thanksgiving of last year. One segment of the documentary as prepared for telecasting compared the rate at which plastic and wooden cribs burned, and did so by burning them. What ABC did was to speed up the film of the plastic crib burning, which took about 10 minutes, to 40 seconds with a voice-over saying, "This test ran about 10 minutes. The film you are seeing are portions of that 10-minute test."

Advance reviews were published of the ABC program in the press and the Indiana plastic crib manufacturer brought suit in his local Indiana state court against ABC and its Indiana affiliates seeking to restrain ABC from broadcasting that sequence any place in the country on the following Monday. The manufacturer claimed that the program was libelous, that the ABC tests had been unfair, and that ABC had acted maliciously in preparing the program. The Indiana court held hearings on Friday and Saturday, and the following Monday—the day the program was to be broadcast—the court entered an oral order enjoining ABC from broadcasting that sequence unless it was altered by the network to include a written notice designating the elapsed time sequence of the fire test and eliminating the name of the crib manufacturer.

ABC obeyed the injunction. It broadcast the program that night with the deletion, and with a written notice on the screen stating that the 40 second sequence was then in litigation. After some procedural maneuverings as to whether the case could properly go to Federal Court, which is what ABC tried to do, ABC's appeal was argued in the second-line court in Indiana—the Indiana Court of Appeals. On June 12 that court held the injunction an impermissible prior restraint of freedom of speech. The crib manufacturer then appealed, the effect of which under Indiana law was to stay the decision of the intermediate Indiana court, which is to say to leave the injunction in effect. On September 13, 1974, the appeal was dismissed on consent of both parties and the injunction was lifted. A total of 291 days had elapsed between the issuance of the injunction and its lifting, and on September 13, 1974, the 40 second sequence was telecast.

Now what do I take from these three cases? From the first two, I think, at least one lesson should be that our courts should not be asked to, and should not attempt to, make decisions as to what is newsworthy. The answer to that question of "who decides?" is clear to me, at least, as being a purely journalistic one and simply not one that the courts should even attempt to make. As three of the judges in the Philadelphia Inquirer case said, "Decisions that particular material is newsworthy, important, or 'hot

news' seem precisely those that, under our constitutional scheme, are to be left to the press and are not to be made by public officials, judicial or otherwise."

I want to savor with you, if the judges present today will forgive me for a moment, the last five words of that quotation. Judges are, of course, "public officials." They are, indeed, "government," the same government against which the First Amendment was designed to protect us all. I tell

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**... For almost ten months, the government—the judiciary in this case—decided what could be telecast to the American people.**

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you no secret, however, when I tell you that is neither a terribly appealing nor an overridingly persuasive thing to say in many courts.

I appreciate that it may seem somewhat anomalous for the press to scurry to the courts seeking protection under the First Amendment against the Executive and Legislative branches, and then—suddenly—to discover that, sometimes, courts themselves are government. Yet government it is, and I think that we should always bear in mind the differing roles played by courts as arbitrators and rulemakers within the government; as vindicators of individual rights and other rights from the government; and, sometimes, as government itself. When courts make pronouncements as to what is newsworthy, they are acting as government and are to be feared and challenged precisely as the press would do if other branches of government were involved.

From the ABC case—which I consider without doubt the worst prior restraint case in American history—I draw a different conclusion. It is that sometimes the judicial system itself is simply not attuned to the realities and practices of publishing news or books, or to the value in theory and practice of what journalists do.

What did the 291 day prior restraint mean in the ABC case? In theory, at least, it meant that for almost 10 months people went ahead buying plastic cribs without knowing they were more inflammable than wooden cribs. To put it more crassly, it meant, in theory, that babies burned because people bought cribs that they wouldn't have bought had they watched the ABC television program. And, in fact, it seems to me, it means that for almost 10 months, the government—the judiciary in this case—decided what could be telecast to the American people. Of course the theory may be wrong. No one may have purchased a plastic crib; the program may have been unfair; the program may have been libelous; and for reasons that I cannot imagine, maybe plastic cribs are in fact safer than wooden cribs, or about the same.

The First Amendment, however, if it is premised on anything, is premised on the theory that words and pictures do make a difference; that people may change their actions for the good, based upon what they see, hear, and read; and that not reading, hearing, or seeing them may cause them grievous harm.

A conflict of different sorts between the press and the courts is illustrated in the three cases I presented. The second, for example, is one of many recent cases in which the conflict between judges and journalists arises in the context of reporting about the courts themselves.

With respect to press coverage of the courts, it seems to me that the press and the entire publishing industry must be unremitting in telling the courts that they alone decide what is fit to print, and prior restraints on what they decide to print about the courts are as improper as prior restraints about anything else. I think the press should say to the courts, with all respect, again and again that judges are public officials, and that reporting of what happens in and about their court rooms must be determined by the press itself; and I think judges should be further urged that there is no case in which they should exercise greater self-restraint than in cases posing institutional confrontations between the courts and the press.

Of course, this doesn't mean—and certainly Professor Miller's seminar this morning pointed this out—that the press should print everything it knows about everything. It doesn't; it never has, and I don't think anyone here, however absolutist he may be, ever has advocated that the press should print everything it learns about everything. A prior record about a defendant in a criminal trial may be central to a story about it, and in Mafia cases it seems to me, it very often is. In those cases, I must say, I think there is at least a strong journalistic argument in favor of publication. Fortunately, prior records are not usually central or even relevant at all, and in those cases, it seems to me, the press acts irresponsibly when it publishes a prior record. Similarly, it seems generally unnecessary to print the address of a rape victim. Journalists and editors should think about these ethical problems, but in my view they *are* ethical problems and they are for journalists and editors to decide, and not the courts. It may come as no surprise to you that the courts have not exactly adopted everything I have said to you today as a precise statement of their views. Taking into account the Sixth Amendment rights of defendants and other societal interests at stake, more and more judges have imposed more and more restraints as to what may be said to the press, and sometimes what the press itself may say about trials. It seems to me that limitations on court personnel, on prosecutors, on police officers, on defense counsel, may be one acceptable way in some cases to protect the rights of defendants to a fair trial. Other methods which may be used, and have been used, are time

extensions, transferring trials to areas where the press coverage is less extensive, and where necessary—rarely—sequestering juries.

So far as I am concerned, however, placing limitations on what a defendant may say to the press and placing limitations on what the press may print are insupportable intrusions into First Amendment rights.

What of the ABC type case? I cannot argue to you, and I do not, that the courts shouldn't *decide* a case such as the ABC one; courts are our decision-makers in cases, and an ABC case, like the Pentagon Papers case, must be decided, and courts must do the deciding. All, I suppose, one can conclude is that when the courts enjoin speech about inflammable cribs for 291 days while they decide whether the speech may be enjoined, the press at least, should be outraged—and should express its outrage in print, on television, or otherwise. That the press did not in the ABC case is not to its credit.

I started by quoting from Mr. St. Clair's brief, and I would like to close by referring again to the Nixon tapes case. In the general euphoria which greeted the unanimous decision of the Supreme Court in the tapes case, there was, I think, too sweeping and uncritical an acceptance on the part of much of the press as to the central role of the judiciary as decision-maker in American life. There is much the courts alone can decide, and there is much that has

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**The First Amendment, if it is premised on anything, is premised on the theory that words and pictures do make a difference. . . .**

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happened in recent years that has led us all to share the views of the author in this week's *New Yorker* who said that she thinks of the Supreme Court, "as the guarantor of our safety, as the last refuge when other remedies fail."

But there are risks in all this, and they are of special dimensions for the press. For one thing, as I have already observed, judges are public officials who are necessarily subject to some of the same pulls and pressures as are other public officials, and the same risks of abuse of power. They are in their role as "government" to be viewed with the same caution and even concern as are any other public officials. And, as Mr. St. Clair's brief correctly observed, "courts also on occasion make mistakes."

Moreover, judges function within a legal system in which delay is endemic, and delay is the continuing foe of much of good journalism. Finally, judges and journalists are different—they are supposed to be different. There are values in the differences. It should really go without saying that judges should not make essentially journalistic decisions, and

that journalists should not come to think like lawyers or judges. As Judge Harold Leventhal observed in a recent decision, "journalists may be stifled if they are steered from the way in which their profession looks at things, and channeled to another way, which however congenial to men of the law, dampens the investigative spirit."

Men of the law, I suggest, must be reminded that the essence of freedom is not law but the absence of laws, and told that the best way to resolve most of the problems between the press and the courts is for the courts to leave the

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press alone. Justice Brandeis, long ago, warned us that "men born to freedom are naturally alert to repel invasion of their liberties by evil-minded rulers. The greatest danger to liberty lurks in insidious encroachment by men of zeal, well-meaning, but without understanding." These sentiments can apply, and sometimes do, to judges as well as to other public officials. We should, with all respect, tell the judges that.

**Question:** In terms of absolutism and in terms of measures taken in journalistic decisions, why should news organizations ever obey prior restraint orders?

**Abrams:** I'd have to answer that in a few different ways. First, since I spoke of the ABC case, let me speak to that. ABC is in a licensed industry. ABC, more than any newspaper, runs peculiar risks, even if it is inclined towards some kind of civil disobedience in violating any court order.

Second, court orders are not lightly to be disobeyed. They are court orders—the fact that we disagree with them does not, and should not, lead us to a policy of simply saying that since we think we know what the law is or ought to be, we choose not to obey.

Civil disobedience is something which, in my view, ought to be practiced only in extremely rare circumstances. It does seem to me that there are some very hard cases which are posed in the First Amendment area—sometimes even in the prior restraint area. I'm working on a case involving Victor Marchetti, a former CIA agent, which is pending before the Fourth Circuit, which poses what seem to me some genuinely difficult and provocative issues as to the degree to which a former CIA agent may be prevented by contract with the Agency from disclosing information he learned there. We claim that that is an impermissible prior restraint. The CIA claims and the lower courts have thus

far held that the injunction in that case is constitutional. I did not advise my client, and I think that it would have been ill-advised for my client in that case, to have just gone and violated the court order.

I would, in short, voice the same note of caution Judge Wyzanski urged upon the press in a meeting last spring: civil disobedience is sometimes entirely justified, but its use should not be indiscriminate. It is a rare situation in which a lawyer ought to urge, but more important, in which you should want to violate a court order.

**Question:** I feel as sensitive about prior restraint as anyone. If you were the publisher of *The New York Times*, as you were its counsel in the Pentagon Papers case, do you really think you could survive if you said you were going to go against the prior restraint order?

**Abrams:** I'm not clear what you mean by "survive" in that context. The *Times*, as you know, obeyed the prior restraint in the Pentagon Papers case. It was my judgment at the time that if they had not, they would have greatly prejudiced their case on appeal. That was only one reason why it was my view that they should obey that restraint, and I still think that was a correct view.

There are, however, cases in which people have not obeyed prior restraints, and there are some in which they may win.

The *Philadelphia Inquirer*, in a case I described to you, did not obey the prior restraint. What happened there was that the court order was entered; the *Inquirer* asked the District Judge to lift it; they filed a notice of appeal and a motion for a stay in the Court of Appeals for the Third Circuit; the motion was not decided; and they went ahead and made reference in the interim to the other pending charges against the defendant. To give you days—they made the motion on a Thursday; there was no decision either on

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**Civil disobedience is something which . . . ought to be practiced in extremely rare circumstances.**

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that Friday or Saturday; and they went ahead and printed. On the following Wednesday, the Court of Appeals for the Third Circuit granted a stay of the District Judge's order.

There are serious legal questions, and they are open questions, as to whether disobedience to a prior restraint which is later held to be illegal is itself a contempt. The Court of Appeals for the Fifth Circuit has held that it is. I think it may not be.

**Question:** I think that the emotional tension in this country over the Pentagon Papers for some people was increased by the involvement of the Attorney General of the U.S. and the argument of national security made there. Doesn't that type of dispute in a court differ from a local dispute?

**Abrams:** I do agree with that, and that was certainly another practical reason supporting the judgment made to abide by Judge Gurfein's order.

**Question:** I'd like you to elaborate upon the relationship between the judiciary and the press. Isn't it evident that what the judiciary can do to the press—for instance, jail—is much more unpleasant than that which the press can do to the judiciary—public embarrassment for instance?

**Abrams:** I don't have much to add on what I have said on that. It is true that while the President has the power to tap your wires, courts have the power to imprison you, and I suppose I should add that you have the right to write the obituary of the judges. . . .

It is a fact and not an opinion that judges can imprison journalists and not vice versa. It is also a fact that journalists can do certain things in their writing about current, pending trials which can have a peculiarly unfortunate effect in some situations on the ability of a defendant to obtain a

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**It is a fact and not an opinion that judges can imprison journalists and not vice versa.**

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fair trial. I didn't mean to suggest in my statement that these were necessarily easy questions because I don't think they are.

You may be interested in the fact that in the *Philadelphia Inquirer* case I referred to, the dissenting judges, that is to say those judges that argued the order was in all respects proper, started out by saying we are starting at the beginning, and the beginning here is the Sixth Amendment right of fair trial. The court, pursuant to that right, entered a protective order, and the First Amendment entered only later on, when the press opposed the order. To this, three of the concurring judges said in a footnote—how did the Sixth Amendment get to be the beginning? Why not the First Amendment?

There is a problem in this area more than in most, that where you start shows you where you come out, and this is even visible from one's vocabulary. I have used the judicial phrase, "protective order" today: most members of the press call them "gag orders" and usually by someone's vocabulary, you can tell everything else he's going to say in the area.

**Question:** Is there any legal precedent for comparing the relationship of an attorney and his client and that of a journalist and his source in support of constitutional protection with respect to the confidentiality of sources?

**Abrams:** Well, certainly those of us who have argued in favor of considerable protection of confidential sources have urged that, and while I can't think of any case, off-hand, in which the courts have relied upon the attorney-client relationship as a basis for granting protection for confidential sources, it is something which is always urged upon them.

Those two protections plus the priest-penitent one are the only ones which can even arguably be said to have a constitutional underpinning. That is to say, you can make an argument that the attorney-client relationship, even though it arises out of common law, has a Sixth Amendment underpinning in that it's the only way someone can get a fair trial. You can make the argument that the priest-penitent relationship is inherent in the First Amendment of freedom of religion, and that the reporter-source one stems from the First Amendment. That cannot be said of other privileges such as the husband-wife privilege, for example, which comes to us from history.

**Question:** I seem to have little difficulty in resolving First and Sixth Amendment conflicts. . . . I start out with a basic premise, which I don't think many journalists challenge, that the entire process of our Federal Constitution guarantees certain rights to minorities. The majorities don't need the Constitution, and I think we have to go on that premise. That is my premise and that is the basis of teaching constitutional law and any enforcement in the country. In a criminal trial, the press wishes to inform the majority, the millions who read and watch your views. The court is deeply concerned about the Sixth Amendment right of one person, that defendant. Looking at the Constitution in terms of its equity, balance and thrust, that is a very easy decision to make, and there is no conflict at all. The defendant wins and the people lose. I'd like your comments on that.

**Abrams:** Well, I think that one of the first principles of constitutional law that one generally turns to is to ask if there is a way to avoid a clash of competing constitutional principles. It seems to me that the way which I briefly sketched earlier of avoiding the potential harm of press-caused prejudice, basically meets that need. If, for example, a judge sequesters a jury, then there is no need to have any limitation on the First Amendment rights for the press to publish and the public to know what's going on.

One only reaches the hard core issue of what to do with a direct clash between the First and Sixth Amendment rights when there is nothing else you can do to protect the

system of justice from the possibly harmful effects of the press. That case very rarely arises, but there are extraordinary cases in which individuals, like Dr. Sam Sheppard, are eventually let out because of the nature of press coverage. In that case the Supreme Court also did not believe that the trial judge had done all the things he should have done, and was empowered to do.

It seems to me that if one wants to think about it in terms of the rights of one as against many, we do have a sanction, and that is that defendants can even go free sometimes, in situations in which the press has really gotten out of hand. Now that may not be a price we as a people are willing to pay. We have been willing to pay that price, however, and it seems to me that if we are willing to pay it, then we should continue saying to the press, you are free to print.

I have no objections in principle or anything else, to judges asking members of the press to refrain from publishing certain things—the press often does so in my experience—sometimes they don't. I mentioned a moment ago the Mafia cases. To take the exact case, an alleged member of the Mafia was accused in a trial in the Eastern District of New York (in Brooklyn) of extortion. The fact of the matter is that no one in the press would have covered the trial at all, but for the fact that the accused individual was said to be a member of the Mafia. There was no way to write a meaningful story, at least as the reporters saw it, without

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. . . There are extraordinary cases in which individuals . . . are eventually let out because of the nature of press coverage.

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saying who the defendant was. That type case does pose, much more clearly than most, the difficulties which sometimes arise.

In one case the Times printed the nickname of the defendant, and in another case they printed the prior record. Those decisions were not easily reached. All I can say is that I still think that they are journalistic decisions and that they should remain so.

**Question:** Would you return for a moment to the priest-penitent privilege? Some editors are concerned about the extension of that sort of thing to the journalist's confidential source. Some of us worry about its extension, for example, to an individual and his income tax, or whether relationships are to be protected ad infinitum. . . .

**Abrams:** It is a fact that every privilege that we have keeps the court from finding out information which might be relevant to a determination of truth, and that therefore—

certainly Professor Wigmore argued, and it is generally accepted as a law—one should narrow rather than broaden privileges. That's why privileges have generally not been broadened privileges. That's why privileges have generally not been broadened to include, for instance, psychologists, psychiatrists, or social workers. There is legislation proposed in New York every year by a variety of people who believe they are as professional as people who do have privileges and who seek that kind of protection.

A privilege for reporters is only justified if you really think that the First Amendment function that reporters perform would be inhibited by not allowing the reporters the confidentiality of their source. But if you do think that, or if that is one conclusion you reach, then it is different, it seems to me, than the other privileges we are talking about.

**Question:** If I may ask your opinion, who makes that judgment?

**Abrams:** The courts have to make that judgment.

**Question:** Then there you have granted the whole issue.

**Abrams:** There's no way out of that one. It seems to me that courts do decide questions of privileges. All a lawyer or a reporter can do is go to jail if he disagrees enough.

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### The press doesn't have an army, and the judiciary can cause the press to go to jail.

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Society has placed the decision-making power in such matters in the judiciary, subject to whatever persuasive effect my words may have today. And if I had to summarize what I was saying, it would be a plea for self-restraint on the part of the judiciary in exercising certain powers. The press doesn't have an army, and the judiciary can cause the press to go to jail. Insofar as who decides those issues, judges decide, and then reporters decide whether they are prepared to pay the price for not abiding by that decision.

**Question:** To get back to the scene of this morning—I also refer back to the fair trial-free press problem. You've indicated a decision as to whether the criminal record to be published is one of discretion of the press. Now the question that I'd like to ask you, should not the responsible press also consider the effect that that publication might have on the rights of the defendant in that case? Let me say that I know a good many responsible papers who do. They make the final decision themselves. They think that what they are doing is responsible. And they do not print prior criminal records.

**Abrams:** Yes, I think that this is a useful amendment to what I said, and in the following terms. In New York, for example, the press and the courts have agreed upon various guidelines relating to the publication of material in this area. What it says in substance is that the press will carefully consider whether it should publish any information about prior criminal records of an individual on trial.

In my experience, they do so. They certainly weigh heavily on the scale, not just the concept of newsworthiness, but as best they can, how newsworthy it is as against what possible potential harm it will do to the right of a defendant to a fair trial. So it is not that they are considering only whether they would like to publish it. They do consider its effect. And they should.

**Question:** You mentioned the Philadelphia Inquirer case. Wasn't the Inquirer acting irresponsibly in that matter by publishing a record of a defendant in a criminal case? And wasn't that illustrative of the too great desire on the part of the press to confront the judiciary in situations where it is unnecessary to do so?

**Abrams:** The Inquirer case did not involve the publication of the criminal record of a defendant. It did involve an individual who was on trial in a Federal court, and at the time he was tried in Federal court, he was under indictment for murder and attempted murder with respect to related matters.

As for your question about irresponsibility, on basis of the case law we have so far, I do not think the publication of most of the material which has led to judicial restrictions by the courts has been irresponsible by the press and, even less, I think, has it stemmed from a desire for confrontation. On the other hand, it is true that there are some journalists who have some degree of hunger to be the first one to wind up in the clink.

**Question:** Do you think television will ultimately be permitted of court proceedings?

**Abrams:** Well, I have some personal involvement with that, having represented a client that persuaded the Supreme Court of New Jersey to lift what was then its complete ban on all sketching. But in New Jersey, it was argued against us in the opposite way. What was argued against our client was that since it is illegal to broadcast from the courtrooms, or to televise from the courtrooms, and since sketching is something closer to telecasting than it is to writing, therefore sketching shouldn't be allowed for some of the same reasons.

It is my judgment that the complete bans on broadcasting from within courtrooms are breaking down already. There

are some states, Colorado is one, which have allowed on a test basis some televising of trials. It seems to me the technology has gotten to a point now where television cameras can be literally invisible. So the only real argument against allowing court proceedings to be televised is the inherently distracting effect on the participants in the judicial process. I don't think that argument will continue to prevail.

**Question:** Given the historical sense of an open court, it would seem to me that the distraction of people sitting out there, occasionally laughing, is the same thing.

**Abrams:** All I can say in response is that in the Billy Sol Estes case, which is the one which laid down the proscription against television in courtrooms, at least in criminal cases, the court was very affected by the psychological effect of the presence of television cameras. The vote was five to four, with one of the five judges in the majority writing an extremely narrow opinion.

**Question:** What you're looking at is purely and simply a generational gap, a cultural gap between technology and law created by Congressional investigations under floodlight, and the obtrusive character of technology 10 or 15 years ago—flash guns popping and things like that.

If you look around the country you'll find a number of phenomena going on. For example, a number of law schools have closed circuit television between the law schools and the local courthouse. That is, trials are actually being watched by law students. They are video-taping trials in Ohio to produce public records. The very fact that in the Watergate trial, people would talk about their having a deposition of Mr. Nixon, perhaps, on video-tape, indicates that's a disintegrating restraint indeed.

I now want to throw something out to you very idiosyncratic. You've been focusing on the First and Sixth Amendments—

**Abrams:** Do you have a different amendment in mind?

**Answer:** Yes.

**Abrams:** I had a feeling—

**Question:** The one that is not identified in what is known as the abortion case, *Roe vs. Wade*, which to me is not an abortion case, really. It's a case in which the Supreme Court in no uncertain terms puts the right of privacy on a constitutional foundation for the first time in American history. It happened to be in the abortion context.

So I give you the following short scenario. I am outside the squared circle so I'm just interested in your reaction.

You have a woman running for Congress and it turns out that 10 years earlier she had had an abortion.

**Abrams:** Legal or illegal?

**Answer:** Take it both ways, I don't care. I mean, in theory there's no such thing or will be no such thing over time as an illegal abortion. What does the press do there? That's a confrontation between First Amendment and this penumbral amendment about privacy which is nowhere identified.

**Abrams:** I may be too blinded by the sun of the First Amendment to recognize either a Fourth or Ninth Amendment problem when it's presented to me. I have to tell you that I don't see that as a hard case. It seems to me that the right to *have* an abortion does not lead me to conclude that there's any limitation on the press to *write* about an abortion.

**Answer:** Yet, courts have already decided that it violates the so-called constitutional rights of privacy to require the identification of the mother on a fetal death certificate when the death is caused by abortion. This has a tangential effect on the press because we are now altering the character of the public record in accommodation with this constitutional right of privacy and in a sense reducing the information flow to people like the press.

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. . . There are some journalists who have some degree of hunger to be the first one to wind up in the clink.

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**Abrams:** I don't think that that puts the notion of government into the Bill of Rights sufficiently. It seems to me that even if there is a right of privacy, particularly if there is a right of privacy, it is basically a right of privacy from certain acts of the government. And it seems to me that it is one thing to say that you can't require as a matter of law, certain things to be done in terms of record keeping, and it's quite another to say that the press can't print something if it learns it.

The right of privacy may well go far enough as to say that hospitals can't keep certain records. It's just inconceivable to me, at this point, that it goes far enough to say that the press can't learn what the records don't say—and print it. Now, it is true that the increased degree of privacy protection has an effect on the ability of the press to find out the news. The fact that there are no records of certain sorts means that the press is unlikely to be able to learn them. But that doesn't go to the right of the press to print it if it can find it. □

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*Nieman Assembly*

## Whither Japan?

*Editor's Note: At the Friday evening session of the October Nieman Assembly, Henry Rosovsky, economic historian, Japanologist, and Dean of the Faculty of Arts and Sciences at Harvard, spoke on Japan's economic growth. The following transcript of his speech has been lightly edited by Thomas Dolan, investigative reporter for the Chicago Sun-Times, and a 1974-75 Nieman Fellow.*

I would briefly like to consider three related issues that are of considerable importance to me. One is the attitude in Japan toward economic growth—a changing attitude. Another is the future of the Japanese economy, which is not a small matter for us in the United States, and finally, issues that might pertain to U.S.-Japanese relations, which also, I think, are of some importance. The first question that I wanted to ask is, really, are the Japanese people becoming somewhat disillusioned with economic growth?

Of course the Japanese are the world's leaders in growth over the last 25 years, and this is a question that bears rather close examination. You will remember that in Japan in the 1950's and 1960's one almost had the feeling that economic development was a matter of national virtue, that two-digit growth existed in Japan and no place else in the world. The Japanese almost felt that the higher the rate of growth of their economy, the better, somehow, they were—not only in their own eyes, but in the eyes of foreigners, as well. And in many ways this was not an irrational attitude, because Japan certainly made enormous progress in the last 25 years.

I don't know how many of you went to Japan in 1950, when I saw it for the first time. One could stand on a chair in Yokohama and see all the way to Tokyo. And today I think you will all agree that the situation has changed a great deal. Well, what's happened? Why is it that in Japan, as in the United States and other countries, there is more and more criticism of economic growth and many people are beginning to be concerned about what all this effort means? Very similar sentiments, it seems to me, are being expressed in the United States, in Zero Population Growth, assembly lines and so forth. Now, I think there is an emerging consensus in Japan that what has happened in the past is no longer possible, may not be desirable, and there's a major shift of emphasis away from economic growth, based both on domestic and international issues.

Let me say a word or two about the domestic matters first. In Japan, of course, the environmental problem is very serious, far more serious than in the U.S. More eco-

nomic activity takes place per square inch in Japan than any place else in the world. The country is physically quite small, and since there is so much economic activity and so little space, it's really quite obvious that the impact of this has been very great. That is, the more rapid the growth of the economy, probably also the more difficult the environmental problems that are created. You may know that some of the most famous pollution cases in the world have all taken place in Japan and have really had a very serious impact on the political and social situation.

But I think a more serious problem in the long run, in the Japanese economy, and in our own economy, is what might be termed the problem of income distribution. In the 1950's and 1960's Japan was a paradise for the businessman. Everything about the Japanese economy and Japanese society seemed to me to be structured toward making the life of the businessman easy and profitable. In fact, it's not so surprising that in the country where business was most favored, there was the most rapid economic growth. I would suspect that, if in the United States, we adopted policies that imitated those of the Japanese we could also up our rate of growth considerably, at a considerable price.

But when you have a paradise for business people, you may have a hell for other people. It is certainly true that large sections of the Japanese population—the aged, the users of public services, those who required public welfare, those who had difficulties in paying for their own education—were neglected. No industrialized country is further removed from, let's say, the Scandinavian welfare state than the Japanese. And this is becoming more of a problem, particularly as very severe inflation has been hitting Japan since 1973.

And so, more and more, in Japan today, there is a chorus of "growth for what?" What was the purpose of this very rapid growth when it has produced such severe environmental problems and created such great problems of income distribution? I think this is a very new development which anyone who is interested in Japanese society should watch very carefully.

Now on the international scene a very similar development has taken place. You might say that from between 1950 and 1970 Japan moved from a situation in which everybody admired the Japanese to one in which there was a great deal of friction between Japan and the rest of the world. The Japanese are asking themselves whether a by-product of the economic miracle—I don't particularly like the term—has been friction with the rest of the world and worsening international relations. Japan has had a very low posture in international relations; it is the largest country in the world without a foreign policy.

It is a gigantic economy, obviously in an inconsistent posture, and it has had growing frictions with the United

States, and with the less-developed world. Europeans have no interest in Japan, except how to keep them out of their markets. Also to be called economic animals—a term originally coined by the Pakistani foreign minister, and probably an unfair description—is not really very pleasant. This fact is, perhaps, less important than how the Japanese begin to perceive themselves in the world.

The outside publicity seems to see them as selfish—people who are interested in exploiting others solely for economic purposes—with all of this resulting from a basic imbalance in the growth pattern in the world. The rest of the world hasn't been growing very rapidly, but the Japanese economy has been growing two or three times as rapidly as the rest of the world, and this basic imbalance has created the problem.

Naturally Japanese people begin to ask themselves, "Was it really worth it? What is the purpose of all this progress—if we're only going to wind up by being rather feared and disliked by the rest of the world?"

Add to that the nervous breakdown of October, 1973, when suddenly the oil supplies seemed to be cut off and the vulnerability of Japan was enormously underlined, for the first time, to its people. You begin to ask yourself whether, perhaps, a lower posture, a lower rate of growth, may not make it more possible and easier to live in this world. Because Japan is really unique: no country has had such a high level of economic output, such a high income per capita, such a large rate of economic growth, and absolutely no natural resources.

I might raise one other speculative point in this connection. I think the Japanese feel very much that they have never been admitted to the club of powerful countries. It's very hard to prove this, but the Japanese look upon their history as a series of rejections by the West. In the 1890's, I think it

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**More economic activity takes place per square inch in Japan than any place else in the world.**

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was, the Japanese wanted to engage in a little bit of imperialism in China. Everybody else was doing it. And we told them that they couldn't do it. Well, they didn't like that. In 1918 and 1919 they tried to get the Versailles Peace Treaty Conference to put in a racial equality clause. We wouldn't do that. In the 1930's we took a very virtuous posture vis-a-vis Japan and China when we didn't take a similar posture with lots of other countries. And again the Japanese felt aggrieved.

I'm not suggesting that this is the way history has actually been, but I'm suggesting that this is the way the Japanese look at it. And they are wondering once again whether

another great success, their economic success of the post-war period, is going to result in the same thing, another rejection by the white man's club, by the powerful countries.

For example, people might say the Japanese are not like us—they're yellow. They work too hard. They're really not to be trusted. Therefore we need special rules to deal with the Japanese. We'd have one set of rules for our friends, the Western Europeans, another for the Communist countries, and a third for the Japanese. Probably this will not happen, but it is something that the Japanese are clearly worrying about.

Now, the second question is: what is the future of Japanese economic growth for the rest of the decade? That's not a trivial question, because Japan is the third largest economy in the world and the second largest in what we laughingly call the "Free World." Therefore, I think it is very important for us to know what might happen there. Obviously, it's very "iffy" and I do not like to predict.

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**But when you have a paradise for business people, you may have a hell for other people.**

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Therefore I will make only long-term predictions, hoping that you will forget if I am wrong in the short run, but that you will have the decency to remember if I am right in the long run. Before I give my prediction, let me say something else. Japan has always suffered from extreme valuations by the West. In 1950 there were lots of wise men around who were saying Japan will never get anywhere, poor country, it's lost all of its markets. It's lost all of its resources, how will they possibly be able ever to arise from the ruins of World War II? I am very happy that I was too young at that time not to make printed statements. Though had I been old enough, I undoubtedly would have said what everybody else said.

My basic prediction is the following: I think that the Japanese economy will slow down in this decade. It will slow down quite considerably, but I think it will grow more rapidly than Western economy. That's a kind of safe, middle of the road prediction.

Let me briefly try and explain why I hold it. Why slower than in the past? Why less than the 10% that has been a kind of standard of the world? Well, I think it's because the very unusual circumstances that led to two-digit growth in Japan are gone. I think they have disappeared or are disappearing. Japan no longer has a labor situation that would be the envy of all Western entrepreneurs. "Catch-up" is finished, and that was the name of the game in Japan: "catch-up" in technology. I think that the 20 years of growth, while neglecting all social expenditures, are finished as well. Resources will have to be redirected

toward hospitals, parks, roads, and so forth, and these produce less output than factories.

Also, there is a very changed international environment. The good old days of an undervalued exchange rate, while keeping one's markets closed to foreigners, will not reappear again. And that was certainly the situation in Japan. And I think that not even the Japanese, smart and superhuman though they might be, are immune from the law of trade-offs. You can't have two-digit growth, stable prices, amenities, welfare, and pollution controls, and not pay some price for it. In other words, they have to make choices. And my feeling is that many of the choices in Japan for the balance of the decade are going to be the kinds of choices that will depress the rate of economic growth.

But I still think that they will grow more rapidly than the standard in the West. The standard growth rate in the West isn't very high, and we are making sure in this country at the moment that the standard remains quite low. But

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### **We'd have one set of rules for our friends, the Western Europeans, another for the Communist countries, and a third for the Japanese.**

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I'm assuming that the standard of the West is sort of an uninteresting three and one-half percent growth of the gross national product or something like that. That's been the historical record for the United States and for the most of western Europe.

Why will the Japanese do better? Because fundamentally Japan is still a three-quarters-developed country, a country in which the dual economy, the traditional and the modern sectors are still co-existing. And I think that that's a much better economic situation for growth than our own situation. That is, one can still do a great deal of rationalizing in the less mature economies, in agriculture and distribution, in eliminating the dual structure. In that sense, the Japanese have really a great advantage over ourselves and over Western Europe, and I think that this will lead to somewhat more rapid growth than in the west.

One could invent many pessimistic scenarios that would probably make my rather optimistic prediction unrealistic. But I find none of them convincing. Let me just review them very briefly.

Is it possible that there will be major labor-management confrontations in Japan? Well, it's possible, but I don't see it as very likely, because as long as labor remains relatively ample, and I think it has, the unions in Japan are just too weak. I don't think they'll be much more powerful in the next five or six years.

More interesting, perhaps, is the question, "Will the

Japanese lose their love of work?" I mean, at what point are they going to be more like us, and become rather lazier? Well, I think this doesn't come quickly. I think undoubtedly in the long run they will resemble us, but that doesn't happen in five or ten years. So I expect that for the next five or ten years the Japanese will continue to work very industriously, perhaps less and less as time goes on, but it won't make that much difference in the short run.

I might say that I consider the Japanese to be among the most materialistic people in the world. Americans are always thought to be materialistic, but I think that's probably untrue. We are rich but we are not especially materialistic. The Japanese are much more interested, I think, at this point, in possessions than we are. Since Japan will not turn into a Scandinavian-type welfare society overnight, there's only one way to get these possessions, and that's to work hard. And if you're going to want a second car, or even a first car, or air-conditioning, or a better house, you're going to have to work pretty hard. And that, I think, is not unimportant. I might also say this: an optimistic forecast as I have made implies that the international situation will not deny Japan the international resources that it needs. If the Arabs, let's say, got together with the Western countries and if the United States wanted to make sure that Japan would be sunk and that no oil was made available to it, anything that I say does not need to be taken seriously. I don't think that the Japanese will be singled out for unfavorable treatment by the owners of the natural resources. I think quite to the contrary, the Japanese may have some advantages with the owners of natural resources: they don't bear the burdens of a past colonialism. If they're clever enough perhaps they can play the United States and the resource-producing countries off against each other and put us in a rather difficult position.

Now let me, finally, talk about what seems perhaps of greatest interest to you. It certainly is of greatest interest to me, and that is policy issues that may arise between Japan and the United States. I want to talk about that because a very few years ago there was a lot of talk about very bad relations between Japan and the United States. And I think I contributed to that talk as much as many other people. I have always felt the press coverage of Japan in the United States is very poor; you very rarely see an intelligent story about Japan in an American newspaper. You see stories when something exotic happens—they eat raw fish or they have people who push people into subways during rush hour—but I think that serious reporting on Japan does not really exist, even in our best papers. Maybe there aren't the resources to do it.

In any event, a few years ago there was a fair amount of anti-Japanese writing in the American press. The balance of payments was one big issue, various kinds of restrictions

on foreign trade were another. It's astonishing to me that today all of this has disappeared.

When I went to Tokyo in August and started asking various people about United States-Japanese relations, including the American Embassy—which is a very poor source—they told me there were no issues. I said, "Well, aren't there any problems?" They said, "No, there are no problems, everything is just delightful. . ." And here were the people who were condemned in Washington, who were the cause of the Nixon shocks, and against whom so much venom was directed in 1971. All of a sudden we say to ourselves, 'Gee, it's all really wonderful,' and there are no issues.

Well, now, that in itself makes me highly suspicious. As usual, we are looking only at the immediate, and not at the important. It seems to me that there are clearly a number of very serious issues down the road between Japan and the United States. For the sake of your future newspaper stories I want to call these to your attention, and perhaps one of you can write an article on the subject—it might not be a bad idea.

The first issue, it seems to me, that will undoubtedly create problems between Japan and the United States in the future is the matter of direct investment. Those of you who have followed Japanese-American economic relations, will know that in the past there have always been great disputes about direct investments. The Japanese don't particularly want us to invest in Japan. A former Japanese finance minister once said to me, "The official plan for welcoming Americans has ten points. There's an eleventh point that is unwritten." I said, "What is that, Mr. Minister?" He replied, "Please stay away."

I think that attitude has changed. But there is no doubt that rules don't mean very much in Japan, and there will be continual friction when American firms want to locate in Japan. But the shoe is also on the other foot. We never cared about foreigners investing in this country, since it happened so rarely, but the Japanese are now coming in

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. . . You very rarely see an intelligent story about Japan in an American newspaper.

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rather larger numbers. That could be a rather major issue between Japan and the United States. Let me point out, also, that in order to negotiate with the U.S. one needs a very peculiar posture that most foreigners can't understand. There are 51 jurisdictions in this country—50 states and one federal jurisdiction, and who the hell does one make the deal with? It's something that most foreigners don't, or at least find difficult, to understand.

The export problem isn't going to disappear either. The

Japanese are very afraid of American restrictions on American exports to Japan, especially when it comes to food and raw materials. The whole food issue is potentially one of the most explosive issues between Japan and the United States and perhaps in the world in general. The Japanese have a highly protected agriculture, and are attempting in vain to make themselves less dependent on food imports. They have absolutely no chance of achieving this. At the moment they are importing 50% of their caloric requirements, and I'm sure in the long run that they will have to import much more. It makes no sense whatever for the Japanese to have any kind of a major agricultural effort.

On the other hand, how can you—in a world that is so uncertain, so irrational—rely entirely on foreigners for food imports? So Japan is caught in an enormous dilemma. It has to import food from the U.S. in fairly large quantities when it knows, really, that it should import even more.

We may be soon in the position of facing the very unhappy choice of either selling food to Japan at high prices, as a perfectly good deal, or giving it away, to less developed countries that may be starving. That's not a choice that will make friends—it certainly will not make the Japanese our friends—and will raise the level of international tension very much.

From the United States' point of view, Japanese exports also present very great problems because they will continue to hit exposed nerves of the American economy. Not only will they hit exposed nerves, but they will hit on those very rare occasions when labor and capital can unite. Labor and capital in the country are united on very little, but they will unite when some particular industry is under attack through Japanese exports.

There will be other Japanese export drives—I don't know where or in what commodities they will arise—but there will be those occasions that will produce enormous political clout in this country, and we will again be tempted to take defensive measures. And the adjustment mechanism, the bilateral adjustment mechanisms between Japan and the United States are very poor. No one in Washington, it seems to me, is giving any thought to this.

Let me raise another issue that I wouldn't have raised three or four months ago, but I think is legitimate at this time. What if there is any American depression? Depression to me would be seven percent-plus unemployment for a period of more than two years, and I submit to you that that is not all out of the question. If this should in fact take place, would this not inevitably lead to serious American protectionism? I'm quite sure it would, and I'm quite sure that this would cause very severe conflict with the Japanese. And I say, again, when I talk about Japan, I'm not talking about Luxembourg or some exotic country that you may or may not be interested in. I'm talking about the second most

important trading partner of the United States, excluding Canada.

There is also the problem of divergent interests in Third World countries. That is, Japan and the United States may clash because we have different views on Third World countries, over raw materials and over markets, and the Japanese may try to gain political influence and emerge from what we have always considered to be a junior partnership.

And it's very possible that many Third World countries will attempt to play the Japanese against the United States. Japan can supply everything that we can to most less-developed countries, except food. If they want nuclear bombs, the Japanese can probably supply them with the technology more cheaply. If they want cotton textile mills, they can do that. I think that there is really a problem here of clashes between Japan and the United States and Third World countries.

Furthermore, I think the rise of multinational companies poses great problems because multinational companies are very powerful, as we all know, and may pull governments into disputes that affect them. Just as the United States cannot be indifferent to the fate of Exxon or some other multinational company, so the Japanese government cannot be indifferent to what happens to Japanese multinationals.

Finally, it seems to me there is one other general problem in international relations that will act in an adverse way, or at least is one that I would watch carefully if I were in Washington. The Presidency of the United States, whatever has happened, has been weakened. Many people say the LDP, the ruling party in Japan—the Liberal Democratic Party—has been weakened, and perhaps is falling apart at the seams. Maybe they will even have to go into a coalition with some other party. But it seems to me that with the weakened U.S. Presidency, and a weakened Liberal Democratic Party in Japan, you have less of an opportunity of making a deal. The stronger the home government, the clearer it is to find somebody who speaks and who can make it stick. It is my guess that in the next three or four years we are going to have great difficulties in finding people who can make it stick for the United States; and the Japanese are going to have difficulties in finding people who can make it stick for them.

That's my view. I've dealt with these three questions. I don't think there's any kind of crisis, but I do wish that the media would take Japan more seriously and that some of these problems were thought about, written about and aired in our press today.

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## Nieman Assembly

# The Press and Cyprus

*Editor's Note: Emily T. Vermeule, the second speaker at the Friday evening dinner, is Professor of Classics and of Fine Arts at Harvard University. Author of "Greece in the Bronze Age," she has recently published "Toumba Tou Skouru: The Mound of Darkness," an account of the findings of the 1971-74 Harvard University-Boston Museum of Fine Arts Cyprus Expedition in Morphou. Wendy L. Moonan, editor of Juris Doctor Magazine and a 1974-75 Nieman Fellow, edited the transcript which follows.*

An archaeologist, of course, isn't a prophet like an economist except, maybe, backwards or upside down, we do share with economists, and with the press, the necessity of getting a lot of small bits of information and putting them into some kind of reasonable pattern, and then changing them the next day when it turns out we were wrong. That is probably why archaeologists are so often intelligence officers in wartime, because archaeologists, who are basically dumb people, are close to the land, know quite a lot about roads and forts and water supplies and lighthouses, and sometimes even speak the language of the country.

But those of us who care for Cyprus and have been trying to follow the Turkish invasion of Cyprus from outside have found very little helpful in the American press. (Even *The Boston Globe* can't spell the name of the island. It's the one that's off on the East, beyond Crete, beyond Sardinia and Malta. . .)

Of course, archaeologists don't often get to meet the press, because our view of it is that the press is rich and we are poor. That is, the press is always to be found in the biggest café in town, or in the Hilton Hotel, or in the Grand Bretagne in Athens, handing out invitations to all sorts of important people to stop by and buy them a drink. So our experience of the press is rather minimal, and the press' experience of Cyprus is also a little bit on the minimal side. Cyprus has had such an extraordinary history that its history is really as difficult to recognize in the past as it will be in the future. There was a famous British handbook for Cyprus, the 1938 Jubilee edition of the Colonial Office Handbook, which said: "Set between Athens and Jerusalem, Cairo and Constantinople, Cyprus seems to have been destined by nature to be the battlefield of the Near East and the prey of contending faiths and rival empires."

This hasn't changed really at all. Cyprus is that island with the long panhandle that lies just south of Turkey and near Lebanon and Syria. . . . It is basically made up of two large mountain ranges. The small one is in the North,

where the Turks landed. The big one, of 6,000 foot mountains, is in the South, where the copper mines are, and where absolutely no other natural resource exists. This is the land which is now left to the Greeks. (The Turks captured the copper mines in "phase III.")

The landscape between these two mountain ranges is extraordinarily fertile. It grows citrus crops, by and large, which were very heavily exported to England before Britain joined the Common Market. That is not allowed now, and there is some competition from Israeli and Spanish oranges, so even before the invasion, Cyprus was getting economically somewhat weaker.

But compared to the rest of the Near East, Cyprus was a paradise (before the invasion). It had the highest standard of living, the highest income per capita, (\$1,313). It had the most light industry, the most shipping, insurance, banking, all sorts of inventive and creative ways of being a very prosperous island. (That is why when Senator Kennedy sent his committee to inspect the refugees, the committee, which was used to Bangladesh, was horrified by the Cypriots' asking not for one blanket in the mountains, but one under and one on top. They were used to a high standard of living, not sleeping on the rocks.)

The people of Cyprus have really had a hard time understanding that they are Cypriots. I think this is the core of the Cyprus issue. The people of Cyprus came originally from Anatolia or Syria some years before the Turks or the Arabs arrived in those districts. They were independent for the first 6,000 years of their history, and then they were successively influenced by the Cretans in 1500 B.C., the Greeks who came in 1200 B.C. in large numbers and left their language and their script; and after that the Egyptians, the Assyrians, the Persians, the Greeks again, and the Ptolemies in Egypt. Then came the Roman Empire and then the Arab invasions, when the aunt of The Prophet fell off her donkey on the south coast and broke her neck, making the site one of the great Turkish shrines of southern Cyprus. Then after the Turks came the very

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**... Compared to the rest of the Near East, Cyprus was a paradise, before the invasion.**

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crazy Byzantine Emperor, Isaac Comnenus. After that came Richard the Lion-Hearted, who got married there and brought swans back to England. After that came the Genoese, then the Venetians, whose last famous commander at the siege of Famagusta was captured by the Turks, skinned alive and stuffed with straw in the public square. Then there were Turks, until 1878, when the British, under Sir Garnet Wolseley, began to make Cyprus into an eco-

nomically powerful dependency of Britain, then independent in 1960. And now, in 1974, it's mostly Turkish again.

It is a great shame that the Cypriots themselves are not interested in Cypriot history, though this is partly the fault of the British, because the British decided from the beginning that Greek Orthodox Christian Cypriots should have a different education from Turkish Moslem Cypriots, and the children never went to school together at all.

In the older days, under the British Civil Service, most people were trilingual, because English, Turkish and Greek were necessary for the Civil Service. Since 1960, none of the younger generation has been able to speak the other inhabitants' language. This has made them exceptionally vulnerable to slogans, so that Greek cries for Enosis (union with Mother Greece) or Turkish cries for Taksim (partition) have fallen on a ground which is fertile by reason of ignorance. It is this situation which the Turks and Greeks in Cyprus have now come to understand is a sign of political immaturity.

The recent reports from Cyprus suggest that the Turkish Cypriots are as unhappy as the Greeks and wish that the island would be demilitarized forever. Cyprus is an agricultural economy and one in which the peasants are extremely devoted to the land. That is why, no matter what the future of the island may be, each wants to go back

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**... Recent reports from Cyprus suggest that the Turkish Cypriots are as unhappy as the Greeks and wish that the island would be demilitarized forever.**

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to his own home, his own family, his own animals, under whoever's overlordship.

This is an island where the dowry system is pernicious, where people work forty or fifty years in order to get enough money to become a bride, at which time their enjoyment of the marital state must be a little bit limited. . . . It is those people who have worked for so long, who have now been pushed off their land, who have lost their houses, lost all their clothes, their trousseaus, the little linens they embroidered for so long, who are now sleeping on sidewalks without blankets.

We at Harvard were very lucky to be invited by the government of Cyprus to start an excavation there in 1970. Harvard was offered a site which many people have been interested in, on the extreme west coast of Cyprus on the Morphou Bay, just under the copper mines. And there, for four years, we worked very happily with extraordinary cooperation from all sides. When we needed a Turkish mining engineer to come and put pit props in our tombs, he came down from the hills and was happily accepted by the Greek workmen who hadn't been able to see him

since the communal lines were drawn a decade ago. When we wanted information from a tomb robber, again, it was a coalition of Turks and Greeks who had worked so happily selling illicit antiquities to the former American Ambassador.

The town of Morphou itself, which was the fastest growing part of Cyprus (at the time of the invasion), the richest part of Cyprus, where everyone had a Jaguar or a Mercedes and irrigated his own orange groves at the same time, was a place of extraordinary kindness to us. They lodged us in the school, and the antiquities in the military barracks. I have here a letter from the Mayor of Morphou, written just before the Turkish invasion, that reads: "Now I would like to assure you once more and to tell you there is nothing for you to worry about as far as electricity bills or water supply bills that may occur. We pay these bills with pleasure. After all, you have done a great service to the Morphou area, because it was only through your great efforts and real interest that you have discovered part of our archaeological history."

What he meant was that the Harvard excavation was lucky enough to be the first to find the first site where people from the Aegean world, from Crete and from mainland Greece, had landed in Cyprus in the sixteenth century B.C. and had begun to offer their script and their language to the Cypriot people.

Now it turns out that on August 15, 1974, the Feast of the Assumption of the Virgin, the great holy holiday for all Greeks, Morphou became the extreme west end of the Turkish line and, being strafed and bombed, was evacuated, and the Turks moved into the Army barracks where our maybe 1,000 vases and other objects were stored.

The Turkish Army was not quite aware of what it was doing when it threw those pieces out the window. The men needed the space; they needed the work tables for ping-pong. They simply shoveled the stuff out the window. The American Ambassador took his best efforts to try to recover the material. After seven weeks the Turks kindly sent the Army out and shoveled the pieces up and put them all back in again. Stratified excavation got rapidly unstratified. The Turkish Antiquity Service and Ankara were horrified by what had been done. UNESCO has also been very helpful and made an inspection of our site on the tenth of October, but it seems clear that Harvard has lost thousands of its major pieces, perhaps all the evidence for the historical connections of Cyprus and the Bronze Age.

It's not often that you think of the Bronze Age as being in the forefront of modern politics or even the interest of the press but, I must say, Cyprus does queer things to people. Leonardo da Vinci wrote about it in 1481, "and there have been many who, impelled by her loveliness, have

had their ships and rigging broken on the rocks that lie in her seething water." This has happened to all of us.

There was a nice story of the two Cypriot ladies who, emigrating after the Turkish invasion, went to London and got on a London bus. And they thought they would go upstairs in the bus for a broader view of London. But when they got up they were very disturbed, because there was no driver. So they quickly went down again, because although the view was more restricted, the driver knew where he was going.

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. . . Cyprus does queer things to people. . . .

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I think this describes the U.S. policy in Cyprus perfectly. The long-range view of policy considerations up above has no driver, but the people down below know where they are going. And so it is that I am very happy to be able to go to Cyprus tomorrow to see what I can do to rescue the Harvard excavation material there.

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*A Postscript:* Mrs. Vermeule reports that, with the help of the Department of Antiquities of Cyprus, the American Embassy, and the director of the Turkish Museum in Nicosia, she was able to travel north to Kyrenia, west along the coast and south to Morphou. The Turkish Cypriots had prepared an inventory of the Harvard antiquities; about 240 vases seem to be missing or smashed. The cameras and excavation library were taken. The site was undamaged, and the surrounding orange groves seemed healthy; Anatolian Turks had been sent in to irrigate them. Morphou was nearly deserted but for cats, soldiers, and propaganda posters. The whole north coast was devastated, and the forests bombed with napalm. Turkish shops were beginning to open in the rubble of Kyrenia, and Turkish Cypriots from the south were moving into Greek houses. The Red Cross, UN, and Embassy personnel were barred from visiting the villages. The indigenous Kyrenia black buzzards were more visible than in earlier years. Nicosia seemed superficially normal, though with fire and mortar damage, inflation, food shortages, and a deep weariness near despair.<sup>24</sup>

. . . One of the darlings of liberal thought is the notion that cross ownership of media is bad.

—Anthony Oettinger  
Merging Media and the First Amendment

## A Reporter Reflects: The York Gazette and Daily (Conclusion)

(This is the second part of a two-part article which began in the 1974 Autumn issue of *Nieman Reports*.)

On my desk as I write lies a copy of the April 18, 1958, issue of *The Gazette and Daily* of York, Pa., a newspaper owned, personally supervised, and dominated by an extraordinary man, Josiah W. (Jess) Gitt from 1915 to 1970. Editor and Publisher once described him as "a determined individualist and incurable idealist," both of which he was, and went on to say that "these are the traits his paper most mirrors." Gitt had strong views which stamped themselves as firmly as possible through the filter of a staff which kept changing. But these views, as he often heatedly lamented, were so simple in origin that staff and readership had a hard time in understanding that it was his own moral imperative, rather than the specific campaigns and stands reported, which made the paper become famous. For example, Gitt crusaded against monopoly; the Smith Act; the "cruel and unusual punishment" inflicted by misuse of the Constitution upon the Rosenbergs; the efforts of the French and (later) the U.S. to impose foreign rule upon Indochina; nuclear testing; unsafe automobiles (long before Ralph Nader appeared); indiscriminate and sometimes harsh application of "disorderly conduct" ordinances by York city and county police; etc. More than anything else, Jess Gitt felt that the First Amendment required owners of a free press to furnish a democratic people with the information needed to be intelligently self-governing. And he felt, too, that such information, including opinion, should be shaped fundamentally by two objectives set forth in the Preamble to the Constitution: to "establish justice" and to "promote the general welfare."

Gitt and his newspaper were misunderstood not only during their lifetime by much of the staff and readership, but also after each had perished. Members of Gitt's class—persons of wealth, privilege and aristocratic York County lineage—considered him to be idealistically eccentric and didn't understand him either, any more than they did Franklin Roosevelt. However they were astounded by Gitt's realistic sense which kept *The Gazette and Daily* alive by its own revenue during the days of the Great Depression when all hell broke loose upon their own banks, businesses and investments. Obituaries of the newspaper in 1970 and subsequent accounts of Gitt's career stressed the maverick quality of *The Gazette and Daily's* policies while suggesting that they verged on heretical propaganda, so distasteful

to the conservative Pennsylvania Dutch people of York County. They also implied that the paper's survival depended upon subsidies from Gitt and his wealthy wife Elizabeth. Such mistaken notions inferred that I. F. Stone had it all wrong when he observed, "Jess Gitt showed you could turn out a progressive—even radical—paper in a small town and make a go of it." As usual, however, Izzy Stone was right.

Only Newsweek, which devoted its press section of Jan. 11, 1965, to an estimate of *The Gazette and Daily*, caught on to the fact that it was primarily a news paper, maintaining consistently a ratio of 60 percent news space to 40 percent advertising when the average daily's ratio was almost exactly the opposite. "More than half of the 30-man editorial staff," Newsweek reported, "sticks to local affairs, covering everything from bowling matches in the city of York (population 54,500) to harvest conditions among the fertile rolling hills of York County (added population, about 112,000)."

Even Newsweek, although generally correct, slipped a bit. The Newspaper Guild editorial membership at *The Gazette and Daily* included staffers up to the level of city editor plus two photo-engravers and numbered 45 in the late 60's. Nor was it an entirely "male and pale" staff—at least seven were women, one serving as assistant city editor and another as wire editor. Also, four of the reporters were black.

One staffer, Robert C. Maynard—the second Nieman fellow to be chosen from *The Gazette and Daily*—put in a year as assistant city editor after returning from Harvard. He is now an editorial writer for *The Washington Post*. The other Nieman Fellow from that newspaper was Arthur W. Geiselman, Jr., twice winner of the Guild's Heywood Broun award, later an investigative reporter at the *Baltimore Sun*. Currently he is covering the Pennsylvania state capital for the *Philadelphia Inquirer*.

But it is interesting to note that reporters from *The Gazette and Daily* have gone on to work for such newspapers as: *The New York Times*, *The Washington Post*, *Baltimore Sun*, *Philadelphia Bulletin*, *Chicago Tribune*, *Chicago Sun-Times*, *St. Louis Post-Dispatch*, *Wall Street Journal*, *Toronto Star* and *Los Angeles Times*.

Newsweek highlighted something else important: the size, design and layout of the paper. During World War II, because of the newsprint shortage, *The Gazette and Daily* became tabloid. It remained that way after it became clear to Gitt and his executive editor son Charles (Josh) that readers liked the easy-to-handle, easy-to-read appearance.

Others liked it, too. *The Gazette and Daily* won the N.W. Ayer award five times as the best-looking U.S. tabloid. In 1958, as headlined in the issue lying here on my desk, the paper became the only tabloid ever to win the Ayer award for all newspapers, regardless of format.

This particular issue, let me hasten to add, was most unusual. I cannot recall, with the exception of the Ayer awards, the Broun prizes and the Nieman fellowships, Gitt ever permitting *The Gazette and Daily* in his words, "to blow its own horn." Once this writer performed what the city's separately-owned evening paper, *The York Dispatch*, reported as "an impressive role" in a community theatre production of *Inherit The Wind*. *The Gazette and Daily's* editorial page editor, David Wesley, who doubled as drama critic, was instructed to write his review without mention of my name. The only times when a Gitt or a Higgins got reported in the newspaper were when a Gitt daughter won the county's women's golf championship (which her father had won years before) and I attained the county tennis championship.

The differing Gitt attitudes toward theatre reviews and sports help to explain what the paper was all about. Sports, in his opinion, ranked as news. So, of course, did the plain facts about a community theatre play or community symphony concert. But reviews were another matter. We suffered them grudgingly, printing them, I guess, because, as

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**... Gitt believed ... that reviews waste space which could be used for material related to more basic human needs.**

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sometimes occurs on newspapers, we didn't want to make a big issue out of it when others, such as Wesley—an exceptionally talented editor—had strong feelings about their worth. But Gitt believed (and I concur) that reviews waste space which could be used for material related to more basic human needs. Consumer information, for example, from Sidney Margolius; nutrition or other health reports from Science Service; labor news from Federated Press; excerpts from the Congressional Record; reprints from the *Afro-American* or the *Manchester Guardian*; articles on housing, stream and ocean pollution, the U.N.'s Food and Agricultural Organization, industrial safety, the conservation of shade trees in cities, and so forth. Day after day, from an overwhelming variety of publications and services, we searched for stuff that might be described as "meaningful filler"—something that might realize Gitt's idea of a newspaper as an educational institution.

At the same time, we were careful not to lose touch with what was happening in York City and County. Five full-time correspondents were stationed in county townships

and boroughs, supplemented by innumerable stringers. Many of them were older women who had achieved, through church and social associations, a status as village centers of news reception. I remember when one woman phoned about the sudden illness of a rural postmaster. "Yes," I said, "and exactly what is the nature of Mr. Bradford's illness?" Long pause. "Oh, well," she said, in that ascending-and-descending tonal scale characteristic of the Pennsylvania Dutch, "could be we'd best say he was all at once took dizzy in the head."

The issue of *The Gazette and Daily* at which I am looking illustrates Newsweek's description of its attractiveness: "... five clearly separated columns (no column rules, just white space) to a page. Long stories are preceded by (boldface) banks (under the main single or double column heads), which may take up as much as ten lines, since their purpose is to summarize. The overall effect is neat and tidy (appealing, of course, to the Pennsylvania Dutch), though dummy pages are rarely composed and no staffer spends much time on make-up."

Again, Newsweek is generally on the right track but a little wobbly. Few stories were "long." If they were, Gitt or I went to work with a blue pencil. The tabloid format demanded brevity and plain language—the goals we were constantly trying to reach. Even so, *The Gazette and Daily* had no style book. When some graduate journalism reporter, new to the paper, suggested to Gitt that we ought to have one, he advised the young man to study the Bible and the speeches of Abraham Lincoln. "And don't get too cute in your editorials," he advised me. "Don't go in for irony. They won't get it. The Dutch take things at face value. Just say it—whatever it is—straight out."

Newsweek was also off base on the dummy question. The first four pages—no ads, all news—were always dummied. This was one of the duties of the managing (and production) editor, Lou Stone, brother of I. F., when I first arrived in York in 1949. Later it became my duty after Lou's wife decided she had had enough of her husband staying up until 4 a.m. to put out a morning newspaper. The managing editor, too, personally supervised the make-up of the first four pages, often changing placement of stories up to the last minute. Same with the sports editor for his pages and the county editor for his, the three major divisions of the newspaper. The second editorial page, a pioneer in what has come to be referred to as "op-ed," got dummied and made up during the day by the editorial page editor. In the April 18, 1958, issue at my side this page contains two articles, although more often there were three or four. The first, an abbreviated piece on Laos abstracted from *The Wall Street Journal*, deals with "the flagrant misuse of U.S. aid funds . . . amounting to \$60 billion to foreign governments since World War II." The second story, a "Special

to *The Gazette and Daily*" by Ralph Friedman, recounts the experience and promise of the "listener-sponsored" FM radio station KPFA in the San Francisco Bay area.

Friedman was one of several dozen "special" contributors of the second editorial page. Among others: I. F. Stone, Max Werner (probably the best military strategy analyst ever to write in the U.S.), William Worthy (Nieman Fellow 1957), J. Alvarez del Vayo (former foreign minister of the Republic of Spain), Edgar Snow, Theodore White, Owen Lattimore, Charles Howard (of the *Afro-American*), Alvin Toffler, Andrew Roth (from England), Eleanor Roosevelt, Robert Hutchins, Dick Gregory, George Seldes, Carey McWilliams, Henry Wallace (one of Gitt's many distinguished personal friends, whose presidential candidacy on the Progressive Party ticket was supported by *The Gazette and Daily*—the only commercial newspaper in the county to do so), Fred Rodell, Kay Boyle, Louis Adamic, Konni Zilliacus, Saul Alinsky, et al. The page, in addition, regularly carried reprints from such periodicals as the *Bulletin of the Atomic Scientists*, *Scientific American*, *The Progressive*, *The Texas Observer*, *Nation*, *New Republic*, *Civil Liberties*, and *The American Scholar*. It also presented condensed texts of Supreme Court decisions and of speeches by Henry Steele Commager, Wayne Morse, Ernest Gruening, Wright Patman, George Wald, Ralph Nader, Thomas Emerson, Martin Luther King, and others.

It was this op-ed page that led such students of the press as Nat Hentoff to label *The Gazette and Daily* "indispensable," which perhaps it may have been for many outside of York County. But it would be wrong to conclude, as some have done, that the page failed to interest local readers. Like most op-ed pages, those of *The Gazette and Daily* drew

counsel to the lovelorn and similar staples which are justified by other publishers on the grounds of giving people what they want. Gitt thought these excuses were hogwash. "I got sick and tired," he once told Editor and Publisher, "of going to meetings of the American Newspaper Publishers Association and hearing nothing except how to make money, never how to make a better newspaper. So we quit the American Newspaper Publishers Association, the American Society of Newspaper Editors and all such. We just tried to use horse sense and put out an honest-to-goodness newspaper."

Gitt composed the motto carried each day at the top of page one next to the paper's name, "The news all the time

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**"We just tried to use horse sense and put out an honest-to-goodness newspaper."**

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without fear or favor, bias or prejudice." News kept *The Gazette and Daily* in flourishing aggressive condition for more than a half-century of self-reliance. During all of this time it disdained liquor and patent medicine ads; lost other accounts (such as Robert Hall) after printing complaints against certain firms made by the Federal Trade Commission; lost still others (such as A & P) after publishing news of anti-trust suits; dropped cigarette advertising as soon as the U.S. Surgeon-General certified the link between smoking and lung cancer; and continued, from 1946, during the period of McCarthyism and cold and hot war drumbeats, to plug liberty, peace and the more equal distribution of goods and money. "All preparation for war," Gitt frequently stated, "is uneconomical. Militarism and democracy cannot co-exist. I'm a capitalist but not a capitalist who thinks as the big businessmen appear to, that fascism can save the capitalist system. So we'll go right on saying exactly that editorially and print the news."

Beginning on page three of the 1958 issue cited here, almost everything reported was local news, accompanied by local photos. Pages six through 21 were filled with "social news," about Legion posts, PTA's, the YWCA, the library, church fellowships, a calendar of the day's events, marriage and divorce listings, and other city items. Pages 22 through 39—excluding the center two-page editorial spread—contained comparable news from all over the county. Pages 40 to 50 include the kind of "meaningful filler" previously mentioned. One, for instance, headed "Natural Light Adds Richness," quotes at length a Texas architect's claims for homes with large windows, glass walls, "and even glass ceilings." Next follow five pages of sports news and the page for "Boys and Girls," with the customary Thornton Burgess "nature story," a feature on forestry, a cartoon depicting Paul Revere's ride with a caption suggesting that young people look up the Longfellow poem, and a listing of 27

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## The Gazette and Daily had no style book.

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the attention of leaders in the community: teachers, lawyers, labor union activists, politicians, preachers, health and welfare professionals, students of the high school level and at York Junior College (now a four-year community college) and that county branch of Penn State University.

The op-ed page was read—not entirely accepted, of course—but read. Supporters and detractors gave plenty of evidence on that score, just as they did in regard to the editorial and news policies on the whole. Among other things, I learned that the Drew Pearson-Jack Anderson column, the single regular column published six days a week—never edited, never cut—must have been the most popular feature in the paper. Everyone seemed to be familiar with its contents. No one, on the other hand, ever moaned about the few comic strips to be found here and there in the paper, the lack of crossword puzzles or horoscopes, the absence of

names of birthdays from Patricia Ann Forry, age one, to Nancy Ann Reider, 16. The remainder of the issue contains New York Stock quotations, prices of grain, vegetables, and livestock at Lancaster, Baltimore, and Philadelphia markets, and five pages of classified and public sale ads. All of this, and more, cost five cents. The "more" deserves attention, in that it concretely establishes the character of the "radicalism" which several post-mortem critics have indicated was more than York Countians could take. The following examples illustrate the tenor of the newspaper's "radicalism":

First of all, a front page drawing by *The Gazette and Daily's* nationally-known cartoonist, Walt Partymiller, shows an infant in a cradle labeled "Future of Civilization" resting upon an arc of the earth's surface. Overhead hangs an explosive symbol surrounded by falling particles, among which are the words: "Danger of Atomic Radiation." Second, Josh Gitt's daily Food for Thought column on the

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**. . . For almost 50 years Jess Gitt showed that a small town paper could be progressive—even radical—and also successful.**

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editorial page, where he argues against the state setting of arbitrary speed limits on country roads and in favor of limits governed by a realistic appraisal of "specific conditions existing on specific highways." And third, the editorial commenting on news of the 1958 conflict carried on page one. Titled "Indonesia," it begins:

"The present conflict in Indonesia poses more than one fine problem for the people of the United States. Unless we read the signs altogether inaccurately, the sympathies of Secretary of State Dulles—and, presumably, others high in the Eisenhower Administration—are with the elements on Sumatra which have staged a rebellion against the central government. Mr. Dulles seems to be sympathetic with the rebels because of their professed concern with the part played by Communists in the central government. . . ."

The editorial's last paragraph went like this:

"Mr. Dulles' expressed sympathy for the rebels is an indication that once our thinking gets in the grip of anti-communism, and only anti-communism, we can be moved to the point of abandoning democratic principles. It is just the trouble with our foreign policy—negative, inconsistent and not in keeping with our fundamental principles, leading us into relationship with forces which seek to overthrow by force a democratically elected government in Indonesia." A footnote can now be attached. Only recently was it revealed, in books by former Air Force Colonel L. Fletcher Prouty and former CIA agent Victor Marchetti, that the so-called "rebellion" of 1958 in Indonesia was CIA-sponsored and financed.

In any event, in 1958—hardly the best of times for U.S. progressives or progressive newspapers—Gitt and his *Gazette* were doing all right with their traditional combination of comprehensive local news, thoughtfully selected and placed national and international news, a serious second editorial page and hardhitting cartoons and editorials. Circulation approached 40,000. Advertising revenues held up.

In 1964 Gitt refused to accept "Goldwater for President" ads because, as he said, he couldn't bring himself to accept money on behalf of a man whose policies were warlike. His stand raised a degree of resentment among some in York County—not all of them Republicans—who cancelled their subscriptions. It's also true that *The Gazette and Daily's* persistent advocacy of equal rights for black Americans, about 5,000 of whom lived in York County, embittered racists in this area which borders on the Mason-Dixon line. And it's true, too, that population shifts into suburban sectors rendered the evening *York Dispatch* an advantage, since it could reach these potential subscribers by home delivery on the day of publication; whereas previously *The Gazette and Daily*, using the mails, had been able to consider county circulation territory as its protected preserve.

But what the hell, any newspaper that could go all out for Henry Wallace and the redbaited Progressive Party in 1948 (when Jess Gitt served as Pennsylvania chairman of that party), any newspaper that could pass through that crisis and many another, need not have been bothered by new resentments, new hostilities, and new demography. Jess Gitt and *The Gazette and Daily* had thrived on such challenges. The real problem, which started to become

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**"Take life in your hands and move."**

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apparent by 1967 and 1968, was nothing but Gitt's increasing age and a difficult family situation, a combination of circumstances which compelled Jess Gitt to part with his *Gazette*, in bad financial straits for the first time since 1915. Why in bad straights? Because Gitt himself was unable to direct the changes in production processes, circulation methods and business practices which would have kept the paper on its feet. Gitt was at last unable to do things he had done shrewdly and superbly over the years, and he was unable, or unwilling, to hand the command job over to anyone else.

Even so, for almost 50 years, Jess Gitt showed that a small town paper could be progressive—even radical—and also successful. In showing that, he showed up publishers and press scholars who plead that a newspaper must be balanced carefully on the real or imagined prejudices and moods of the American people; and that a paper must be adjusted to the common community denominator. "Bullshit" would have been Gitt's response. He was aware, more

## 1975-76 Nieman Selection Committee

Three journalists and four officers of Harvard University are serving on the committee to select Nieman Fellows in Journalism for the academic year 1975-76. The Fellowships provide a year of background study at Harvard for persons experienced in the news media, and the awards are announced in June.

Members of the committee to select Nieman Fellows for 1975-76 are:

**Robert G. Abernethy**, news correspondent for KNBC, Los Angeles. Mr. Abernethy was graduated from Princeton University in 1950 and received his M.P.A. in 1952 from the Woodrow Wilson School of Public and International Affairs at Princeton. He has worked for the National Broadcasting Company since 1952 in New York and in the Washington and London bureaus. He is a trustee of Princeton University.

**Samuel H. Beer**, Eaton Professor of the Science of Government, Harvard University. Mr. Beer is a 1932 graduate of the University of Michigan and received his Ph.D. from Harvard University in 1943. He was a Rhodes Scholar at Balliol College, Oxford. Mr. Beer was a speech writer for Franklin D. Roosevelt, a reporter for *The New York Post*, and did writing and research for *Fortune* magazine. He is the author of numerous books on political systems in the United States and abroad.

**Hale Champion**, Financial Vice President, Harvard University. Mr. Champion received his A.B. degree from Stanford University in 1952. At Harvard he was a Nieman Fellow in 1957, and a Fellow of the Kennedy Institute of Politics in 1967. Mr. Champion was formerly a director of the Boston Redevelopment Authority; Director of Finance for the State of California; and vice president for Planning and Operations at the University of Minnesota.

**Peter Lisagor**, chief of the Washington bureau, Chicago Daily News. Mr. Lisagor received his A.B. degree from the University of Michigan and was a Nieman Fellow in 1949. He has covered a variety of foreign assignments and

has made every major trip by an American President since 1959, his travels spanning the Eisenhower, Kennedy, Johnson, Nixon, and Ford administrations. This year he became the first newspaperman to win the broadcasters' Peabody Award.

**Mary McGrory**, nationally syndicated columnist. Ms. McGrory, a native of Boston and graduate of Girls' Latin School and Emmanuel College, has been with *The Washington Star-News* since 1947. She was the recipient of the George Polk Memorial Award for national reporting in 1963.

**Barbara G. Rosenkrantz**, Associate Professor of the History of Science, Harvard University. Ms. Rosenkrantz was graduated from Radcliffe College in 1944 and received her Ph.D. from Clark University in 1970. She is Co-master of Currier House, chairman of the Standing Committee on Research, Radcliffe Institute Programs on Health Care, and is the author of many publications relating to public health.

**James C. Thomson Jr.**, Curator of the Nieman Fellowships and Lecturer on General Education, Harvard University. Mr. Thomson was graduated from Yale University in 1953, received the A.B. and A.M. degrees from Cambridge University in 1955 and 1959, and a Ph.D. from Harvard in 1961. He served as an East Asia specialist at the State Department and White House in 1961-66.

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About 12 Fellowships will be awarded for 1975-76. Each grant provides for nine months of residence and study at Harvard for journalists on leave from their jobs.

The current class includes 15 Fellows from the United States and seven Associate Fellows from foreign countries.

The 1975-76 class will be the 38th annual group of Nieman Fellows at Harvard University. The Fellowships were established in 1938 under a bequest from Agnes Wahl Nieman in memory of her husband Lucius W. Nieman, founder of *The Milwaukee Journal*.

than any other news person I have known, that prejudices and moods are made, not born; and that the press, along with radio and television, does the making through lack of guts, love of money, and in his words, for the sake of greed.

"Take life in your hands and move," Jess Gitt used to say to me over and over. "If you're afraid, never let the bastards know it. Keep moving. Keep moving on. Goddamnit, some day this country—the whole world—is going to be beautiful—once we clear the dumb greedy bastards out of the way. I trust people to do that when they wake up to the facts which an honest newspaper, like nothing else, can

give them. So that's what we need. Honest papers for the people."

Jess Gitt died in 1973 at age 89. The years did him and his newspaper in—period. Leaving a question mark—where are the young publishers, the young editors, the young newspapers, to take Gitt and *The Gazette and Daily* as a model for a future that works?

—James Higgins

**Mr. Higgins**, editor of the *Gazette and Daily* from 1950 to 1970, is an Associate Professor of Journalism in the School of Public Communication, Boston University.

## Letters to the Editor

To the Editor:

It seems more than a little ironical that photographer Stephen Northup (Nieman Fellow 1973-74) wrote an article taking us wordsmiths to task for misuse, disuse, and non-use of photographs, and that that article appeared in a publication which never has had a single picture in it.

What about this? Are there any plans to add photos to the staid old Nieman Reports? Or will NR continue to take words and suck them dry?

Ronald Gollobin  
Highland Park, New Jersey

*Stephen Northup replies:*

I would hope Ron Gollobin's letter is taken to heart, and that Nieman Reports would include photographs in future issues.

As to the source and selection of the photographs themselves, I'd like to make the following suggestion: that Nieman Reports open its pages—and mailbox—to the nation's photographers as a home for unprinted pictures. Each day editors across the country reject fine images, ones that deserve to be seen. The reasons are as numerous as the photographs themselves, but lack of space ("too much news"), or taste ("too arty"), or the wrong size or even politics rule them out.

I'd like the Foundation to send invitations to photographers across the land to mail in their loved but rejected images; NR could select the best of the lot and run four or five scattered through each issue.

This would be beneficial in at least three ways: first, it would provide good display for good work; it would also further acquaint more photographers with the Foundation and the program. And last, it would let editors and their colleagues across the country see the quality of the pictures they had overlooked and/or omitted.

To the Editor:

In Nicholas Daniloff's perceptive article in the autumn issue:

"Stage eight: General Alexander Haig delivers Nixon's one-line resignation letter to the White House Office of the Secretary of State at 11:35 a.m., slightly more than 25 minutes before Gerald Ford is sworn in as president. At that moment, President Nixon is flying over Jackson City, Missouri. . ."

It is Jefferson City. (It is the capital of Missouri.)

Not to put too fine a point to it, should there not be a scholarly inquiry into why scholarly articles in scholarly publications contain silly mistakes?

James F. Wolfe  
Blue Springs, Missouri

*Nicholas Daniloff replies:*

I'm sure I don't know why scholarly articles in scholarly journals contain silly mistakes. In this specific case, the fault is mine. I had intended to double-check the city to be sure I had heard the White House briefing officer correctly—but I forgot.

To the Editor:

Since the Nieman Foundation is dedicated to elevating the standards of journalism, some time the Fellows might wish to consider soberly this striking paragraph I find in W. E. H. Lecky's "*History of England in the Eighteenth Century*," Vol. III, pp. 285-287, New York, 1882:

"Nowhere else in free governments do we find so large an amount of power divorced from responsibility. A very few men, who are not altogether unconnected with the official business of the State, who are personally unknown to the nation, whose position is entirely self-constituted and peculiarly exposed to sinister influence, often succeed in acquiring by the Press a greater influence than most responsible statesmen. They constitute themselves the mouth-piece and the representatives of the nation, and they are often accepted as

such throughout Europe. They make it their task to select, classify, and colour the information, and to supply the opinions of their readers; and as comparatively few men have the wish or the time or the power to compare evidence and weigh arguments, they dictate absolutely the conclusions of thousands. If they cannot altogether make opinion, they can at least exaggerate, bias, and inflame it. They can give its particular forms a wholly factitious importance; and while there are very few fields of labour in which the prolonged exercise of brilliant talent produces so little personal reputation, there are also very few in which exceedingly moderate abilities may exercise so wide an influence. Few things to a reflecting mind are more curious than the extraordinary weight which is attached to the anonymous expression of political opinion. Partly by the illusion of the imagination, which magnifies the hidden representative of a great corporation—partly by the weight of emphatic assertion, a plural pronoun, conspicuous type, and continual repetition, unknown men, who would probably be unable to induce any constituency to return them to Parliament, are able, without exciting any surprise or sense of incongruity, to assume the language of the accredited representatives of the nation, and to rebuke, patronise, or insult its leading men with a tone of authority which would not be tolerated from the foremost statesmen of their time. It was the theory of the more sanguine among the early free-traders that under the system of unrestricted competition all things would rank according to their real merits. In that case the power and popularity of a newspaper would depend upon the accuracy and amount of its information, the force of its arguments, the fidelity with which it represented the dominant opinion of the nation. But anyone who will impartially examine the newspapers that have acquired the greatest circulation and influence in Europe and in America, may easily convince himself

## J. Edward Allen

### 1905-1974

J. Edward Allen, Nieman Fellow '40 and Newspaper Guild pioneer, died of a stroke on August 25th at his home in East Weymouth, Massachusetts.

In the early years of his long career, Ed Allen was a typical wandering scribe, working as a reporter and editor on papers in Baltimore, Providence, Wilkes-Barre, Scranton, Long Island, Waterbury, Worcester and Lynn before he settled down at the Boston Herald and married a fellow reporter, Barbara Schofield.

In 1933 after Heywood Broun, the founder of the Newspaper Guild, visited Boston, Allen became one of the founders of the Boston local. Dedicated to Guild causes from its beginning, after Ed was granted a Nieman Fellowship in 1939, it was typical of him that almost daily, on his way to Harvard, he would stop off for a turn on the picket line at the Lynn Item where the Guild was involved in a four-month strike. Two years later, he became international vice president of the American Newspaper Guild.

During World War II Allen was made lieutenant colonel in charge of the War Department's Public Relations offices in New York and San Francisco, and set up the Army's first labor-press service.

After the war, he became news editor of the International News Service in New York, and organized the first United Nations bureau of any wire service, anteceding both the AP and UP by several months. He later became an employee of the United Nations and was made chairman of its Film Board. In 1948 he resigned that position to become Chief of the Public Information Division of the International Labour Organisation, a United Nations component, first in Montreal and then in Geneva, Switzerland.

During his ILO work he traveled widely in Europe, America and the Far East; learned French, Spanish, German, Russian and a little Italian; and made a documentary film which was shown in Germany, France and England.

But Allen's devotion to the Newspaper Guild was undiminished, and in 1956 he relinquished his well-paying job with a prestigious organization and gave up the glamor of associating with the great and near-great in Geneva. On his return to New England, he took the lowly job of Guild staffer and spent the next seventeen years driving his big car from one town to another, wherever there was a chance that newspaper men and women were being exploited. Known as "the Newspaper Guild's personal memory bank," or the "Old Original," Ed was full of stories about the early days of the Guild, when brilliant reporters often made half as much as printers and were fired twice as fast.

When Allen announced his retirement during the Vancouver Convention of the Guild in 1973, the delegates responded with four rising votes of applause, personal accolades and a resolution. After a tribute from the staff was read, Ed spoke his farewell. His opening comment personifies the man.

"There are really only two words that need to be said," he declared, his voice still a bit weak. "One is 'love,' the other is 'peace.'"

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To honor this remarkable man, Newspaper Guild members have established a fund in his name. Known as the J. Edward Allen Memorial Fund, it will be used to purchase books about journalism for permanent addition to the Nieman Library, with special emphasis on publications about the Guild and its founder, Heywood Broun. Contributions in memory of Allen may be forwarded to the Nieman Foundation, 48 Trowbridge Street, Cambridge, Massachusetts 02138.

*(Editor's Note: The preceding information has been provided by John C. Cort, former executive secretary of the Newspaper Guild of Greater Boston, and a close friend of Ed Allen.)*

of the falseness of this theory. A knack of clever writing, great enterprise in bringing together the kind of information which amuses or interests the public, tact in catching and following the first symptoms of change of opinions, a skillful pandering to popular prejudice; malevolent gossip, sensational falsehood, coarse descriptions, vindictive attacks on individuals, nations, or classes, are the elements of which many great newspaper ascendancies have been

mainly built. Newspaper writing is one of the most open of all professions, but some of the qualities that are most successful in it do not give the smallest presumption either of moral worth or of political competence or integrity."

There is a lengthy following paragraph in which he discusses the relation between the commercial character of a paper, the necessity of which Lecky freely admits, and the moral integrity it ought to have. I think the whole dis-

cussion, though almost a century old and though some elements in it are outmoded by time and invention, is still a profound analysis of journalism today, and may well be worth a serious discussion at one of your Nieman conferences.

Howard Mumford Jones  
Professor of the Humanities,  
Emeritus

Cambridge, Massachusetts

## Walter Lippmann

(continued from page 2)

Street for Steffens' next book. Then he became assistant to the Socialist mayor of Schenectady.

But the grubby reality of city hall, socialist or not, disillusioned him. He quit to write the first of that long shelf of books that have buttressed college courses on government. It was "*Preface to Politics*." In 1916 he joined Herbert Croly in launching the *New Republic*, where his work attracted President Wilson. Lippmann at 28 helped Wilson on the famous Fourteen Points for ending the war. He next collaborated with Col. House in preparing the peace plan.

But the peace, too, was disillusioning. He turned again to writing his books. Pulitzer persuaded him in 1921 to join the *New York World* as editorial writer, under his stalwart editor, Frank Cobb. On Cobb's death two years later, Lippmann became editor. That meant the editorial page. Lippmann introduced the op-ed page with its all-star cast, Heywood Broun, Lawrence Stallings, Harry Hansen, Franklin P. Adams, Allan Nevins and the rest. Those two pages through the 1920's were devoured by admiring young newspapermen.

With our valedictories said for Walter Lippmann, and our obituaries written, a parochial footnote remains of his relation to the Nieman Fellowships. For he was in at the creation.

Lippmann was a member of the Harvard Board of Overseers in 1937 when the Nieman bequest came to Harvard out of the blue of Milwaukee, "to promote and elevate standards of journalism, and educate persons deemed specially qualified. . ."

President James Bryan Conant was later to confide that journalism was close to the bottom of his list of priorities for Harvard. But the University had just completed a year of study for the uses of the Littauer bequest and had set up the Littauer Fellowships for persons in public service, to come on leave for studies in government. That suggested a possible parallel program for journalists. Conant discussed it with such publishers and editors as came within a chemist's purview. Their response, he has said, was generally negative. It was not Conant's nature to be put off a project.

Indeed he had much more experience being the "No" man himself. He gave a special place on his desk to a crystal ball presented by alumni. When faced with some dubious innovative proposal from the Faculty, he would say, "Let's consult my crystal ball," and turn it over. It had "No" lettered on the bottom.

How early he consulted Lippmann on the Nieman idea is not recorded. But Lippmann was the most distinguished journalistic mind available to him, and Conant had such

respect for Lippmann's mind that he tried to persuade him to become the first Littauer professor in government. Lippmann's support would have clinched the vote of the governing boards.

Lippmann joined in so fully with Conant's plan as to accept appointment on the first Nieman selecting committee, along with Ellery Sedgwick, editor of *The Atlantic*, and Conant's friend John Stuart Bryan, who was both publisher of the Richmond newspapers and President of the University of Virginia.

Lippmann was most obviously the one of the three with the broadest background in journalism. Then 48, he was six years into his final career as the leading political columnist in the country.

Word of the Nieman Fellowships spread rapidly. It was an innovation. Academics had chances at fellowships, leaves, sabbaticals, but nothing of the sort had ever been offered newspapermen. Applications poured in—more than 300. Some screening was done for the committee. But Lippmann took an active hand in the judging and retained an interest in the result.

I was a beneficiary of the selection, from *The Boston Globe*, along with Edwin A. Lahey, *Chicago Daily News*; Irving Dilliard, *St. Louis Post-Dispatch*; John McL. Clark, *Washington Post*; Edwin J. Paxton, *Paducah Sun-Democrat*; Frank S. Hopkins, *Baltimore Sun*; Herbert Lyons, *Mobile Press-Register*; Wesley Fuller, *Boston Herald*; and Thomas O. Zuber, *Birmingham News*. Only nine. Not all the Nieman money had cleared. Next year twelve Fellows were appointed, which became par for the annual group.

Lippmann took his responsibility on that first selecting committee seriously enough to follow through on it. One of us, John Clark, spent his year in intensive study of Latin America. He had what he felt was a commitment from Frank Knox, then publisher of the *Chicago Daily News*, to appoint him Latin America correspondent. But Knox's interest in Latin America, like that of other publishers of the time, soon faded.

So at the year's end, Clark had his preparation and no place to use it. But John Winant, then head of the International Labor Organization, was planning a Latin American conference at Havana. Winant knew Clark from their New Hampshire days. He enlisted Clark to help organize the Havana conference.

When Lippmann learned that one of the first group of Nieman Fellows was leaving journalism he was upset. That wasn't the way it was supposed to work. He let Harvard know that. This was in between Archibald MacLeish's tenure as curator and mine. Lippmann's complaint went to Jerome Green, secretary of the Harvard governing boards, who was chairman then of the Nieman Committee. He asked me about Clark and, I presume, explained the circum-

stances to Lippmann. Clark was soon to return to newspapering as our first publisher on acquiring the *Claremont (N.H.) Eagle* where, he used to take pride in saying, Willy Loeb's stooge candidates never carried his circulation area. (This held until Clark's untimely death in a drowning accident in 1950.)

It was a distinct pleasure—and relief—when I was able to report to Lippmann the satisfying sequel to Clark's temporary aberration. I am sure it comforted him.

Lippmann's strong reaction to John Clark's move led us to require of each successful applicant a statement that he considered his leave of absence an obligation to return to his paper. We seldom had any further problem about that, although individual situations were sometimes such as to raise a question as to the wisdom or justice of the rule. Fellows generally were very conscientious about it. Sometimes one would write me after a year or more to ask how long I felt it committed him.

I suspect Lippmann of making the suggestion to Conant of contriving a thread of journalistic discussion to run through the Nieman year of individual studies. This was the origin of the Nieman dinners that became an institution. Lippmann, still an overseer, led one of the dinner discussions the first year and generously continued to come up for a session with the Fellows for years after his overseer term ended, and on occasion as late as 1960.

His discussions were mostly on international issues. His own pattern of thinking dealt largely with the Western community. I remember once, to a question of what U.S. policy should be on some Asian issues, Lippmann said, "I'd ask Nehru."

His example was followed by James Reston, Ralph McGill, John Gunther, Mark Ethridge and the other leading journalists, who also led the newspaper Fellows in discussions of the craft in which all acknowledged that Walter Lippmann's name, like Abou Ben Adhem's, led all the rest.

## Book Reviews

### The Art of Readable Writing

by Rudolph Flesch

(Harper & Row; \$7.95)

Is there a college teacher today who doesn't run into students with serious problems in writing the English language? It has now become routine for college administrators to complain about their newest crop of incoming freshmen. Some journalism professors have been known to spend less time showing students the difference between straight news and interpretive reporting and far more time working at length with them on the fundamentals of grammar, style and clear writing.

There are, of course, many books and teaching aids for the student or for anyone who wants his writing to be structurally sound and easily understood. *"The Elements of Style,"* by Strunk and White is almost indispensable to people who write seriously or casually; so is Theodore Bernstein's *"The Careful Writer."*

For a long time there's been another book around, and we now have the 25th anniversary edition of Rudolf Flesch's *"The Art of Readable Writing."* Flesch has written nine other books on writing, anything from *"Say What You Mean"* to *"Why Johnny Can't Read and What You Can Do About It."* To be honest, I had never before read any of his books but Flesch is known to have had considerable impact a generation or so ago in helping newspapers and wire services shorten their writing styles.

Frankly, I found very little new here that is not included in the AP or UPI or New York Times stylebooks, or in Strunk and White, or even in the Times' periodic and valuable reports, *Winners and Sinners*. However, considering that the bulk of Flesch's manual came out in 1949, one has to admire it—even his Flesch Readability Formula, with its thermometer-like how-to-do-it charts of "personal words," "words per sentence" and "syllables." One finds in his pages a certain quaintness, a sort of mechanical-illustration quality.

Nonetheless, anybody who writes day in and day out has much to gain from

this handy compendium of advice on breaking established rules in the interest of brevity, clarity, readability. In fact, the book seems not at all intended only for journalists or other professional writers. Anyone who does technical writing, or short pieces for company magazines—or simply wants to write better letters—will find some interesting and worthwhile advice here.

Yet, the feeling after completing this 271-page, easy to read book is one of *deja vu*: a fine period piece, even a perceptive one, but a book that had its primary impact a generation ago. Clichés abound. One chapter begins by getting "down to brass tacks." People are "dyed-in-the-wool," or face "bread-and-butter" writing assignments. So many examples of good and bad writing cited by Flesch seem out of date. Younger readers of this 25th anniversary edition might find the frequent references to writing and writers of the Franklin D. Roosevelt era interesting but passé.

Flesch dealt with this problem in his preface, stating that he "could have replaced the illustrations with corresponding ones from the early 70's, but

that would have meant taking the book apart and rebuilding it again from scratch"—not a bad idea.

At any rate, one of the most memorable and lasting chapters is the final one, *It's Your Own Language*. It goes like this, in part: "Language is the most democratic institution in the world. Its basis is majority rule; its final authority is the people. If the people decide they don't want the subjunctive any more, out goes the subjunctive; if the people adopt OK as a word, in comes OK. In the realm of language everybody has the right to vote; and everybody does vote, every day of the year."

Well said, though the purists might flinch. While we all put gas in our cars, Ted Bernstein at *The New York Times* still insists it's "gasoline." That's why his copy editors still put quotation marks around "gas" in *Times* headlines. Rudolf Flesch wouldn't like that.

—Ronald Walker

## Pressures on the Press by Hillier Kreighbaum

(Crowell Company [paperback]; \$3.45)

When will the American press subject itself to the same sharp critical scrutiny it brings to bear on the rest of the nation's institutions?

That is the central question raised by New York University's Hillier Kreighbaum in his latest contribution to an understanding of the press and its problems. His question deserves a fast and affirmative answer.

In 25 years of newspaper work, spanning both my native New Zealand and my adopted America, I have never found hostility towards the press to be as high as it is today. The irony is that never has the press been more conscientious in the discharge of its duties than it is at present.

As many a newspaperman will attest, a person's suspicion of a newspaper is often far worse than the facts of the matter. And yet, as long as the press doesn't charge out into the jousting lanes and clear away that suspicion by going public, we're going to be branded guilty. The basic change that has occurred in press-citizen relationship is that the First Amendment and the simple fact of newspaper ownership are no longer good enough passports and credentials. More than ever before, the newspaper has to prove itself every day, and—more fundamentally—it has to be seen to be proven. If we ourselves do not do some disciplining and reporting back to the public, someone else will do it for us—and that's a shivery prospect.

Kreighbaum's book performs a great service. It lines up all the villains who are waiting in the wings to lasso the press and drag it, penitent, to its knees. If this depiction of the pressures upon the press—especially by the government—doesn't scare the hell out of us newspaper people, then we deserve to be thrown down and trampled.

In chapter after depressing chapter Kreighbaum shows how heavy is the accumulated weight of "attacks on the media as social institutions, needless subpoenas, and court injunction to prevent publication."

He also notes, "While contests . . . between politicians and reporters have occurred since George Washington's day, many observers of the media, and most newsmen, feel that the struggles during the past decade, and especially during the administration of Richard M. Nixon, have been far more sophisticated and, from the press's standpoint, almost Machiavellian and mischievous."—And Kreighbaum wrote that before the disclosures of Watergate!

Vincent S. Jones of Rochester, New York, executive vice president and secretary of the Frank E. Gannett Newspaper Foundation, saw the need for accountability long before many others.

A former president of the American Society of Newspaper Editors, he examined the British Press Council firsthand and found much to praise. As far back as five and six years ago, he stated,

"I, for one, think that the American press would benefit tremendously from regular, responsible, knowledgeable, constructive criticism. . .

"There remains the simple basic issue of fairness and the establishment of credibility. No newspaper of substance has anything to lose in subjecting its operations to a dispassionate review by a competent committee. On the contrary, it has much to gain, for newspapers, while selling everyone else's goals or ideas, have done a lamentably bad job of selling themselves as worthy custodians of the First Amendment."

In his book Kreighbaum proposes a system of media review boards at the local, state and national levels. Since its publication, there have been a number of encouraging developments in the use of newspaper ombudsmen, publishers' and editors' reports to readers, and national and local review mechanisms. Still lacking, however, is a universal conviction among the nation's press that it is wise and necessary—indeed, imperative—to win our spurs all over again, and come out from behind the First Amendment.

Kreighbaum summarizes it well on his concluding page:

"When the media do a good job, let them get full credit where all can see—as they would, with the open and full reporting of media review board findings. And when they do a poor job, under a review system they will merely receive public attention comparable to that (which) editorial writers and other commentators have given politicians, private citizens, corporations and social groups for several centuries."

—Desmond Stone



## Dateline Chicago

by William T. Moore

(Taplinger Publishing Co.; \$7.95)

Every reporter has a bank account of memories that compensate him for his time and trouble when the publisher does not. From my own personal savings, I can withdraw the never published story of how the *Detroit News* once kidnaped three Bangladesh sailors from the *Detroit Free Press* where I was working in 1972 as an assistant city editor. A Free Press reporter, Howard Kohn, had helped the sailors escape from a Pakistani ship where they said they had been held prisoner. The News found where we had lodged the sailors and literally stole them away, refusing to give them back until the first edition deadline had passed. Luckily, there were more sailors from where the three had come, and we simply replenished our supply, thus saving the story and giving us cause to take full credit for the rescue. I can still remember Kohn, however, when he discovered that his first three had been snatched by the competition, pounding the desk and ranting, "They can't do this to us! This is 1972! William Randolph Hearst is dead!"

Well, Hearst is very much alive in William T. Moore's book, "Dateline Chicago," and it is full of the anecdotal treasure Moore collected during the 1920s and 1930s when he was a reporter and rewrite artist for Hearst's *Herald-Examiner* in Chicago. To those who loved her, she was the "Her-Ex," and Moore obviously left his heart in the newsroom there, judging from his book. He later worked for the *Chicago Tribune* and its Washington and Moscow bureaus. He has retired to Florida which must seem terribly dull compared to his fast life at the "Her-Ex."

In breezy Hearst style, he introduces the characters he worked with and the characters they wrote about. Some you should know, such as Harry Romanoff,

the legendary crime reporter for the "Her-Ex" who could scoop stories out of the telephone the way Baskin-Robbins serves ice cream. Another is Bonnie Parker, Clyde Barrow's moll. Moore stumbled onto her at a dance marathon at the old Coliseum and brought her drinks at a speakeasy. This was before she and Clyde had become sufficiently anti-heroic to inspire later-day movie scripts. There was also the gang boss who, when ordering an execution, prepared his alibi by dropping by the "Her-Ex" offices to talk with reporters until after the hit was delivered. Moore remembers them all—Capone, Dillinger, the Humane Hangman, flagpole sitters, trained seals, copyboys, editors—all the strange characters who people a big city newspaper.

Moore's journalism was zany, entertaining and widely read. By today's standards it was also reckless, sloppy, and simpleminded—all habits that Moore, unfortunately, carries over into his reminiscences. He repeats himself, he follows no chronology, jumping from the '30s to the '20s and back to the '30s. The book is a rambling monologue that has the cadence of a tape recorder about it.

Wisely, Moore admits that some of his favorite Her-Ex stories would not make it past the city desk today, though I doubt he would ever forsake them. They were part of a brash, fun journalism that now gives him comfort to recall. Their remembrance, however, is sure to make some of his juniors uncomfortable to learn that this is the way it was, and not so long ago.

—J. Barlow Herget

### Note to Readers

We regret that unforeseen circumstances have delayed the publication of this issue. Nieman Reports for Spring, 1975, is scheduled to be mailed early in June, so you should receive your copy in the near future.

The Editors

## The I. F. Stone's Weekly Reader

Edited by Neil Middleton

(Random House; \$7.95)

The place to begin reading this anthology of nearly two decades of incisive, independent journalism is with the last piece in it, "Notes on Closing, But Not in Farewell." This is I. F. Stone's 1971 swan song as he folded his Weekly—a biweekly in its last three years—and undertook a less exhausting schedule as contributor to the New York Review of Books.

It all began in the New Jersey environs of Philadelphia when Stone, a high-school sophomore of 14, launched a monthly that paid for itself through ads hustled after school. Stone went to work as a professional reporter while still in school, barely squeaked through to graduation, then became a dropout in his junior year at the University of Pennsylvania because he wanted to be a full-time newspaperman. By that time he had learned Latin and Greek, and he continued to read voraciously in a self-education that puts many an Ivy League degree to shame.

The weekly itself came after a maverick career as writer and reporter for various left-leaning publications, notably PM and its later incarnations, the *New York Star*, and *Daily Compass*. Stone started the Weekly because a money-pinched Nation didn't hire him again as its Washington editor. But energy, ability, and factual quality paid off. The Weekly began in 1953 with 5,000 subscribers, and ended in 1973 with 70,000.

"To give a little comfort to the oppressed, to write the truth exactly as I saw it, to make no compromises other than those of quality imposed by my own inadequacies, to be free to follow no master other than my own compulsions, to live up to my idealized image of what a true newspaperman should

be, and still to be able to make a living for my family—what more could a man ask?”

It is not easy to categorize this one-man publication and its writer, editor, and publisher. Stone was and is no radical, of either Old or New Left. He does hanker after doctrinaire solutions, preaching that “the greatest task of our time is to find a synthesis of socialism and freedom”—which, granted the inherent ungovernability of man, sounds like a contradiction in terms.

Stone is more a philosophic anarchist than anything else. But what really makes him tick is his devotion to that Western liberal tradition of free inquiry and free publication to which we all give lip service, however grievously we may betray it when it cuts close to home. Says Neil Middleton, the Englishman who originally put this collection together for British readers:

“All Stone’s attacks on the existing, social-democratic governments of the West follow from his view that in behaving oppressively, what they represent is a deformity of that [Western liberal] tradition,” rather than the tradition itself.

Stone’s search for the truth often forced him leftward. In 1953 he saw Senator Joe McCarthy, the supposed killer of subversives, for what he literally was—“The most subversive force in America today.” In 1955 in Mississippi, when two men obviously guilty of the racist murder of Emmet Till, a 14-year-old black, were acquitted Stone asked, “Where else would newspapers somehow make it appear that those at fault were not the men who killed the boy, but those who tried to bring the killers to justice?”

Politically, Stone was usually found on the side of the Democrats. But he could dismiss Lyndon Johnson as “a man the whole world has begun to distrust,” or flay the Democrats as cheerfully as the dinosaurs of the GOP. After that tragic milestone, the 1968 Democratic Convention in Chicago, he

lamented not only the Daley police state, but also the activist Left:

“To howl down those with whom we differ, to use obscenities instead of arguments, to abandon persuasion for direct action, to dehumanize the other side with cries of ‘pigs’ and worse is to embark on a game the rightists are better equipped to play, and to set examples which American Storm Troopers may someday apply to us.”

Perhaps we should simply call Stone an investigative reporter with a polemical bent—or better, perhaps, a pamphleteer who is listened to because he puts facts behind his arguments. He writes that he sought always “to document what I had to say from governmental and standard sources.” And he reads the fine print, the neglected or hidden records others often miss.

If many of these reprints are echoes from the past, they are still useful. They enable the respectable and the orthodox to see how wrong they often were. Not that these are likely customers for this sharp bite into mid-century history, but it is all there for those willing to look. There is often wit as well. Thus a 1958 piece, “Why the Chinese 7th Fleet Is in Long Island Sound,” lights up the truth about our frenetic fussing over Quemoy and Matsu, simply by turning the tables to imagine what China might say—aping Secretary Dulles’ own words—upon dispatching its Navy to Long Island Sound.

“We have put the regime in Washington on notice that any attack on Long Island would be an attack on China.” The spoof is complete, down to the observation that “the free world may rest assured that all these questions will be answered in good time by our great leader, who is keeping in close touch with the situation from the Peking golf links.”

To try singlehandedly, as Stone did, to get this country to look realistically at what it was doing, instead of merely accepting Establishment Official-speak,

may look like a hopeless task. But it is good that he tried. What he wrote then still makes for understanding of what goes on now.

—Herbert Brucker

## White Goats and Black Bees

by Donald Grant

(Doubleday & Co. Inc.; \$7.95)

After 25 years on the *St. Louis Post-Dispatch*, Donald Grant decided to become a peasant in Ireland, a place as foreign to him as he was to it. Since neither the author—a Nieman Fellow in 1941—nor his wife knew anything of Ireland or the Irish, we are spared another of those syrupy tales of a well-heeled “return” to a land that never was.

Instead, we have a fine account of the lives these two urban Americans are struggling to build on a rocky farm they bought in West Cork for a basic investment of \$3,750. This is a price tag low enough to entice many a window-box farmer to membership in the “look, look, now I’m back to the earth” school for a disastrous but usually brief encounter with barren soil and one bleak winter.

Limited means and even more limited useful knowledge gave the Grants little chance of success. Even by Celtic standards the three acres of Dooneen, or “little fort” in Irish, composed an undersized holding of submarginal quality. The author’s tale, sharpened by his background and by the opportunity to write occasional pieces for the *Post-Dispatch*, is a delicate, sad and yet humorous work that at its best combines bits of O. Henry with the Foxfire book. And somehow it is something much more because against every probability the Grants not only survived but also came to know—to really know—the Irish with whom they share this Atlantic outpost.

There are minor weaknesses in the picture of the Grants as peasants: almost alone among the farmers of Kilcrohane, they possessed two baths, a freezer and an electric blanket; moreover, they raised strange beasts—bees and rabbits and goats—instead of sheep. No matter, for the dog ate the blanket and the costs and vagaries of electricity in the West drove them closer and closer to the simple life they first talked of and finally found.

Grant has a sure feel for Ireland where famine and murder have cut the population in half. He writes not of these things, not even of the ruins of a nearby mill that stand in mute reminder of foreign landlords who exported grain while their tenants starved. He leaves polemics and history to others while he tells of a country that was:

"... constructed on the human dimension. It was a small island. People there lived in small communities. They didn't pass each other by, they stopped and talked . . . you could wander anywhere, day or night, and meet only friends. If you were hungry and thirsty and stopped at a strange cottage you would be given food and drink, a warm fire to sit by and a friendly bit of talk.

"Life in rural Ireland was far more complete than in any city. . . It was different when the family across the way has just moved in from Pittsburgh and when they have lived there for seven hundred years."

Quietly told, too, are the Grants' own moments of despair. An animal is dying, perhaps it is only a goat but it's more than a pet. The goat is milk and cheese and meat; an untimely death, an economic calamity. So we have Grant rushing to the telephone at the pub, consulting with one and all, getting no common diagnosis but gleaning agreement from those at McCarthy's White House that the veterinarian's advice should be followed:

"He suggested that we give Fleur a quantity of Paddy Old Irish Whiskey,

mixed with bread soda and water.

"Back home, Fleur was still huddled in her corner . . . we forced the whiskey-and-bread-soda down her and stood back to watch.

"The change was dramatic. Within minutes Fleur was on her feet and perspiring. Within a few days she was back to normal." (Editors take note!)

Another crisis brings together folklore and reality. Suddenly the stream that comes from beyond Dooneen has been cut off. There is no water. Paddy Hart is called, he of the mighty diesel with its giant drill. But machines must be guided, and guided they are by the diviner's rod:

"There the stick turned again. Unable to restrain myself, I asked if I could try it . . . the stick also moved in my fists. . .

"When the drill had gone down fifty feet without finding water I began to think I had imagined the forked stick moved in my fists. Hauling water from Kilchohane became more arduous than ever . . . at ninety-two feet, the water came."

Untrue? No. Unlikely? Perhaps. Yet a year ago, on another farm I watched dry hole after dry hole being dug. Then the diviner was sent for, the rod moved and pointed down and water was found. You may not believe but I know thousands who would, and it is true.

If neighbors would not or perhaps could not share water with the Grants, there was shared work, loneliness, pain and joy.

"Of the approximately 1,200 people in our parish there are few, if any, to whom we are not in some way indebted," writes Grant who learned that sharing among equals is one thing but sharing with old friends from his earlier culture and—now—another economic class rather different:

"It was not easy to convey to our guests the fact that we were very poor. That we produced much of our own food did not mean that it was free. Our

supply of labor, as well as of money, was limited . . . One spring visitor we all welcomed was the cuckoo."

Dooneen was not fort enough to withstand all unwelcome elements of the world outside. There was Gulf Oil with its little boom town and its oily scum on the waters. There lurked and there lurks the war in the North:

"There are no such troubles here," Grant told a nervous visitor, then added for the reader, "Perhaps I did not really feel as certain as I tried to sound."

But the farm is remote and please God the chances of violence equally so, for among the bright spells and showers of Ireland Donald Grant is a man satisfied.

—Charles U. Daly

*Editor's Note: Mr. Daly, Vice President for Government and Community Affairs at Harvard University, is a Dubliner by birth and has been going to West Cork for 47 years. He has a farm on Bantry Bay five miles over the ridge from Dooneen. They have never met because, as Daly puts it, "That's a long way and we're sure the Grants, like ourselves, don't enjoy thinking of other Americans in that lovely place."*

## The Palace Guard

by Dan Rather and  
Gary Paul Gates

(Harper & Row, Publishers; \$8.95)

Oh, the awful, awful power of television.

Richard Nixon said it was there, and this book proves it.

The Palace Guard is Watergate revisited; or, rather, pre-Watergate visited . . . a chronicle of conniving boorishness featuring Bob Haldeman as an

intent but ultimately bumbling Machiavelli, in white button-down and crew cut.

Had it been written by somebody named Orville or Brakefield or Guillerman or Jones, it would have been just another book—but put Dan Rather's name on it and it becomes a best seller, making the *New York Times*' list only a few weeks after publication.

Quite probably, most people expected it to be a hatchet job on Nixon. After all, Rather became the best known White House reporter in the brief history of television by simply baiting the man, usually at every opportunity. He reached a pinnacle of sorts in Texas, his home turf, when, after receiving applause upon rising to ask a question, he was asked by Nixon, jokingly, "Are you running for something?" To which Rather replied, "No, Mr. President . . . are you?" And the applause turned to jeers. And if ever the national audience needed any proof of the Nixon line that the media was against him and conspiring to make him look bad, Rather at that moment supplied that proof. And we imagine Mr. Nixon must have smiled—or even guffawed—inside his very private world, having once again sucked Dangerous Dan into the trap.

Of course, it was good television, which accounts for many excesses. This brings up still another question for that particular medium: "Is good television always the best television?"

Rather wasn't the only reporter, of course, to become Mr. Nixon's unwitting accomplice. There is always the memory of the ruffled, growly-bear indignation of Clark Mollenhoff complaining because he wasn't called on. But Rather seemed to go out of his way. We remember the time in New Orleans when Mr. Nixon came to deliver a speech. And as he was entering the hall, followed by Press Secretary Ron Ziegler and the usual on-the-road press corps, he turned, said something to Ziegler, spun him around, and

pushed him on his way. Later, it was discovered that Mr. Nixon wanted to enter the hall alone, as was his wont. So when he saw the phalanx of press behind him, he told Ziegler to stop the march and bring the press in through another door. And he grabbed him by the shoulders, turned him around to face the oncoming press, and gave him a shove. It seemed a natural enough act for a man accustomed to getting his way and who, at this particular moment, wasn't.

But Rather saw it in a different light, apparently. After all, Nixon showing his anger in public was news. His CBS camera crew had captured the entire scene—but it only lasted maybe 10-12 seconds. Luckily for him, he was in New Orleans where CBS affiliate WWL-TV has extensive mobile equipment to telecast the Saints' football games and other sports events. So Rather took the footage of the Ziegler shove and transferred it over to the "slo-mo" machine, an ingenious device used in football to record the isolated camera, with the ability to play back in slow motion. And in the Walter Cronkite show that evening, the nation saw not only Mr. Nixon shoving his Press Secretary once, as it happened, but also got the instant replay, in delicious slow motion. And an incident that ran 10-12 seconds in life managed to cover almost a minute of prime time. Once again, chalk one up for Mr. Nixon.

It was almost as if Rather was trying to match Mr. Nixon in vendetta, waging a personal war of retribution. At least it seemed that way to me and many in the business. And we got assurance of sorts the night Mr. Nixon resigned. Rather, asked for comment after the President's speech, took the pose of the indulgent victor, being gracious. He said it would go down as one of Richard Nixon's finest hours. And in a supreme moment of condescension, imbued it with "a touch of majesty."

Thank goodness for Roger Mudd, who brought us all down to earth by labeling the speech merely "unsatisfactory."

But if readers of Mr. Rather's book (and Mr. Gary Paul Gates' book, too) expected a hatchet job on Richard Nixon, they will be disappointed. The hatchet has been put away. And although a job is done, it is done to Bob Haldeman—and nicely.

The premise of the book is intriguing. It claims that Ted Kennedy was responsible for most, if not all, of the excesses that led to Watergate and beyond. That's right—Ted Kennedy. It goes like this: Nixon squeaked into office in 1968, looking already to 1972 and fearing the oncoming popularity of and demand for Kennedy. So he played it cool, kept a coterie of closet and otherwise liberals on his cabinet and in his councils, names like Romney, Volpe, Finch, Burns and Moynihan. He would pre-empt the left, so the scenario goes, or at least enough of it to offset and perhaps partially negate the Kennedy charisma. So what happens: Kennedy drives into the creek at Chapquaquiddick in July of 1969. The threat was ended. The liberals were fired. And the Nixon platoon turned right-face with a vengeance. And the drill sergeant, crew-cut Bob Haldeman, marched them right into the morass that made Watergate possible and the coverup imperative.

Haldeman and Nixon were not a recent marriage. The book traces them back to 1956 when Haldeman, then a hot-shot advertising man with J. Walter Thompson on the West Coast, would leave his job to work for various Nixon campaigns. There were three other Nixon men who went back even farther—Herb Klein, his first press secretary; Murray Chotiner, who is given credit for the "Checkers" speech; and Robert Finch, then an early campaign manager. They were with Nixon since the late 1940's. And it was they who were responsible for bringing

Haldeman into the Nixon camp. Haldeman later repaid them by methodically edging each one away from and then out of the Nixon inner circle. Of course, in retrospect, he may have done them all a favor because their replacements turned out to be John Erlichman and Chuck Colson. And, of course, Ron Ziegler.

What was Haldeman's secret? How could he so capture Nixon's confidence that colleagues and acquaintances of a working lifetime were so easily shunted aside? Apparently, it was his unabashed, absolute belief that Richard Nixon was the greatest man in the world. That, and the fact that he stayed with Nixon after the embarrassing 1960 campaign, helped research "Six Crises," and, for the most part, listened for months on end. It was therapy for Nixon; and for Haldeman, a job as sounding board and cheerleader. But whatever it was, it cemented the two for all time to come, for better or for worse.

Three things stand out vividly in the book, giving classic examples of Haldeman as PR man and as classic bungler:

Haldeman, it turns out, was the man responsible for installing the White House tape machines. The book calls it an effort to sell the President before the bar of history, the ultimate PR job, a sort of electronic Mount Rushmore.

Haldeman was also the man who nagged Mr. Nixon into that dreadful press confrontation following the California gubernatorial campaign, when he delivered the famous line: "You won't have Nixon to kick around anymore. . ." The game plan had called for Herb Klein to talk to the press, which he did, masterfully. But Haldeman, watching on TV, exploded into a rage at the attitude of the reporters. He worked Nixon up to such a state that Nixon threw the game plan out the window and went down himself to tell the reporters a thing or two. Later, he admitted it was a terrible mistake.

And, finally, it was Haldeman who

set up the "Sea Shot," a marvelous story that displays, to us, anyway, the ultimate Richard Nixon.

We are told that Haldeman was always envious of those photographs of Jack Kennedy at play around Hyannisport, sailing his ketch in the ocean or just walking barefoot along the beach, with the water lapping at his feet.

He made up his mind that he would get the same kind of action for Mr. Nixon. So one day, at San Clemente, the photographers were alerted to a "photo opportunity," which was later immortalized as the "Sea Shot."

The cameramen and reporters were herded up a high cliff near the Nixon compound that offered a spectacular view of the ocean and the stretch of beach below. And sure enough, there on the beach was the solitary figure of President Nixon, walking along the sand, the waves lapping at his feet—a splendid picture. Cameras were aimed and for a moment a respectful quiet fell upon the group. Until one photographer, focusing in tight, ruined the mood. "Good Christ," he shouted, "he's wearing shoes."

And he was.

—Phil Johnson

## Fear in the Air: Broadcasting and the First Amendment, the Anatomy of a Constitutional Crisis

by Harry S. Ashmore

(W. W. Norton & Co. Inc.; \$6.95)

In January 1973, the Center for the Study of Democratic Institutions invited a number of people to its Santa Barbara headquarters to talk about broadcasting and the First Amendment. The idea for such a conference originated with Richard Salant, President of CBS News. Mr. Salant was

concerned about the continuing attacks being carried out by the Nixon administration on the mass media in general, and the commercial broadcasting networks in particular. He wrote to the Center: "The problem becomes increasingly urgent and increasingly difficult. The proper accommodation between the imperatives of a licensing system for broadcasting on the one hand, and the First Amendment on the other hand, is a subject which deserves and has not yet had the application and attention of the nation's best and most innovative minds. All it has received so far, in general, is reflexive, automatic sloganeering by liberals and by conservatives alike."

For two days, former Nixon administration officials, former members of the Federal Communications Commission, constitutional theorists, network and local broadcasters, and Fellows and Associates of the Center wrestled with the problem. One tangible result of their discussions is this book by Mr. Ashmore, the Center's President, and a Nieman Fellow (1942).

The lengthy title, *"Fear in the Air; Broadcasting and the First Amendment, the Anatomy of a Constitutional Crisis,"* promises more than the book delivers. Almost fifty percent of the text consists of transcripts of the conference discussions. While there is much of interest in these exchanges, the reader and the issue would have been better served had the transcripts been included as an appendix and the bulk of the work given over to Mr. Ashmore's own analysis. What he has given us is not so much a book about broadcasting and the First Amendment as a book about a discussion of that topic.

Nonetheless, the work does establish the dimensions of the controversy. It does reveal the widely separated points of view about the question held by representatives of the government, the legal profession, and the broadcasters themselves. It does contribute additional thought and literature to a vital

subject which has been largely neglected.

As Professor Harry Kalven, Jr. of the University of Chicago Law School points out in chapter two, broadcasting has really been slighted in the development of First Amendment Case Law for fifty years. "A conventional case-book," he says, "will not have anything in it about the broadcasting problem." According to Kalven the 1968 Red Lion case, in which the Supreme Court upheld the FCC's Fairness Doctrine, may rate a footnote, but until that decision there was simply nothing to turn to. "There was no case that actually represented any considered judgment by the courts about the application of the First Amendment to broadcasting."

Given that situation it is not surprising that the conference was unable to reach any definitive position in response to Salant's basic question: "All I want to know is does the First Amendment apply to me, and if not, why not?"

The answers he gets are yes, no, sometimes, and maybe. Professor Kalven, for example, thinks the First Amendment undoubtedly does apply in some sense, but admits his answer is unhelpful because the degree to which it applies is entirely an open question at this point.

When he planned the conference, Mr. Ashmore was no doubt aware that there are simply no answers to many of the questions. He certainly understood that the questions themselves must be considered in a broader context. The agenda was therefore enlarged to include such things as the adversary relationship between government and the press, the right of access to the media by private groups and individuals, the public network, and alternatives to regulation.

The chapter on the adversary relationship contains a noteworthy dialogue between Professor Kalven and Antonin Scalia, former general counsel for the White House Office of Telecommunications Policy. During the conference

Kalven advanced the novel suggestion that the proper adversary relationship between press and government is an asymmetric one. In a follow-up essay he wrote: "... Free, robust criticism of government, its officers, and its policies is the essence of the democratic dialectic. . . . The government cannot reciprocally criticize the performance of the press, its officers, and its policies without its criticisms carrying the implications of power and coercion. The government simply cannot be another discussant of the press's performance. Whether it will or not, it is a critic who carries the threat of the censor—and more often than not it wills it. . . . The balance struck then is avowedly, and even enthusiastically, one-sided. The citizen may criticize the performance and motives of his government. The government may defend its performance and its policies, but it may not criticize the performance and motives of its critics."

Kalven entitled his essay "If This Be Asymmetry, Make the Most of It." Mr. Scalia responded: "The Most of It; Asymmetry Is An Unbalanced View." He argues against a one-sided adversary relationship on the grounds that the press itself is an exceedingly powerful institution in the society—more powerful perhaps than any other except the government itself. "Quite properly," he says, "the only check we are willing to place upon this powerful institution is criticism. But to be effective that criticism must be heard; to be heard it must appear in the press itself; and to be sure of appearing in the press itself it must, in some cases at least, be made by an 'automatic newsmaker,' that is, a high government official." Scalia further contends that a one-sided adversary relationship would muzzle government officials and thereby curtail public debate; that coercion can be privately threatened with equal if not greater effect than in public; and that it is too much to expect "flesh and blood" government officials to make no reference

to what they may regard as bias and incompetence on the part of those who publicly denounce their life's work.

Mr. Ashmore awards debaters points to both sides, but as he says, the elegant exchange does not resolve the basic issue.

In mid-1973 Dean Albert Sacks of the Harvard Law School suggested to a Nieman Convocation that there are two processes, the political and the judicial, by which the vigor and power of the First Amendment are felt at any given time in our society. In the judicial process, he said, "... we deal with very sophisticated and technical interpretations. We get ourselves involved in complexities. Lawyers and newsmen read both and come out in different ways; and since they put in different things, they put out different things."

That principle is well-illustrated in the Center's conference and in Mr. Ashmore's book about the conference. The broadcasters, lawyers, former government officials, and academics all put in different things. That's also what they put out.

—Gene Pell

## In Search of Light: The Broadcasts of Edward R. Murrow, 1938-1961

Edited by Edward Bliss, Jr.

(Avon Books [paperback]; \$1.95)

Today's newspapers are tomorrow's fish wrappers, but what about today's broadcasts? A newspaper story can be clipped, filed, become part of the morgue or the micro fiche or just be thrown away. But broadcast journalism is written on the wind; it is disposable the moment of delivery, relatively expensive to preserve on tape. And why should anyone *want* to keep a record of

broadcast journalism, that branch of show business, that product of Golden Throats and Tailor's Dummies?

This collection of the broadcasts of Edward R. Murrow shows why. CBS newsman Ed Murrow, as his old colleague Edward Bliss tells us, made more than 5,000 broadcasts during his radio-television career, starting with an eyewitness report of Hitler's seizure of Austria and ending, 23 years later, with a commentary on the Inaugural Address of John F. Kennedy. Bliss has collected more than 100 of the radio scripts as well as excerpts from three television broadcasts in the 1950's, including the classic Murrow-Fred Friendly "See It Now" program of March 9, 1954, on the resistible rise of Senator Joe McCarthy (CBS has thoughtfully saved the kinescopes of the Murrow-Friendly series). To read Murrow's words is a high pleasure for anyone in the news business—as well as a sad reminder of what broadcast journalism can be, and usually is not.

The Murrow broadcasts are well reported, well written, and—as anyone over 40 can recall—well spoken. Murrow was no Golden Throat, but strangely enough, unlike other members of his broadcast generation, he had no print nor news background that might have prepared him for his later success—nor was his formal schooling anything special. I used to think that perhaps his success was a case of the man rising to the task: World War Two, after all, was a pretty good story. But, as these broadcasts testify, it was not just that Murrow was reporting the grand sweep of global events. He was as good describing a channel fisherman as a bombing raid. His explanation of British mine sweepers in action is a model of narrative description.

The reason the Murrow broadcasts played so well then, and read so well now, I think, lies in certain habits of mind. Murrow was a widely read, widely traveled man. He was a good listener; he cared, and he had a deep

belief in freedom. In his McCarthy broadcast he said:

"We will not walk in fear, one of another. We will not be driven by fear into an age of unreason if we dig deep in our history and our doctrine and remember that we are not descended from fearful men, not from men who feared to write, to speak, to associate and to defend causes which were for the moment unpopular."

Murrow not only believed in freedom, he was free to practice it. He had a unique relationship with CBS and its proprietor, William S. Paley. Murrow was CBS News. Perhaps no journalist ever again will have the freedom that Murrow exercised. The Murrow broadcasts had two other qualities in addition to their excellence as writing and reporting. When the occasion warranted, they were long and thorough, and they were highly personal; when Murrow finished, the listener knew how Murrow felt, what he thought, and where he stood. Listeners today just can't get that in 120 seconds of a Severeid or a Smith anchored in a studio, or in the formula news that locks a Cronkite into reading other people's writing. Yet Severeid and Smith and Cronkite were all first-class reporters before they became part of the star system of today's over-produced television news.

Broadcasting from London in the Spring of 1941, Murrow described the courage of the ordinary men and women of Britain. These people, he concluded, can say, "We've lived a life, not an apology. . ."

Edward R. Murrow lived a life. How many journalists today—broadcast and print—are living an apology?

—Edwin Diamond

Coming

A Radical Journalist in the 1950s

James Aronson

## Strictly Speaking

by Edwin Newman

(The Bobbs-Merrill Co. Inc.; \$7.95)

"*Strictly Speaking*" is a scrapbook of the linguistic misdemeanors and felonies Edwin Newman has witnessed in his career as a newspaperman, TV anchorman, author, and "house grammarian" to NBC. They're all there—the spelling on American restaurant menus, British hyphenated surnames, Ron Ziegler, political bathos, the faulty idiom of The New York Times—all the odds and ends of language use and misuse collected in his career as a wordsmith.

Newman is at his best in letting the air out of officialese, in revenging us all on Ziegler and the rest of the flim-flam boys who wove the verbal scrim behind which Richard Nixon was able to do his thing. That, of course, was hard-core fraud.

Newman is also concerned with the softer variety which is committed by anonymous educators, advertisers, and undersecretaries who provide the public with multisyllabic imprecisions in the apparent belief that it is uncouth to be lucid.

George Orwell covered some of the same ground in his essay "Politics and the English Language," published in 1946, a year before Nixon went to Congress or the War Department had been transmogrified into "The Department of Defense," that first in a series of verbal legerdemains which were to culminate in "limited-duration-protective-reaction."

Describing the effects of imprecise language, Orwell observed, "It becomes ugly and inaccurate because our thoughts are foolish, but the slovenliness of our language makes it easier for us to have foolish thoughts." Orwell, however, was serious and his purpose was ultimately moral: "In our time, political speech and writing are largely the de-

fense of the indefensible . . . thus political language has to consist largely of euphemism, question-begging and sheer cloudy vagueness."

Newman, on the other hand, is self-indulgent and crotchety. To be sure, he is irritated by faulty language, but he prefers to kid around about it. Many of his points are made in a series of one-liners which seem designed to amuse as much as to inform.

The reader is instructed both in the text and on the book jacket that Ed Newman is witty, wry and something of "a press room wag" (to which the author responds that "a good wag is hard to find"). This prankishness takes over completely in the last chapter, in which Newman turns punster and spins out a six-page dialog which is unrelated to the rest of the text and includes such zircons as "Dogma eat dogma"—"You said a Maothful."

A taste for puns is personal and has little to do with matters of fact. Opinion, after all, is democratic. But Mr. Newman occasionally strays into areas where expertise has some claim. Like other amateur linguists who have gone a-jousting against Webster's "Third International" and the realities it records, Mr. Newman comes off a poor second.

He arches his eyebrows over The New York Times' use of "treaded" and sticks it to William Simon for saying, "We cannot ad hoc tax reform." Such jealousy over verb forms is the avatar of amateur linguists of his stripe, who unaccountably never go on to urge the restoration of "durst" or "holpen." Nor does Mr. Newman suggest dropping "ad lib," a useful verb with antecedents similar to "ad hoc."

That the language has been wisely, inevitably reducing its stock of irregular verbs over the past six centuries is beside the point to conservatives, who mistakenly attack what is unfamiliar without regard to what is useful. The proper enemy, I think, is fraud and imprecision, not change.

"*Strictly Speaking*" is a misnomer. The speaking is more random than strict, and the subtitle is misleading, as a fair portion of Newman's for-instances come from his observation of foreigners. A more accurate title would be "Verbal Flourishes that Ruffled Edwin Newman."

No doubt his admirers will find the book endearing, whatever its faults, though it's difficult to determine Kingman Brewster's intent in declaring that "Thanks to Mr. Newman, English will die laughing." Prorate the participle to "chuckling" and the sentence still fails to make much sense.

—Bruce MacDonald

## Shoeleather and Printers' Ink

Edited by George Britt

(Quadrangle/The New York Times Book Co.; \$9.95)

## Assignment America

Edited by Gene Roberts and

David R. Jones

(Quadrangle/The New York Times Book Co.; \$8.95)

In these two anthologies the reader finds more than 150 articles about 150 diverse subjects by nearly that number of writers.

"*Shoeleather*" brings together the writings from the semi-annual *Silurian News*, publication of the *Silurian Society*, an organization of veteran New York City newspapermen (and women, since 1971).

The book jacket acknowledges an "antique flavor" to this collection of "memories" and a belief they will warrant special attention from historians. Indeed, as one gets engrossed in his reading, it is easy to imagine a flick of the finger will bring not only another page, but also another nickel beer.

A little nostalgia is a good thing and it is easy to yearn for the days when the

driver lashed a horse to speed the hack (the carriage, not the reporter inside) that took Henry Curran to cover the return of Admiral Dewey from Manila Bay in 1899.

It is even possible to envy the good old days when fired reporters were rehired the next day because their abilities were perceived below the layer of their most recent failure or the fumes of alcohol.

But not even the coziness of nostalgia can cause one to cuddle up to the days when reporters were hired for \$20 a week and got one dollar for dinner money, but no extra pay, when they worked a double-trick weekend. I'll concede many of those underpaid journalists wore out the soles of their shoes while many of today's \$300-a-week reporters wear out the seats of their pants. But the fault for that today is, too often, the lack of opposing media to fuel the competitive drive. So many of us labor in one-newspaper communities with little pressure. Our zeal and work suffer, even if we don't realize it. How invigorating it would be to have a Henry Noble Hall compare this reviewer's editorials for "topical interest, punch and style of writing" (as he did with London's *Evening News* and *Evening Standard*) and report back on who "won!"

George Britt, eight years editor of the *Silurian News*, assembled these dozens of reminiscences in the way one would expect from an organization whose members can't agree on "why the name *Silurian*?" As acknowledged in an introduction, the book does "forever change the subject," but, like a newspaper, "if one story doesn't catch you, turn to another."

There will be plenty that will "catch" the reader, whether they be the story behind interviews with Gandhi, Hitler or Nixon, or frequent facedowns with publishers and editors.

One is struck by differing attitudes on morals and changing attitudes on morale.

There was George Sandison's ethical code at the Star, for example, which permitted "only news honorably obtained." Thus Billy Cowan's snitching of some love letters at the police station, or Ralph King's infiltration of the Astor family's house staff were shoeleather efforts that never saw printer's ink. (Significantly, Sandison went on [up?] to be managing editor of a Christian weekly.)

On the other hand, there was no apology in Wendell Phillips Dodge's account of how he scooped everybody on some intimate details about "Little Egypt." He used his own "coroner's credentials" to get into the apartment where her body was found, pocketed torn-up letters on her desk, and used a dollar bill to gain entry to a closed office building where he found a needed home address.

With the Pentagon Papers still fresh in our minds, which attitude is in fashion today—the straight leg(man) or the flare?

As for morale, how many today would write as did Frank Sullivan upon the death of *The World*, "When I die I want to go wherever *The World* has gone, and work on it again." To many today, that would be a certain request to go to hell.

It was Malcolm Johnson's task to write the *Sun's* obituary and he commented that "... a good newspaper has a heart and a soul and ... the death of a newspaper is as grievous and personal as a death in the family."

How often would we find such expressions of love today? As newspapers' founders died and their heirs sold out, the professional publisher has taken the reins. Too often, his first love is advertising and his key interest is the profit picture, not the product. With his pay, bonuses and stock options based on current profits rather than quality and its long-range effects, he doesn't worry about 20 years from now.

In cases where publishers are concerned with the principal, not principle;

who mouth the businessman's credo that "the customer is always right"—as though a disquieting story were an undercooked steak to be returned to an erring chef for another try—is it any wonder that loyalty lags?

If "*Shoeleather*" is a well-done stew made from every leftover in the Silurian refrigerator, "*Assignment America*" is strictly prime rib. Its pieces from the last five years of *The New York Times* are never medium, always rare, a tribute to the book's editors as well as its writers. Gene Roberts (Nieman Fellow 1961-62) was made national editor of *The New York Times* in 1968 and became executive editor of the *Philadelphia Inquirer* in 1973. David R. Jones has been *The Times* assistant national editor since 1969 and succeeded Roberts as national editor. Presumably they selected these 50 stories from among those they assigned and edited.

Here is a book for everyone interested in America, but with special significance for those who appreciate the writer's craft. Here is unexcelled writing and even those who make the *Times* part of their daily diet will be struck anew by the quality.

Roberts and Jones deliberately excluded coverage of principal news events and major political figures to show "workaday people." As they point out in their preface, the *Times* has learned that many major stories do not break; they "trickle, seep and ooze." And the *Times* is covering the ooze.

"*Assignment*" is divided into "Constant America," "Fading America," "Evolving America," "Troubled America" and "Engineering America." The last section is its weakest, perhaps an indication that press critics are right when they say we focus too much on what's wrong and not enough on what's right. But a section that may be weak in terms of subject is as strong as espresso coffee in terms of writing.

Consider B. Drummond Ayres Jr. from Kansas:

"But here in the country's unbuffered

middle ground, where the flag still flies from screened front porches, where lonely coyotes and lonely freights still wail at each other in the night, where a Sunday drive in Dad's pickup can still be a lot of fun, here in the heart of the Kansas wheat country, where William Holden and Kim Novak had their picnic, where a stranger is still innocent until proven guilty, where everybody still works half a day on Saturday, here, right here in Lyons, the Federal Government is still trusted and here, right here, is what 'Auld Lang Syne' is all about."

The datelines vary—from Ava, Mo., to Hot Coffee, Miss., to Ward, Colo. The topics vary—from crawfish racing in Breaux Bridge, La., to an elderly couple living (dying?) in a car in the Bronx. And the writers are the best in the business—Niemans John Corry, John Kifner, J. Anthony Lukas and Roy Reed among them.

Many of the leads are so good, we can only marvel:

James T. Wooten: "Each morning at nine, the old men come to the weather-scarred courthouse as though answering a Pavlovian summons from the clanging clock in the dome."

George Vecsey: "The noisiest thing in Big Springs is usually the recess hour at the one-room schoolhouse. The second noisiest thing is the chickens picking in Parralee Hurd's front yard. And when it gets real quiet, you can hear the Clinch River flowing by."

McCandlish Phillips: "Two kinds of people wait in the Port Authority bus terminal near Times Square. Some are waiting for buses. Others are waiting for death."

If many of the leads are prize-winning prose, some of the endings are close to poetry.

Andrew H. Malcolm's look at Sacred Heart, Minn. (population 696) concludes as Police Chief Rustad "... walks to the southwest corner of Main and another street nobody has bothered to name. He opens a metal box. He flicks a switch. The town's sole stoplight be-

comes a yellow blinker. And one more night has officially come to Sacred Heart."

And Jon Nordheimer leaves the St. Joseph, Mo., grave of Charles Stockbauer, Catholic seminarian and reluctant Vietnam G.I., where "The single word PEACE is inscribed in its cold granite face and below that is the peace symbol, the only tribute to the patriot lying in the ground above the bluffs where a young America once massed in excitement and hope."

Getting these stories was not easy. It required more than perceptive eyes, empathy, writing skill. Roy Reed, for example, writes of people, mostly Southerners, "not much inclined to reveal themselves to strangers."

Michael T. Kaufman could chronicle the typical boyhood day of 11-year-old Michael Edmonds in New York City only by being able to climb alongside him the tenement buildings that served

as his playground. The reader almost grows winded trying to keep pace with the two.

When Joseph Lelyveld tried to learn the history of a Harlem heroin user dead at the age of 12, he found most agencies clammed up. Everything was confidential. After telling us that, Lelyveld proceeds to give us a 4,000-word biography that excludes almost nothing in Walter Vandemeer's short life.

"The story . . . is a difficult one to trace," writes Jon Nordheimer and thereupon he follows with skill and compassion an account of key details in the three-year period between the 30 minutes at Dakto that made Dwight Johnson a hero and the 30 seconds in Detroit that made him a dead villain.

Historians and sociologists can save a lot of effort trying to explain what the generation gap is—and isn't—if they will simply reprint James T. Wooten's look at the "generation in collision" at

Fort Lauderdale in the spring of 1969.

Here, then, is a book of unexcelled writing to turn most editors blue because they didn't make such assignments, most reporters green with envy, and every reader pink with the happy flush of discovery.

A word must be said about these books' contribution to one's appreciation of the value of the photojournalist. Except for an old, unidentified newsroom shot on its jacket, "*Shoeleather*" is pictureless and suffers for it. One longs for photos to complement the text, even if only mugs of the principals. But "*Assignment*" has 51 pictures (almost a quarter of them by the outstanding photographer Gary Settle), each heightening the impact of the adjacent words and reminding us that the *Times* is ever good, and not so gray anymore.

—Joseph R. Zelnik

## Notes on Book Reviewers

**Herbert Brucker**, the former editor of the *Hartford Courant*, writes a syndicated column. **Charles U. Daly** is Vice-President for Government and Community Affairs, Harvard University. **Edwin Diamond** is Visiting Lecturer in the Department of Political Science, MIT, a commentator for the Post-Newsweek stations in Washington, D.C., and a contributing editor at New York Magazine.

**Bruce MacDonald** is a former member of the College Board Committee on

English Examinations and author of the Atlantic Monthly Study Guide. He is a Curriculum Director in the public schools of Weston, Massachusetts. **Ronald Walker**, Nieman Fellow '71, is Assistant Professor at the Graduate School of Journalism, Columbia University. **Phil Johnson**, Nieman Fellow '59, is News Director of WWL-TV in New Orleans.

**Desmond Stone**, Nieman Fellow '56, is Editor of the Editorial Page, the *Democrat and Chronicle*, Rochester,

New York. **Joseph Zelnik**, Nieman Fellow '70, is Editorial Page Editor, *Delaware County Daily Times* in Chester, Pennsylvania. **Gene Pell**, Nieman Fellow '75, was chief of Foreign News Service for Westinghouse Broadcasting Company in London, England.

**J. Barlow Herget**, Nieman Fellow '70, is an editorial writer with *The News and Observer* in Raleigh, North Carolina.