

NIEMAN REPORTS

PUBLISHED QUARTERLY BY THE NIEMAN FOUNDATION FOR JOURNALISM AT HARVARD UNIVERSITY

Vol. XXXVI, No. 4

Winter 1982

America In 1982: How Does It Look From Europe?

Flora Lewis

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Ram Loevy

Ralph McGill's America And Mine

Robert C. Maynard



With Photographs by Eli Reed

The Nieman Who Came In From The Cold

Nigel Wade

Between the Lines: The Politics of Type Size

An advertisement for the Republic of South Africa that appeared in *The Wall Street Journal* should raise questions in the minds of thoughtful readers.

Page 31 of the October 25 issue carries two two-column photographs, side by side, above three inches of text that begins "South Africa is changing. Creating opportunities for all her peoples. In her social, political and economic life, reform is a reality." The picture on the left shows opposing teams of black and white soccer players as they jostle to kick the ball; the other photo catches the moment when three runners strain to break the tape. The two athletes in the background are white; the third, in the foreground, is black. Under both pictures the head, in 72-point type, says "The Changing Face of South Africa." Those with keen eyesight will find a wee sentence above the photographs announcing, in 6-point type, "These photographs portray the reality of equal opportunity in South Africa."

Readers who had previously seen two items in *The New York Times*, datelined Johannesburg, might recollect the heads: "White Woman Guilty of Treason for Union Work in South Africa" (October 21), and "South African Jailed for Treason" (October 22).

Barbara Ann Hogan, a 35-year-old member of the banned African National Congress and a former researcher at the South African Institute of Race Relations, is said to be the first white woman convicted of that crime in South Africa. She was found guilty of obeying directives from the Con-

gress to work with labor groups and organize a union of unemployed people to struggle against the government's system of apartheid — offenses amounting to high treason under South African law.

The day after her conviction, the defendant received a 10-year sentence on the ground that her membership in the African National Congress amounted to participation in a conspiracy to overthrow South Africa by violent means. She is the first person to be so convicted without having been implicated in any specific act of violence.

The 24-point heads in *The New York Times* pieces concerning treason seem to be at odds with the 6-point message in *The Wall Street Journal* advertisement citing the "reality of equal opportunity in South Africa."

True, equality does exist to a degree: anyone, regardless of racial classification (white, coloured, Indian, black) may be detained for offenses such as membership in a banned organization. Also, in the field of sports, athletes now compete more solely on the basis of skill, without regard to racial classification, as the photographs in the advertisement demonstrate.

Nonetheless, examples of the white and non-white dichotomy continue to appear in the press. For instance, the South African government has decided to spend nearly half a million dollars to build an extra primary school for Indians, for a town in northern Cape Province, thus ending a 50-year tradition of allowing Indian and mixed-race children to be educated together. And a dissident Afri-

kaner churchman, the Rev. Beyers Naudé, was notified in October that the government was placing him under a new 3-year ban that makes it a crime for him to attend meetings, write for publication, or be quoted anywhere in South Africa. Notice of the ban was delivered to him at his home in Johannesburg just three days before the expiration of a 5-year ban that he received in 1977, when the government clamped down on white as well as black opposition after the death in detention of black nationalist Steve Biko.

A government that legally enforces racial separation of its inhabitants — 83 percent of whom either have no citizenship or simply limited privileges, and therefore no vote — is functioning from an incomplete base.

Can this explain why some South Africans charge Western journalists with giving their country a poor press? If a banning order is reported by the West and elicits negative criticism from outside South Africa, does that constitute bad press? Is the talk of licenses for South African journalists a euphemism for control?

In reaction to the lively pictures in the ad carried by *The Wall Street Journal* and recent news items elsewhere in the press, we are left with the conclusion that it is not the "changing face of South Africa" that will bring about "the reality of equal opportunity," but rather, it must be an ear willing to hear the clamor of its people, and finally, it must be a changing of the heart.

—T.B.K.L.

NIEMAN REPORTS

Vol. XXXVI, No. 4
Winter 1982

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Nieman Reports (USPS #430-650) is published quarterly by the Nieman Foundation for Journalism at Harvard University, One Francis Avenue, Cambridge, MA 02138. Copyright ©1982 by the President and Fellows of Harvard College.

Subscription \$15.00 a year; add \$10.00 for foreign mailing. Single copies \$4.00. Back copies are available from the Nieman Office.

Please address all subscription correspondence and change of address information to P. O. Box 4951, Manchester, NH 03108.

Second-class postage paid at Boston, Massachusetts, and additional entries. POSTMASTER: Send form 3579 to P. O. Box 4951, Manchester, NH 03108.

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America in 1982: How Does It Look From Europe?

FLORA LEWIS

I've been asked to talk to you about how the United States looks to Europe in 1982. I will start by saying that perhaps the most important thing is that to a clear majority of voting Americans at the end of 1980, the United States looked pretty bad. The Europeans noticed that. They are beginning to ask questions, such as, why the decline of liberalism in the United States?

The change has brought some comfort to the right in Europe, some concern and worry to the left, both of which are to the right and the left of their counterparts in the United States. Regardless of political position, they're all concerned about the American economy, because it does directly affect everybody else in the world. We have reached a point, willy-nilly, where international trade has deprived virtually every individual government of real control of its economy. Some people would say the United States still has it; even that, I think, is an illusion, but other countries don't have the illusion anymore. They are aware that what they can expect to do depends on what goes on elsewhere — most particularly in the United States.

I was very struck by an article in *The New York Times Magazine* by Norman Podhoretz, the neo-conservative. He was disappointed with the Reagan administration. He had very high hopes for Mr. Reagan before the election, because, he said, "We had, Reagan suggested, lost or forgotten the principles through which we had become the most productive, the most prosperous, the strongest, and the most respected nation on earth. It was up to us to rediscover them, and he — Reagan — proposed to lead us in this adventurous undertaking." Mr. Podhoretz said President Carter's message had been just the opposite. He told us that American decline was the result of inexorable historical forces and that we must adjust like a mature people to our diminished condition.

It's very difficult for Europeans to understand these arguments, these drastic swings in the self-perception of the United States. Productive, prosperous, strong, still seem to exist; they existed last year, and the years before. Respected is a little something else. There has always been some disdain, some intellectual patronizing. I take you back to Harold Macmillan in World War II who said we — Great Britain — will be Athens to their Rome. On the other hand, there has always been, and still is, an

admiration for what is seen as a vigor and enthusiasm and absence of dogma in the United States, an approach that seeks to solve problems rather than to bemoan them.

However, during the period of post-war expansion — what Henry Luce called "The American Century" — which lasted not quite twenty years, symbolized by, but in no way limited to, Vietnam — there was a sense of lost innocence. This produced a certain cynicism. A French sociologist who has spent quite a bit of time in the United States, Michel Crozier, wrote a book about it. His analysis — to which I don't subscribe — is that what's wrong with the United States now is that it is unable to acknowledge the reality of evil, that it hasn't developed a tolerance of the inevitable faults and defects of human nature; that it remains Manichaeistic, believes everything must be good or bad. That's particularly French, I might say.

But there is, I think, looking from outside, both too much and too little awareness in this country of what it means to be a super-power. We still hear talk about George Washington warning against entangling alliances, as though we still lived in thirteen colonies, newly declared independent, without even having moved to the Mississippi. The United States was not a continental power in those days and all the powers in the world were European. American power developed without the United States really seeking it, and, most important, without the United States quite knowing what role it wanted to play, what it wanted the power for. So I suggest that it's not at all, as Mr. Podhoretz says, a kind of crowning reward for unique American virtues.



Flora Lewis is Foreign Affairs columnist for The New York Times. In April 1982, she was awarded the first annual Joe Alex Morris Jr. Lectureship at Harvard University by the Nieman Class of 1982. The text of her talk given at the John F. Kennedy School of Government appears above in lightly edited form.

The role of the United States during this period of special dominance was due primarily to the failings of other powers; to two world wars; to decolonization having changed the relationship among very large parts of the world; to the second industrial revolution and the development of technology. The United States was early in the second industrial revolution, not the first, and it is only now learning that being early can be a disadvantage. We have seen in Germany and Japan, for example, after drastic war damage, a necessity to build a totally new plant, to make drastic changes in economic and, to a considerable extent, social organization, that brings certain advantages. On the other hand, we can see in Great Britain the disadvantage of having been first, oldest and therefore slow to renew. None of these things, it seems to me, has to do with virtue, will, determination, with something that voting right can fix.

The view of the United States as the most deserving country and therefore the one that should restore predominance, as Podhoretz advances, also fails to recognize how power inevitably looks to other people. It is impressive; it is also frightening. We have done some bad things with power as well as some good things. From the view of the rest of the world, the biggest virtue — and as a member of the press, I like to feel especially proud about it — is the fact that we can criticize and reform ourselves. I don't think our failings are less great than others, but our capacity to recognize them and to change is greater than most countries; it is perhaps our greatest strength.

Naturally, other countries worry about such a big, powerful neighbor. This is especially true in Latin America. From time to time we also hear talk, again, about the Monroe Doctrine, and we forget that it started as a doctrine of virtually collective defense, of a weak United States offering to support other weak countries in the Western hemisphere, against an effort by European powers to renew their influence. Little by little, and not so recently, certainly at least in the days of Teddy Roosevelt, that sense of Monroe Doctrine was changed until it became virtually the opposite: a claim of exclusive American dominance and influence in Latin America. The United States really has never had any colonies except for the Philippines which were granted independence during World War II, at a time when they were occupied by Japan and therefore not in response to a war of national liberation. But during the period of decolonization it gradually became clear that it was easier to throw off direct colonial rule than to escape the more subtle, pervasive influence of a big neighbor.

A different attitude developed in Europe in the last decade, after decolonization. The Europeans feel they have learned better how to deal with Latin America than the United States does. They took their lumps being thrown out, and now they're going back on different terms, whereas the subtle change from not being colonial

ruler to not remaining the dominant influence has been much more difficult for the United States to make. The new Socialist government in France is particularly insistent on trying to establish long-term, economic relations with the Third World, and they think they have a better approach to this. When I went to the Ministry of Defense to ask why France was selling arms to Nicaragua, why they were taking the position they were on El Salvador, it was explained to me, very coolly, that it's perfectly obvious the United States is going to be hated for a generation or two in Central America and maybe other parts of Latin America.

There's no way around it: being a super-power and having the position the United States has had makes it inevitable, and the Europeans are trying to limit the damage by perhaps making some Yugoslavias. I think that is an arrogance and an exaggeration as much in one direction as American policy is in the other, but nonetheless, it shows you what a different point of view you can find in Europe. Certainly what Washington now pleases to call the difference between authoritarian and totalitarian regimes in the developing countries is very hard for others to perceive; it looks much more like the difference between left and right dictators.

When, as has been happening, it is unclear whether the United States is opposed to the ideas of a government, or against that government, that makes American politics essentially a puzzle to Europeans as a whole and to the rest of the world. People don't follow very closely things that seem obvious as explanations for political movements in this country. During the 1980 campaign it was really astonishing how little was known about candidate Reagan outside of the United States. I spoke with prime ministers, presidents, all kinds of people, and they really knew nothing much about him nor were they very interested. They were, by that time, disdainful and irritated with President Carter, and claimed — this was true in Moscow, too — that it was enough to get rid of Carter; it's got to get better. The dislike for Carter was not really due to any specific policy, but to the fact that he was vacillating. They never knew exactly where he was going to land on an issue. And that, I think, is really what both friends and opponents want most from the United States: a certain clarity and consistency of position, because the United States is so important to them all. They want to know what to expect.

There was a peculiar idea, to my mind, when this administration came in, that the Allies were yearning to be bossed, that all they wanted was an America to get up there and pound the table and say: Shape up! Stand in line! and then they would be happy to do it. That really is not the view, I think, of any other government in the world. What other governments — particularly those that are representative of their people — want is to have a sense that their interests are being considered, and that they know what to expect. The reason the United States

created NATO — and it was an American idea — was because after two world wars in which the United States found its own interests overwhelmingly involved and had to intervene at a late stage after things had gone badly, it came to the conclusion that it is in the interests of the United States to defend Western Europe. I think really that's what the Allies want: an acknowledgment that we are not fighting for them, we are fighting together for mutual interests. There seems to have been an expectation in Washington that a big defense buildup, a big defense budget in this country, would bring a lot of applause. Then came the surprise: why weren't the Europeans terribly impressed with it? And it should be noted that a large part of the concern here in the United States about this defense budget — that it's going to mean a lot of cuts in other parts of the budget — is not much of a European concern; that's considered our domestic problem. But the kind of defense buildup that has been suggested is not seen as adding particularly to the protection of Europe. It has been accompanied by a good deal of anti-alliance talk. What has come to be called "unilateralism" — we'll go it alone if they won't kick in — is not necessarily reassuring to the defense of Europe. A certain kind of bellicose talk of casual, offhand, enormities has also become very frightening. I don't think anybody imagines that the United States really wants war, but there are a great many people frightened that we are going to bumble into war, that we don't know what we're doing, and that is a serious risk. Therefore, the peace movement in the United States has been welcomed in Europe.

A German editor, a quite senior man in his country, said Europeans were very pleased about it because it showed that peace movements in Europe aren't anti-American. But there is also concern about somewhat simplistic formulas of how to move back from the appearance of confrontation. A freeze, a declaration of no first use — these don't really face the extremely complicated and difficult issues of nuclear strategy. I welcome the ideas as a useful focus for necessary debate, but none of the formulas proposed so far is a firm and clear answer. There is a tendency here to say: Well, in that case, Europeans want it both ways. I think they are only asking to have it both ways if wanting freedom *and* peace is both ways. I think that's what the United States wants. So I don't see that there is such a contradiction there. At the same time, the United States' refusal to reintroduce the draft does give an argument to Europeans about the seriousness of this big talk in the United States and adds to the fear of excessive reliance on nuclear weapons.

For this and for other reasons I would like to see a universal service in this country, and I'm suggesting this to you because I'm curious about your reaction. What about a universal service that would be predicated on the same philosophy as the income tax: that every citizen owes a part of his income, to pay for the services he gets from

government? He would also owe a period of service in return for the services this society provides. But I would suggest a choice, where the kind of service would be voluntary.

For example, I think of the Civilian Conservation Corps as an early ecological service. I think of paramedical services, paraeducational services, certain kinds of care for the very young and the old, security on university campuses, especially at night when students are walking home from the libraries. And I think, in that range of services, the incentives could be adjusted by the length of time, the conditions of service, so that you would wind up with a sufficient military recruitment, a manpower resource for the military that would be adequate to need without the clear unfairness of any kind of selective service that would be necessary for a merely military draft. There have been suggestions that since loans, essentially federal loans, are the basis for a large part of university attendance now, a substitution of certain services in place of repaying loans might be possible. This strikes me as a very interesting idea because there is now a danger not only of reversing the historic movement to mass higher education, but of weakening the capacity to provide that education by undermining the institutions.

In any case, it seems clear to me that in Europe, in the United States, in the rest of the world, this is a new era. The post-war period has run out. We're still operating on old assumptions. I refer again to Mr. Podhoretz — he seems to think that those were the good old days and all you have to do is to wish them back. Whether they were good or bad, they're gone, and they cannot be revived. It is terribly important now to have a new, basic look at our assumptions of the missions that we seek to perform in the world and how we think we can go about doing this.

Certainly for Europe and for the rest of the world, there is really no alternative to working with the United States. Whether the United States thinks it can go it alone or not, everybody else knows they can't without the United States. Interdependence has already been achieved to a far greater extent than we realize. At the same time, the United States is very much a part of the rest of the world's perception of the danger of war. For the survival of freedom and for democracy, the participation of the United States in the world, as well as the sober, sound judgment of the United States and the cooperation of the United States, are after all, essential. Ask the Poles. Ask people in Third World countries who are not running the government whether they would like the United States to drop out of the world. You will hear, very quickly, a sense of need for an America sure of its principles, sound in its judgment.

There is a double standard, but it has been set with American aspirations, and I think that it's a compliment; we should be proud of it. The United States is expected to behave better, and I think it is just as much in our interest as in the interest of the rest of the world that we do it. □

Epic Television

RAM LOEVY



SAN FRANCISCO EXAMINER/ELI REED

Kuh Beim Fressen

And while she gets the hay down, someone
is milking her. Patient, without a sound
She lets his hand go tweaking at her teats.

She knows that hand and doesn't turn around.
She'd sooner not know what is going on
But she takes advantage of the evening
mood — and shits.

—Bertolt Brecht
Translated by J. Willett

The cow — apathetic, thoughtless, cumbersome, —
lets herself enjoy the dual pleasure
of eating and being stroked.

Someone — quick, efficient, future oriented
but warm, aware of the ways by
which imitations of love can be used.

Under such circumstances, even given the mood
of the evening — is it possible to
rebelliously shit into the milk?

I don't think the traditional form of theatre means anything any longer. Its significance is purely historic; it can illuminate the way in which earlier ages regarded human relationship and particularly relationship between men and women.

So the theatre has outlived its usefulness; it is no more able to represent modern phenomena and processes with the means available to it than the traditional kind of novelist can describe such everyday occurrences as housing shortage, export of pigs or speculation in coffee.

No, in its own field the theatre must keep up with the times and all the advances of the times, and not lag several thousand miles behind it as it does at present.

—Interview with an exile
Ekstra Bladet
Copenhagen, 1934

Introduction: Brecht's Theatre and Western Television

It looks as if there is no comparison: the epic theatre as described and envisaged by Bertolt Brecht is a political tool designed by a Marxist. Western television — especially American television — is one of the main pillars of the capitalistic system. The whole notion of the epic theatre was to challenge this hypnotic response of the audience to what was presented in front of them on stage. Moreover, how can one imply a strong connection between the epic theatre and televiewing when the very experience of televiewing is very often referred to with the same terms which Brecht used when he talked about the audience reaction in the traditional theatre?

Let us go into one of these houses and observe the effect which it has on the spectators. Looking about us we see somewhat motionless figures in a peculiar condition: they seem strenuously to be tensing all their muscles, except where these are flabby and exhausted. They scarcely communicate with each other; their relations are those of a lot of sleepers. . . . True, their eyes are open but they stare rather than see, just as they listen rather than hear. They look at the stage as if in a trance: an expression which comes from the Middle Ages, the days of witches and priests. Seeing and hearing are activities, and can be pleasant ones, but these people seem relieved of activity, and (they look) like men to whom something is being done.

— A short organum for the Theatre
Potsdam, 1949

The main goal of the epic theatre was to make the audience think rather than achieve catharsis which would purify their souls through pity and fear. "I appeal to reason," says Brecht in an interview with Bernard Billen.

Does television appeal to reason? Is it legitimate to



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compare the epic theatre with television? This work will try to show the many layers of similarities between the two and to draw a few conclusions.

This work is a result of my encounter with the American television. It is definitely a foreigner's point of view. It stemmed out of one evening in which I was watching a television production of *Of Mice and Men* by John Steinbeck. The constant commercial interruptions made me angry to begin with and amused later. I finally understood that my identification with the big guy who kills pets and women out of love, was paid for by companies who sell cars, dog food, and perfume. One should never forget, I concluded, who is paying for raising my emotions.

The Epic Theatre

The basic meaning of *epic* in Brecht's use of the term is "a sequence of incidents or events, narrated without artificial restrictions as to time, place or relevance to a formal plot." The framework, with its recitation, songs and placards, is not meant to provide an illusion of unified structure. It is a system of interruptions which breaks up

the play into atomic elements of which it consists. The very name is a challenge — like calling drama undramatic.

Epic theatre, in Brecht's terms, is first of all a question of construction.

If, as Brecht says, "The essential point of the epic theatre is that it appeals less to the feelings than to the spectator's reason," then the first and most important feature of it is to tear to pieces all notions of roundness of a work of art, of well-made play or well-built structure. Brecht's description:

The Epic writer Doblin provided an excellent criterion when he said that with an epic work, as opposed to a dramatic, one can as it were take a pair of scissors and cut it into individual pieces, which remain fully capable of life.

In this respect, televiewing can be regarded as theatrical experience constructed of numerous elements, each of which has style and content of its own, each of which can be viewed and related to separately or viewed as a whole.

A unit of the television experience is not one particular program and not even (in most countries) a predecided schedule of programs (since the viewer can switch channels).

According to figures reported in American newspapers in the early 1970's, 99 percent of American homes had acquired at least one television set. On an average evening, more than 80 million people would be watching television. The average household has the set going more than six hours a day. The average person is watching for nearly four hours daily.

The four hours of television consist of drama, music, dance, documentaries, news, commercials (which, in Brecht's terminology, might be called *Lehrerstuck* of the capitalist system).

Moreover, within any one program there is a constant fragmentation by means of cuts, camera movements, changes of lights, decor, and audio variations. As a whole, it is legitimate to describe the evening experience of each viewer as a self-chosen epic theatre performance.

•

But it's not only the fragmented way televiewing is constructed in which it resembles the epic theatre.

• The narrators and the reporters in most news shows, talk shows, commercials, and entertainment shows gaze straight into the eyes of the audience — and talk directly to them. In so doing they function in a way similar way to Brecht's actor.

In the Epic theatre serving a non-Aristotelian type of drama, the actor will at the same time do all he can to make himself observed standing between the spectator and the event.

• The usage of written words on the screen and the sophisticated way by which statistical data are being

shown (in Brecht's adaptation of Gozky's *The Mother*, he flashed on a screen the prices of basic foodstuffs in a scene in which the cost of living is mentioned in the dialogue).

• The uses of film inserts in various shows — especially in the news.

• The fact that in most shows, excluding some documentaries and some "serious" drama, there is no pretense that it is anything other than a television show. Brecht wanted the audience to be absolutely aware of the fact that what they were watching was a representation and not "real." He objected to the false fourth wall of the romantic theatre, which gives an audience the illusion that it sees the world as it is.

In television the approach of most shows is usually very direct. For example, consider the pre-arranged (or dubbed) laughter of the invisible audience in most television comedies. On the one hand, the laughter is put there to serve as a social stimulus for the isolated home public. On the other hand, it is a constant reminder that the whole thing is a piece of a television show and not "real."

The same applies to deliberate visual references to the medium itself by showing microphones, cameras, and very often even the sources of light.

The world, diversified and full of contradictions, is presented as such each evening on the small screen in a room which had become a theatre.

The fact that the ideology behind Western television is diametrically opposed to Brecht's is irrelevant. It's clear that television is not similar to the pre-Brechtian epic theatre which was accused of formalism. Unconstructed as it is, there is a definite ideology behind the Western television epic theatre. And, like Brecht's own ideology, its goals are more political, economic, and social than aesthetic.

The Alienation Effect

alienate 1. to make indifferent or averse; estrange: *He has alienated his entire family.* 2. to turn away; transfer or divert: *to alienate funds from their intended purpose.*

— *The Random House Dictionary
of the English Language*

The term *Verfremdung Effekt* which is the cornerstone of the epic theatre has been translated into English as the alienation effect. This was perhaps one reason why Brecht

Ram Loevy, Nieman Fellow '82, is senior director, Israeli Television in Tel Aviv. He recently received the Violin of David Award for Indian in the Sun as the best television drama in Israel for 1981.

was alienated from the Anglo-American audience: he used a negative term in a positive way.

In "Towards Utopia" Dickson suggests that "the French translation *depaysement* best expresses Brecht's meaning, since the most important function of this technique is to transpose the stately familiar into a new and unexpected context." As Hegel puts it, "What is familiar (*bekannt*) is not recognized (*eskannt*) precisely because it is familiar." But it is not only a question of a problematic translation; the expression as such is bewildering.

Hegel and Marx used the term *Entfremdung*. *Verfremdung* is Brecht's word for the process of making alien or strange. Since it is well-known that alienation is an appalling phenomenon — especially in the writings of Karl Marx (for example, the estrangement of the worker from the ownership and meaning of what he works at), how can the Marxist Bertolt Brecht actually call for alienation?

To understand the answer we should trace the origins of the verb *Verfremdung* in Brecht's terminology.

The word first appeared in Brecht's writing in 1936. In 1932 and 1935 he was in the USSR. It is suggested that the expression *Verfremdung* is a loan-translation of the Russian word *ostranerie*, coined just after World War I by Victor Shklovski. In his essay *Art as Method*, Shklovski defines *ostranenie* as "not calling a thing by its usual name, but describing it as though it were being seen for the first time." Brecht defines *Verfremdung* in a similar way:

Alienating an event or a character means first of all simply stripping the event or character of its self-evident, familiar obvious quality and creating a sense of astonishment and curiosity about them.

In this respect Brecht's idea of alienation stems from the same source as the shock-tactics of Dadaism and surrealism, much as his notion of the epic theatre can be connected stylistically to cubism and the art of collage.

And indeed because of this explanation Brecht was accused by earlier Soviet critics of being a formalist — an artist for whom form and not content is the essence of his art. (Victor Shklovski was the leader of the formalists in the USSR.) But Brecht dissociates his epic theatre from the formalist approach and from the oriental theatre because "the social aims of these old alienation effects were completely different from our own." For Brecht the alienation effect is not strictly speaking an aesthetic category at all, but an instrument of social change. "The function of the modern alienation effects is to remove from events susceptible to social influence the stamp of familiarity that at present renders them immune from interference because what has long remained unchanged seems unchangeable."

Brecht's alienation effect is intended to break the force



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of inertia by showing what we otherwise take for granted, and cannot be changed.

Alienation and Television

The alienation effect of television is an expression which is often used in a negative way. Television is said to alienate the spectator from the world, from nature, from his fellow man and from himself.

In *The Plug-in Drug* Marie Winn argues that the experience of watching television is more significant than the content of the programs being watched and that television viewing by children is addictive, and turns them into passive, incommunicative zombies who can't play, can't create, and can't think very clearly.

Jerry Mander, who declared a total war on television in his book *Four Arguments for the Elimination of Television*, supplied us with some quotes on the televiewing experience.

"I feel hypnotized when I watch television."

"I feel like it's brainwashing me."

"Television is an addiction and I am an addict."

He goes on to describe the total silence that is asked for when television is watched with others; the heartbeat that slows to idle; the pulse rate that tends to even out, the eyes that move less while watching television; the freezing of the focusing mechanism in the eye.

The world, the immediate environment, and the self become completely alien. It's very similar to the way Brecht described the experience of the German audience who viewed the traditional theatre. According to Brecht's theory, the confusion, the constant changing of focus, of values, of figures to identify with, would force people to use their brains.

But can television audiences be accused of thinking? If the answer is no, does it mean that there is no connection between televising and an epic theatre experience, and comparison is completely artificial? That the epic theatre and the alienation effect are mere theoretical constructions which have no relevance to reality? (Long ago many observers suggested that Brecht produced excellent drama despite his theories and not because of them.)

I propose that Brecht was not so much after *thinking* as after *influence*. He used the theatre as a political tool in order to present his ideologies. In an ingenious way he grasped that breaking down the elements of the well-made play, speeding up action, estranging characters and environment is the best way to capture modern audiences. "Make them think" was the slogan; "convince them" was the real aim.

And Western television hypnotizes the spectator with the same goal in mind: to influence.

The big difference is that Brecht attempted to change the existing power structure of society, whilst the main goal of Western television is to preserve it. At the most, Western television is a tool which allows minor changes in the power structure in order to maintain its basic interests.

Viewing the World Through Brecht's Spectacles

Generalizations are the way by which things are usually obscured, not clarified. The same applies perhaps to Brecht's theatre and to any comments concerning it. Specific observations with specific ideas in mind are perhaps more revealing.

For a couple of months I was going about with the comparison between television and Brecht's theatre in my mind. This brought about somewhat bizarre ideas.

For instance, *The Caucasian Chalk Circle* can be set as an example of epic television.

- First program (Prologue): A documentary or even a news item dealing with a land dispute in the USSR.
- Second program: A melodramatic suspense film about a do-gooder woman in times of war.
- Third program: An in-depth investigation into juridical problems at times of upheaval.

With a little bit of imagination a sports program and weather forecast could also be included to make it a perfect epic television evening.

Or, another example: How is the audience regarded by television producers? What is their decision-making process?

Paul Espinosa from the Department of Anthropology, Stanford University, followed a series of discussions among producers and scriptwriters which shaped up one episode in the *Lou Grant Show*. The purpose of the study was to find out how people who make television shows regard public taste. From the point of view of Brecht, I find some remarks quoted in the article especially interesting:

"Our intent is to contrive entertainment."

"The characters should be believable."

"If we have any violence or pistol or hitting someone in the mouth in this scene, we won't get another laugh in the show."

"One should not divide the audience [by introducing too controversial problems or solutions]."

As a whole, producers see their regular characters as the "good guys" and they invest their characters with positive, moral behavior which they feel will meet their audiences' expectations about how their heroes should act.

Brecht would have laughed. All these assumptions are the opponent's slogans. They were quoted during a collective decision-making discussion about writing.

Has Brecht, in his solitude, completely ignored calculations of how he will be received by the public? Aren't there some general rules of human response which even Brecht couldn't do without? The late Israeli playwright Jacob Shabtai used to say that the real question is that of "cunning," of how shrewd one is in manipulating plots, characters, and human emotions. And this is perhaps the big difference between Brecht and American television playwrights.

In order to structure my thoughts I decided to view American television one evening with Brechtian ideas in mind. The rest of this work is the result of my experience.

One Evening in April — An Individual Epic Television Experience

Facts. My own television epic theatre experience of April 14, 1982, started at about 9:00 and ended at about 12:20. I viewed mainly five programs on two channels.

1. "Family Business," a film for the series *Middletown America* on Public Television's WGBH.
2. The news at 10:00, also on WGBH.

3. Local news on ABC's Boston affiliate, WCVB.
4. ABC News, also on WCVB.
5. *Love Boat*, also on WCVB.

There were, in addition, numerous announcements and commercials.

My experience that evening was particular to me. The choosing of programs was conscious to begin with. I decided to see an episode in the series *Middletown America* because I have heard interesting things about it. But there was no conscious decision-making as to the rest of the evening's viewing.

In a way, this was an atypical television epic theatre experience because I don't first of all, usually view television that much; secondly, my experience does not necessarily correspond to that of an average television viewer in the United States because of cultural and language differences; thirdly, because I was viewing with a purpose — to write down these notes. But since each viewer is different, the evening had most of the ingredients of television epic theatre: It was fragmentary; it dealt with social and political messages; it succeeded in making me think.

Order into chaos. Can a certain pattern be traced in this viewing? Was there an overall theme for the whole evening, as opposed to one for each program?

Of course, each program had its own pattern, style, and goal. (Some of them will be analyzed in detail later.) But was an "overall message" in the evening's viewing?

Theme of the evening. Most of the evening was emotional, not rational. I was carried away by the problems of the family who owned a pizzeria. I was frightened by the possibility of war in the Falkland Islands. I was pitiful of the Arab youth who was beaten by the Israeli soldier and the Israeli soldiers who might get hurt by the rocks thrown at him. I rejoiced at the good-hearted lady who offered a funny-looking taxi driver named Shakespeare an escape from his life in *Love Boat*. Emotions were ruling; reason was nonexistent.

The subject matter was manipulation of emotions. To pick some examples, the ex-navy officer pressing his children to stay in a collapsing business so that he himself will not collapse; the commercial urging me to buy a certain insecticide by exploiting my attraction to beautiful leaves which are so missing here at the end of winter. The manipulation of nationalistic feelings in Argentina and Britain; the former ballet dancer in *Love Boat* who exploits nostalgic feeling in her former lover.

Using deeply rooted feelings in A in order to make him submit to the interests of B is undoubtedly a common pattern of behavior in our society.

Structure. My epic theatre experience might be described as a three-act play.

The first act: Family Business.

The second act: The different news shows.

The third act: *Love Boat*.

The first act dealt with the basic economic and social



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unit, the family. As it was shown between 9:00 and 10:30 — a time in which my own home is still very lively — the chaos and the tensions shown on the screen were in a way a mirror image of what happened in front of it.

I was trying to be as attentive as possible to the struggles of the pizzeria-owning family while my wife was fighting alone on our family front: My youngest daughter (age 3) screamed because she refused to take a bath; my eldest daughter (age 12) needed some help with her homework; a neighbor came and told my wife about her family problems. I was trying to concentrate on the screen but I felt uneasy for not helping my wife. A bitterness developed.

I mention these "trivialities" because I believe that they had to do a lot with my experience of the first act. In televising much more than in theatre and movies, a person is not cut off from the world.

At the end of the first act — when my wife finally could sit down and watch the film with me — the family on screen seemed to get together again. Everybody agreed to work harder and get less pay. But it was clear that this was a very shaky solution; the economic structure of the business is unsound and it's only a question of time until it collapses.

The spectator who became involved with the sticky atmosphere of the pizzeria is now eager to breathe the odors of the outside world. Can the solution be found there?

The second act is how I'll describe all the news shows taken together and may be presented as the voyages of the daring individual in the outside world. Having just left the warm bosom of the family he is confronted with the inferno of reality. He is beaten up by soldiers; he is thrown out of work; he is offered a Cadillac. His own students' grants are cut. His fleet is facing a war. His budget is cut. His brain is urged to force a low-cholesterol diet war over his stomach which is dying for a hamburger.

From this point of view, "light-hearted" stories which were presented in the news show should be mentioned.

- A story of an usher in a theatre which shows the *Chorus Line* who dreams of getting a role on stage. He practices the dances in the hall while the performance takes place inside, and tries to take part in every audition for new actors. We actually see him failing in one.

- A story of "Pac-Man Fever" about an electronic game in which a primitively drawn head with a big mouth tries to swallow everything on the screen. It seems that thousands of youngsters have become addicted to the game. If I am not mistaken, the player is identifying himself with an evil power who has a never-ending hunger to swallow everything around — very much like the ancient dragon. Only this time, one is supposed to identify oneself with the dragon, not with the knights who want to kill him.

These two stories might be presented as the symbols of what happens to a family member who leaves home in search of happiness outside.

But the culmination of Act Two as far as I was concerned was the presentation of the Middle East conflict. A rather long news film was shown where one could see (among other things):

- An Israeli soldier beating an Arab youngster. Both looked terrified.

- Arabs throwing stones on Israeli soldiers. The camera was positioned with the soldiers. Being an Israeli soldier myself, it duplicated my feelings that the stones are thrown at me.

- Few demonstrators from the "Peace Now" movement with tears in their eyes commenting about their growing estrangement from their/my society.

Act Two ended with a double interview between the ambassadors of Saudi Arabia and Israel. The two were arguing about the past; the grim present and the future-less future were ignored.

At the end of all the news shows I felt completely exhausted. The voyage which I took from my family, my castle, to the hostile world, the constant bombardment of my emotions with contradictory messages left me empty and frustrated. I was eager for salvation.

The third act in this television epic theatre experience

offered me a resolution. *Love Boat* is a series in which a group of passengers are taken for a pleasure tour on board a white boat traveling upon a blue sea, and the adventures are those of love. "It's an open smile" says a line in the sweet song which invites you to join the journey. And, indeed, there are no storms, no murders on board, no sinking of the ship. The colors are bright, the girls are beautiful, the sexual adventures easy.

In every episode there are two or three plots which intermingle with each other. Every scene starts and ends with a soothing piece of tonal music which indicates that life can be easy and simple. Pursuit of eternal love (by way of marriage) seems to be the formal goal of the trip but nobody takes it seriously.

The commercials which were somehow a contradictory and alienating force in the previous two acts (the names of the firms which promoted films on WBGH are also commercials) suit this act perfectly well. Like most of the scenes in *Love Boat*, most of the commercials present a small problem (a flat in the tire; indigestion; a cat who doesn't eat) and one that can be resolved in a very easy and quick way. The spectator who identified with the ex-navy officer (from the first act), who left the sea in order to open a pizzeria and settle down, returns to this ship of fools, and finds that escapism is the only answer. Just like television itself, society has been saved.

What Could Have Been Changed?

Not much. Western television suits the consumer society as much as communist television fits the totalitarian society.

If Brecht the communist would get out of his grave for a while in order to smoke a cigar and view both broadcasting systems he would probably have preferred Western television, mainly because of its dialectic nature. He probably would have enjoyed the juxtaposition of highly emotional and moral messages of the programs with the utilitarian aims of the commercials. This pattern makes it clear who is paying for the emotions, and who is interested in the existing order.

In his 1934 interview in *Ekstra Bladet*, Copenhagen, Brecht stated the following:

We have acquired an entirely new psychology. The American Dr. Watson Behaviourism. Its theories have something in common with American business life, with the whole modern advertising. Salesmen all over the world are trained according to its principles to influence their customers' behaviour; they learn by rule of the thumb how to provide new needs for their fellow man. (Example: a man goes into a showroom, mildly infected, and comes out, severely ill, in possession of a motor-car.)

The existing system provides enough food for thought but only few digest it. All the Brechtian techniques used

by television bring about the same medieval gaze.

Television can be used as a tool for thought which might produce societal change. ("Change" doesn't necessarily mean a communist revolution.) It is possible that Brecht would have objected to some of these ideas. As it is not absolutely clear that Brecht was really after stimulating thought as such — he might perhaps have preferred Soviet television.

Act I. Middletown America — "Family Business." As a whole, this was a film with exceptional beauty. The camera work and the recording of the sound were superb, especially when we consider the location difficulties. We were given a structured view of a specific family in a specific situation and not a generalization. The problem which emerged at the very beginning of the film was at least partially resolved at the end.

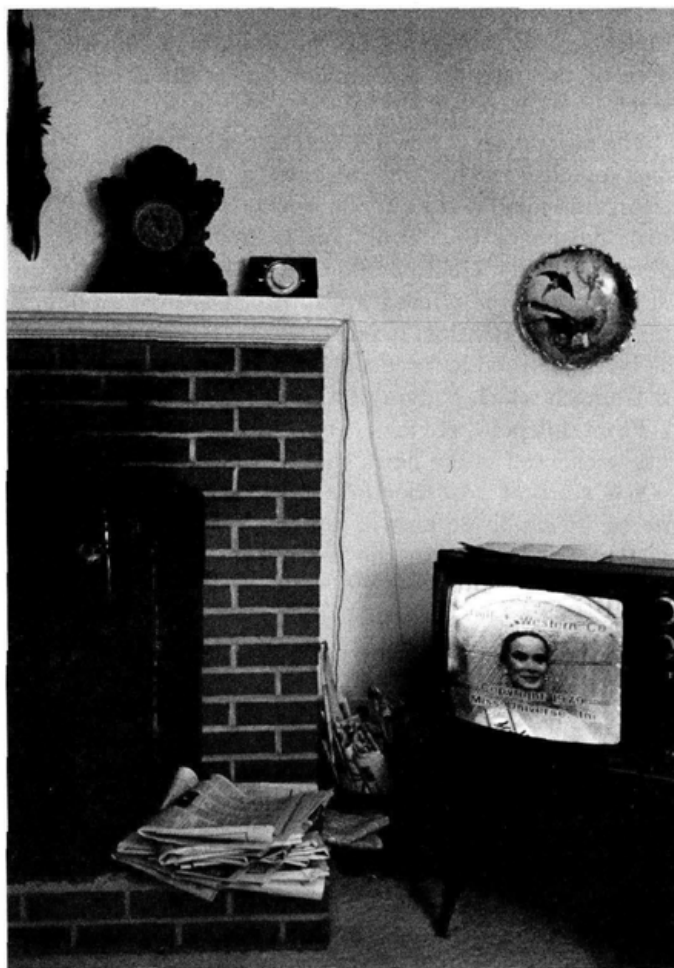
Sub-plots of various kinds (one of the brother's dating problems, the hidden conflict between the sons and their father over coming late to the pizzeria, the wish of one of them to become a soldier) were interesting and related to the major plot. The people seemed real; it was rather easy to identify with them. In the family gathering at the end, when one of the boys cried about his father losing his dignity, one felt like crying with him.

The cleanliness of the style, the lack of narration and of interviews prepared the premise for "a slice-of-life documentary" but it was only partly so. Because of the structure it was very much like a feature film or a well-made play with its climaxes or anticlimaxes and catharses. This was its strength but also its limitation from the point of view of Brechtian theories.

Real life is much more fragmented. Not everything is connected to the main plot. A documentary — the main goal of which is to portray reality — should be allowed to deviate, to be almost as casual as life itself. For instance, after the pizzeria is closed and two brothers go about cleaning it, the tune which one of them "chooses" to play on the slot machine is "Family Man." This only stresses the fakeness of their conversation about their father's whims at the bar later on. The camera movements of that scene are also too stylized. For example, at the end, one of the brothers leaves the hall, and the camera follows him to the door. When he stops, turns around, makes a V sign, the camera stops with him. This is perfect timing as far as feature techniques are concerned but is incongruous with the goal of depicting life "as it is," which was the declared intention of this film.

The editing style is an obedient servant of the goal. The quick cuts at the beginning, the long shots of the empty restaurant later on, are excellent in themselves but are highly intentional. The best example is the cutting across from the car where the "guilty" brothers are heading for the pizzeria with the angry father waiting for them. There were about five or six such cuts which made me doubt the authenticity of the whole scene.

The television documentary has the capacity to capture



Miss Universe, Inc., A Gulf + Western Co.

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reality in its crude, unorganized existence and therefore "make people think."

Although the film was wrapped with highly emotional cover, underneath it the subject matter was economic. It had to do with the family as the smallest economic unit being crushed by the power of capitalism. (Brecht would have certainly enjoyed dealing with it.) It was an almost perfect example of the Marxist notion about concentration of wealth: how under capitalistic rules small businesses will inevitably go bankrupt and will be swallowed by big organizations.

The film has almost completely ignored the subject. There were almost no confrontations outside. No meeting with the former partners, no effort to explain and understand the uneven struggle with the big corporations that are the main competitors of the business. The declared explanation for the failure of the pizzeria ("Americans are meat eaters"; "The location of the pizzeria is wrong") are far less convincing arguments than the far-away sign of a Howard Johnson restaurant. The grim remark of the father that banks give loans only to the people who don't need them could have been followed up by the film-

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The Nieman Who Came In From The Cold

NIGEL WADE

Arkady Renko, detective-hero of *Gorky Park*, gets his first look at America from the air. He is amazed by the number of cars. Where can they all be going? Have New Yorkers suddenly started a mass evacuation?

I know the feeling. Similar impressions awaited Christine and me as we headed back to the West and another spell of American living, after more than two years in Moscow, preceded by four years in Peking.

Entry procedures at Logan Airport take only twenty minutes, compared to the hour or two we always have to wait to pass immigration and customs going into Moscow. A fierce-looking U.S. Customs officer lets our four suitcases through, no trouble. What about all the subversive literature I might have been carrying? He doesn't even look inside.

It's steamy late August and we are soon feasting on lobster and beer at a Cambridge restaurant, reveling in the pleasure of being in America again after several years on the other side of the East-West divide.

The radio in our hotel room assures us that next day's weather will be fine for the Cape and Hyannis Port — "weekends were made for you, and Orange Crush, too." What did he say? Oh, yes, we're in America. Still out of time with the clock, I watch 6:45 a.m. television, about nutrition, with stomach diagrams and a map of the sigmoid colon. Give me televised Russian ice-hockey any time!

We walk straight into our waiting apartment, securing in a morning what some Russians never manage to obtain in a lifetime: a neat, little home of our own. (A quarter of the people in Moscow and Leningrad still live in shared accommodation, although this has dropped from one-third ten years ago.)

At the telephone company I have my choice between dozens of models of handsets, ranging from Mickey Mouse to old-timey styles. I walk out with a phone in less than ten minutes, a miracle which Muscovites simply would not think possible. "Have a nice day — thanks for your time," says the attendant, who is wearing a Kennedy button.

Still feeling almost as amazed as Arkady Renko, I stop at Brigham's on Mass. Avenue and deliberate on which of seven breakfasts to choose. Type four comes prompt and sizzling: one egg, fried or scrambled, home fries, bagel with cream cheese, orange juice, and coffee. That evening, the craving to re-experience these bountiful choices of American cuisine drives us to Bartley's Burger Cottage. Cottage? By Soviet standards, it is a pleasure palace. How would Muscovites choose between the Nancy Reagan Burger ("served on our best silver, topped with melted mozzarella cheese and pizza sauce, coleslaw and french-fried onion rings"), the Canadian Bacon Cheeseburger, the Guacamole Burger, the Bearnaise Burger, the Mighty Brunch Burger, the Mushroom Burger, the Liz Taylor Club Sandwich ("breast of turkey with swiss cheese, bacon, lettuce and tomato, french fries and coleslaw"), or the Burt Reynolds ("a hunk of roast beef with swiss cheese, bacon..."). It seems to me that President Reagan's best bet in the arms race might be a sophisticated scent weapon which could drive Russians into a helpless frenzy with the smell of a Mighty Brunch Burger and a side order of fried potato skins with guacamole dip.

Having worked in Washington for three years in the 1970's, I am not completely astonished by all this Americana. But more than six years of Communist living leave their mark: neither Christine nor I have entirely thrown off the habit of shopping for ordinary household items in bulk, in case they disappear from the shelves. We still buy toilet rolls twenty at a time and we still hate to throw out all those useful, not to say valuable, plastic shopping bags and household containers. Russians literally go through our Moscow rubbish bins to retrieve these kinds of precious items.

Basically, we know quite well what to expect in the United States and, even after years in Russia and China, the sight of colorful polka dots on cement mixers at a Manhattan construction project doesn't come as too much of a shock. Toothpaste has turned bright swimming-pool blue while we've been away; they've invented yet another way to open beer cans; and Roger Mudd has switched networks — this kind of progress we can handle.

But, after the food, it is the rapidity and enormous variety of American life that I have to get used to again. It only takes a five-minute phone call to book an Amtrak berth from Boston to Washington and a quick stop at the

Nigel Wade, Moscow correspondent of The London Daily Telegraph and a Nieman Fellow in the current class, describes his re-entry to the capitalist world.

twenty-four-hour banking machine provides the cash with which to pay for it. Both these transactions, in a Soviet setting, would take the best part of a morning. Ah, private enterprise! At Washington's Union Station I enjoy a chat with the shoe-shine man: "shoes 75 cents, low boots \$1.50, high boots \$2.50, two-tone \$1.50, off-foot shoes \$1.00." Looking through the window across the hall, I see the word "Solidarnosc" emblazoned across a water tower. What would the Russians think!

Westerners take for granted the sheer variety of their life under capitalism, provided not just by all kinds of cars, clothes, and shops, but by the thousands of private service companies and little businesses which make each street or part of town different from the others, if only in terms of color and activity. Laundry vans, tankers delivering oil, railroad cars marked with the names of different companies, even billboards. It is all food for the eye (call it pollution in extreme cases, if you will) which provides a constant subliminal stimulus, and makes life that much less monotonous, less boring. Westerners don't really notice and Russians don't realize they lack it.

Look at — really look at — taxis, for example. In a few minutes walking around downtown Washington I see Diamond Cabs, or Red Top, or Arlington, or Dial, Capitol, Checker, Liberty, Yellow, DuPont, Imperial, Executive, York, Airport, Coastline, Barwood, United, Veterans', Bell, Autorama, District, American, Suburban, Columbus, Silver, M. L. Sesay Cabs, Eastern, Charlie Gilchrist, Delta, A. K. Adam, Radio Flash, Potomac, Union, State, Globe, Paul Ridley, G. E. Duff Taxicab, H. Guerrier, Y. F. Noblet or C. J. & A. Y. Lawrence. In Moscow, they are all the same, just "Taksi." Private, "pirate" cabbies do exist, using their own cars without any distinguishing marks, but this is illegal and they risk being punished.

Politically, it is election time back in Cambridge and I am immediately struck by the spreading debate going on over the proposed nuclear weapons freeze. Last summer I witnessed the heavy-handed suppression of a small Soviet citizen's group which tried to promote free discussion of disarmament in Moscow. The chief spokesman for that group was later confined in a psychiatric ward.

In Cambridge, the nuclear debate spills onto walls and pavements and car bumpers. "One nuclear bomb can ruin your whole day"; "Disarm or die"; "I can't embrace you with nuclear arms." Bumper stickers in Russia? No way. All advertising is subject to official censorship and no one with the patience to wait eight years for a new car would be rash or dumb enough to invite KGB investigation by airing his private political opinions just below his license plate.

But we have not left the USSR behind entirely. Christine goes down with "Leningrad tummy." Cambridge doctors seem familiar with it and one tells her darkly, "It's already in New England."

Seeking light relief from the Harvard course catalogue, we explore the offerings of the Cambridge Adult



Education Center, including classes on "Apples" (not computers) and "How to get over a broken love affair." We sample the delights of the Coop record section, where we find enough Pink Floyd albums to make some street-wise Russian a ruble millionaire — if only he could get his hands on them. (Pink Floyd records sell for about \$200 each on the Moscow black market.) As for books, all the smuggled books, illegally photocopied books, *samizdat*, or self-published books, and books in special libraries for trusted party members in the Soviet Union would not substitute for a fraction of what is on hand anywhere in Harvard Square. I marvel at the magazine titles: *Computer Games* — why not, in a country where video games gobbled up \$5.5 billion in quarters last year? — or *Success* — *The Magazine for Achievers*, featuring an article on "preparing your baby for a lifetime of success," or *Money* magazine, with a cover story headed, "Living Like Princes on \$35,000 a Year — how many Americans enjoy the best of everything on middle-class incomes." I think about the average Soviet worker and his \$220

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Opposite page, above: a typical summer traffic jam on the way to Cape Cod; below: a typical Brezhnev billboard; this page, clockwise from top: advertisement for a pop concert adds a touch of color to the scene in Soviet Georgia; street performer in Boston; good weather brings out crowds for the Charles Street Fair in Boston; in Soviet Georgia, a billboard urges children to train as scientists.



Boston photographs courtesy *The Boston Globe*/Stan Grossfeld; Russia photographs courtesy Nigel Wade.





Ralph McGill's America and Mine

ROBERT C. MAYNARD

In the days of my wondering youth, when Ralph McGill was a towering symbol of light in a troubled land, it never occurred to me that I would have an opportunity to pay tribute in this manner to such a rare figure of our time.

The reason such a thought never would have occurred to me is that Mr. McGill and I lived in such different Americas. His was the Southland with its strangled conscience then, a land beset by a segregation he called "estrangement... a withdrawal from humanity that is close at hand, that passes in the streets, that lives just over the other way."

I read of that land as it was described by Lillian Smith, Carson McCullers, W. J. Cash, and Ralph McGill. I tried to understand it in my youth, but it was a strange place that existed between the pages of a book or occasionally on the front pages of our

New York newspapers when some event occurred that seemed to typify a time of tortured souls.

My America then was a place of urban uproar, a place that moved in massive rhythms between day and night, a place that conjured up pictures immediately when, in the argot of the place, the "joint was jumpin'" or it was a "rompin', stompin' kind of night."

We thought we were free and that you "down here" would be slaves forever to Jim Crow. Whether white or black, you were shackled to a set of rules only a few understood, but by which all must play.

In the days of my youth, the days when Ralph McGill's name was a legend because he stood against the forces of evil in a land in terror of the nightrider, the flaming cross, and the white robe, we were so innocent "up North" because we thought we were free and that you were not.

Later — years later — Dr. Martin Luther King would predict that the South would be free of Jim Crow long before the North was free of its racism. We scoffed and said we were free. Then one day, long after that, I found myself facing a man in a gray flannel, three-piece suit, wearing Gucci shoes and holding an imported leather attaché case. His name was James C. Crow III, Esq.

By then I knew none of us was free.

But I am getting ahead of the story of Ralph McGill's America and mine.

•

Two different forms of fantasy shaped our worlds. It seems to me the South became transfixed after Reconstruction by a delusion that it could recapture the old relationship of master and slave if it held on rigidly to the remnants of the caste system that existed before the Civil War. It was necessary, then, for a whole region to engage in massive self-deceit, to foster through every means possible the notion of inherent superiority of whites and the total inferiority of blacks. All this was psychological reinforcement of the fantasy that nothing had changed.

But, as Ralph McGill wrote so often, it was all a mask of self-deceit. And Walter Scott's little rhyme applied no place as it did to that situation: "Oh, what a tangled web we weave when first we practice to deceive."

No tangle of deceit is quite as elaborate as that created to deceive oneself.

The role of Ralph McGill, Hodding Carter, and myriad other courageous literary leaders of the region in that

Robert C. Maynard, publisher and editor of The Tribune (Oakland, California), and Nieman Fellow '66, delivered the fifth annual Ralph McGill Lecture in October at the Henry W. Grady School of Journalism and Mass Communication, the University of Georgia, in Athens. The text of his talk appears here by permission.

time was to try to awaken a people from their fantasy to face the reality that the past was never to return and that the world was moving on, leaving a region to rot in remembrance.

Soon after, the civil rights lawyers, Martin Luther King, the marchers, and the television cameras would combine to jolt the region from its reverie. I date the day of great awakening to that Sunday afternoon on the Edmund Pettus Bridge in Selma when American citizens marching for the right to vote were beaten, trampled, and tear-gassed, and the whole wide world was watching on NBC's evening news.

Only a short time later, Lyndon Johnson went before a joint session of Congress to introduce the Voting Rights Act with the words, "I come before you tonight to speak of the dignity of man and the destiny of democracy...."

Little by little, McGill's South became "the New South," and soon after that, the "Sunbelt" and it has a long way to go before it fulfills its full "destiny of democracy," but it is a long way from the South of Eugene Talmadge, who so delighted in spitting the worst of epithets at Ralph McGill.

The delusion has diminished, even if it has not disappeared. Only time will tell if the delusion can ever be wholly cured. I came South as a young reporter to record the crumbling of the wall of delusion.

It was yet fully to occur to me that the world in which I was raised "up North" was fostered on fantasy, too. If the South reveled for so long in a delusion of the past, the North reveled with equal abandon and for just about as long in the illusion of freedom and equality for all.

I take you back now to the 1940's, to

the same time during which Ralph McGill wrote his column every day on page one of the *Constitution*.

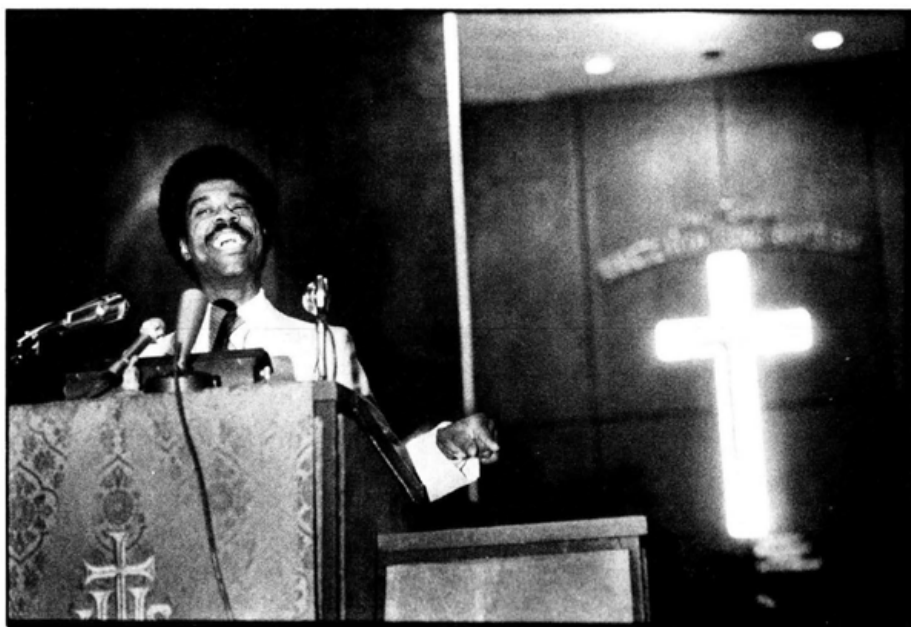
Those were the days of my growing up in New York City. Those were the days of our illusions. We who had never been to the South regarded it as another country. I can remember many nights in my childhood when my brothers and I whispered under the covers and told each other frightful stories. Often, those stories concerned hideous happenings in the South that we had read in a newspaper or a magazine, or had conjured in our minds.

We would tell these things sometimes to my mother and father at breakfast and they would look sad as they talked of the people "down there" living in a hell unheard of in our quiet and secure world of brownstones and urban culture.

We could not see or understand

DETROIT NEWS/ELI REED





DETROIT NEWS/ELI REED

then that we, too, lived in a world of illusion governed by the web of caste and class. By virtue of my father's property and my mother's managerial skills, we and most of the middle-class families around us assumed the world was generally all right. That is to say, we would go to the right school, marry into the right family, enter the right profession, and live in the right neighborhood.

That is not to say for a moment that we did not, each of us, encounter our share of racism in some form or another, usually at school, but sometimes on the street or in a restaurant. But we were told we were free, so we brushed off those encounters as aberrations, and rarely connected them to any larger system of thought or activity resembling what we understood to govern the South's mores.

One of the clear manifestations of racism around us was police brutality. We were aware of police killings and police beatings, but we were sure those things only happened to certain kinds of bad people and that some individuals on the police force were "prejudiced," the most common word we used in those times for racism.

But I must say only a few people within our hearing in those days stood up and said to the people in our stable little community, or the many others

like it in New York City, that great masses of poor blacks in New York were ill-fed, ill-housed, and were denied equal justice under the law as a matter of course.

Our school teachers rarely mentioned such a thing and neither did our church leaders. It was not that the problem did not exist. We were all soon to hear the thunder from Watts

and Hough and Harlem. The problem was there, all right. It simply was not discussed by those who were living the illusion of being free.

And those who were living the harsh reality of those mean streets had no voice of their own, certainly no voice the rest of society had deigned to heed. Out of sight, out of mind.

By the late 1950's and into the early 1960's, the voice of the oppressed of the South was beginning to be heard. The sound of the feet of the walking Montgomery bus boycotters was telling a story to the world, a story whose tones would grow louder and louder across the land, to lunch counters in Greensboro, to the streets of Birmingham and Albany, and on to Selma.

But no such great, moral, nonviolent movement had captured the energy and the frustration of the urban masses in New York, Detroit, Cleveland, or Chicago. Indeed, many in those cities continued to live the illusion of freedom in the midst of deprivation.

By the time Bull Conner's police dogs tore into the marchers in Birmingham, there were small protests in New York for jobs, one or two



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against housing discrimination and educational inequality. But they were generally ignored or treated with disdain on the inside pages of our great New York newspapers — if they were reported at all.

And then — to use the phrase of John O. Killen's novel about racial warfare in the armed services after World War II — and then we heard the thunder. By that time it was August of 1965 and the sounds of breaking glass and the sight of burning buildings came to us first from Watts, a place then known to few outside Los Angeles. Soon its name would be a symbol for urban unrest across the land and around the world.

Once again, the whole wide world was watching and what it saw was the end of the illusion that only the blacks of the South were oppressed. The illusion that Jim Crow was a regional phenomenon, unique to the South, was a cruel illusion we nurtured up North to our great peril.

One by one, our great cities, the great citadels of civilization, were ravaged by the fire of the pent-up rage of those who had been the invisible victims of our Northern illusions. Rivers of blood and years of darkness were the price the Northern city would have to pay, and is still paying, for

having nurtured our illusion that the North was free and equal while the South was not.

Here the delusion and the illusion coincide. Goethe once said that all it takes for evil to prevail is for good men to do nothing. Those of us in the press, the great calling of Mr. McGill and myself, live in the belief that if we do not ferret out wrongdoing, evil will engulf our society. Each time anyone moves to abridge our rights under the First Amendment, that is what we cry out from the rooftops and from our pulpits on the editorial pages.

But we came late and lame to the story of one of the greatest evils of our society, the evil of racial oppression and its great cost to our advancement as a society. Ralph McGill said of the South's press:

A shocking number of its newspapers had failed in the responsibility of leadership — to reveal a region to itself. Painfully few had ever dissected the so-called Southern way of life or stripped the myths from the Southerner's belief that he was somehow different from other Americans and entitled to special rights, including the right to be "let alone" in the ugliest practices of discrimination.

The marvel of this coincidence of

delusion and illusion is that much the same thing could have been said at the very same time about the press of the North, but I know of no editor of a stature comparable to that of McGill who said the same about the unstripped myths of life in New York or Chicago or Los Angeles.

Indeed, it was left for a presidential commission to examine the urban uprisings and declare that the press of the North bore no small amount of the blame for what transpired. It found that the press had ignored a major story — make that *phenomenon* — in its own back yard.

More than that, the commission and many serious students of the urban riot could only conclude that the press played a major role as a causative factor; that our failure to report on the conditions of the inner city left those inside its walls with no way to make the rest of us out there in illusion land understand how deep was their anguish.

In other words, so far gone were we in our illusion, so ignorant were we of that before our very noses, that our neighbors had to set a fire to gain our attention.

I wish this were a purely historical exercise. I wish I could say we were cured of illusion in the North and of delusion in the South. Oh, how I wish.

In a little more than two years, we will celebrate — if that is the correct terminology — the twentieth anniversary of Watts. I wonder what lessons we can claim to have learned as a society from what we saw and heard there and elsewhere in those terrifying days and nights.

It has been fourteen years since the death of Dr. King. The night he died, I watched the flames of urban anger reach within ten blocks of the White House. I would have thought such an experience would have etched permanent wisdom on our society about the dangers of such illusions as so possessed us before the riots.

But I am persuaded today that we learned almost nothing. The conditions have changed little in most places. In some instances they may



have become worse because we are on the cusp of the new age of information and technology and we still have penned up in our cities people who have yet to get right with the Gutenberg revolution. We have wasted human potential ticking away like a time bomb we pretend does not exist. And despite having seen it explode once, we seem immobilized and incapable of defusing it.

Meanwhile, a South that now calls itself a "Sunbelt" has become more urban. In so becoming, the problems we have seen in the Northern city have become more familiar in the South. The Klan, once familiar only in the South, is now vividly visible in the North. Thus are the distinctions being erased between North and South.

We see now more clearly than ever that the problem was not so much one of region as it was one of entrenched racism that simply found different forms of expression at another time.

The heart of the matter in Mr. McGill's America and mine is that both have been seized for centuries by the curious ability of racism to poison the quality of our national life.

Even though we see the many awful manifestations of its evil works, we cannot seem to come to grips with it as a society and purge it from our public life and from our private hearts.

I have mentioned the piece in which Ralph McGill chastised his Southern brethren of the press for their failure to "reveal a region to itself." When he published that piece, I know of many liberal New Yorkers who savored the subtle power of its phrasing and treasured its poetic rebuke.

Unfortunately, it did not occur to them to ask how well we in the Northern press were doing at revealing our region to itself, or for that matter, our society to itself.

It must be obvious by now that this problem of racism is our great national shame, a shame from which we still seek to hide instead of facing. I suspect part of the difficulty is that racism is a peculiar phenomenon. It is the only personality disorder with which I am familiar that has managed to transform itself into pervasive public policy.

James Crow III, Esq., and his better-known forebear, Jim Crow, suffer from something the psychologists call by several fancy terms. The simplest one I know of is impaired self-esteem. They are, to make short work of the matter, deeply damaged human beings.

In their modern manifestation, these are people whose egos were damaged early in their lives. They were told by someone they hoped

would love them that they were unworthy of love. And not just that they were unworthy of love, but that they were unworthy altogether.

In general terms, the pain of such rejection was too excruciating to bear, so instead of living with a sense of self-loathing, they project that hatred onto some other fixed object or group. Whatever ugly self-image they seek to expiate, they project onto the object of their hatred.

It is this mixture of self-hatred and guilt that has always given classic racism some of its more baroque contours. A man who goes out and preaches racism all day will come home to a black servant he will tell everyone is the person he loves most in the world.

Or, for example, psychiatric literature will report on the case of the woman who so fought to keep her children from going to a school with a handful of blacks that she committed vile acts of violence. When finally she received the proper medical care, she was found to have a morbid sexual fixation on black men that she feared she could not control if she came in proximity to any black people, even small children.

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It has long been a concern of mine that our public institutions have permitted themselves to fall victim to the foibles of racism instead of becoming the way to help people grow out of them.

I regard that as a pity because it is obvious to me that healthy humans do not need racism to enhance their self-esteem. There was a time in the 1960's when it was popular to decree that all white Americans were racists.

Nonsense. I will grant that racism pervades the land, and I will grant that any of us can at some time or another bolster our egos by finding some object on which to plant the flag of inferiority.

But that is a long way from saying that all whites are racist. First of all, the issue of ego and the problem of self-phobia can affect any person of any race. More important, I will not concede to any disease the power to be

so persistently pandemic.

Not everyone is a racist because not everyone needs to be a racist. Racism is a personal circumstance reinforced by one's social environment. People who may have the same ego problems that we call racism, but who are raised in an atmosphere that discourages racism, will often find some other means of dealing with their problem. Racism is little more than an elaborate justification for a sense of inadequacy.

What I have always wondered is why we do not treat this phenomenon in its proper context as a mental health problem instead of a public policy problem.

Above all, I trust none of us any longer labors under the illusion that racism is a regional problem. In one way or another, it is a problem that affects most of the globe. We may take some small comfort in that fact, but it should be very small.

I say so because I believe Dr. King was correct when he said we would either learn to live like brothers or we would one day die like fools. We must come to grips with this as a global problem, but we dare not point our finger elsewhere until we have addressed the problem seriously at home: at home in our universities and medical schools, in churches and synagogues and, above all, in the news media.

In that regard, Ralph McGill is a model of integrity and mental health who should inspire us to continue to be courageous as he was courageous. He knew the rich potential of this region and this nation, and he knew the mental disorder that affects our body politic would forever hold us back.

We have seen in the transformation of the economy of this Southern region only a small example of the profundity

of his wisdom. And thus what I learn as I ponder Ralph McGill's America and mine is how, after all, they are one America. He saw an America fulfilling its promise by ridding itself of prejudice. We have not heeded his advice very much, only enough to realize he was right. □

"If it's not good enough, you're not close enough," is Robert Capa's frequently quoted advice to photographers. For **Eli Reed**, Nieman Fellow '83, there is another dimension to making "an honest, accurate image — something with guts to it."

"The moving target," he says, "having been shot at, moves on. If you don't move fast enough, you're going to miss it."

In moving fast to capture the image, Reed seizes more than the moment. "I steal time in measures of 250th of a second, and I steal souls. But God forgives me. I get away with it because I give back an image that reveals something new — something that enlightens."

•

The photographs that accompany Robert Maynard's "Ralph McGill's America and Mine" represent moving targets successfully captured during Reed's two years as a staff photographer with *The Detroit News*, starting in 1978. As further evidence of his photographic marksmanship, three of the pictures (pages 18; 21, bottom; 23, top) were taken within the space of an hour. They appeared in the *News* as part of a series on black women in America.

With the exception of the drum player and the National Guardsman, taken in Liberty City, Miami, 1980, the photographs were taken in Detroit, while Reed was on regular assignment for the paper.

Since leaving the *News* in 1980, Reed has chased — and caught — moving targets for the *San Francisco Examiner* — a quest which has taken him from the Yerba Buena Plaza

Annex (the "Pink Palace" housing project) to British Columbia; from an antinuclear rally in Diablo Canyon to El Salvador and other Central American countries. The Pink Palace series put Reed in the finalists category for last year's Pulitzer Prize; his two trips to El Salvador with *Examiner* staff writers and photographer John Storey are recorded in a 15-part *Examiner* series on Central America, "The

Tortured Land," reprinted as a 52-page special section.

No matter where he is, Reed strives for the unexpected viewpoint — the additional reality within what is usually seen.

"Every assignment I go on," says Reed, "I want people to remember the images. I want them to understand what's going on as honestly and succinctly as possible." □



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Corporate Stumble

PAUL SOLMAN and THOMAS FRIEDMAN

In their heyday, the railroads seemed omnipotent; network radio, everlasting. And today we still assume that our largest and most powerful corporations are somehow beyond change, beyond failure. Yet size is no guarantee at all.

In this excerpt from *Life and Death on the Corporate Battlefield*, the authors describe the takeover of a major oil company and the genesis of a television series.

On November 1, 1980, the nation's thirty-ninth largest industrial company, Marathon Oil, was selling for \$66 a share. Multiply that by the approximately 60 million total shares of Marathon, and you get a company worth about \$4 billion on the open market.

Within a month, U.S. Steel had outmaneuvered Mobil Oil for the ownership of Marathon with a bid of \$6.3 billion — more than half again the previous month's market price. The reason given was that oil was a profitable industry while steel was economically depressed. Thus U.S. Steel was channeling money out of steel and into oil.

But at what price? And for whose benefit?

Corporations are supposed to be run in the interest of their stockholders which is to say, much of the American public, through our pension funds, mutual funds, insurance policies, and so forth. But if the stockholders of U.S. Steel had wanted to invest in an oil company, wouldn't it have made more sense for them to buy Marathon stock themselves, for the pretakeover price of \$65, rather than the \$105 a share that the U.S. Steel Management paid with "their" (the stockholders') money? What, after all, did the stockholders get for this dramatically higher bid? A "synergistic" combination of companies that will make Marathon 60 percent more productive, justifying the 60 percent premium in stock

price? Perhaps, but it's not likely. How much expertise can a steel company bring to the oil business?

For the management of U.S. Steel, however — or for any management that tries to acquire another company outside its area of expertise — there are other considerations. U.S. Steel had to do *something* with more than \$2 billion in profits that it had amassed. It didn't want to funnel the money back into steel, because the industry was in terrible shape. And it certainly didn't want to give the \$2 billion back to the stockholders by increasing dividends or buying back stock, because there's no incentive to do so — no extra power, greater glory, or corporate rewards. Moreover, it wouldn't help the company, only the stockholders. The management of U.S. Steel didn't want to preside over what it feared might be the declining years of the company. No management would. Rather, it wanted to increase its domain. By hedging against the possible collapse of the domestic steel industry, U.S. Steel management tried to increase its chances of long-term survival, regardless of the short-term economic consequences.

The U.S. Steel managers' deepest concern, we assume, was their own professional welfare, as well as the economically dubious goal of corporate immortality for their company.

As for Marathon's top managers, they got to divide up \$30 million in stock options exercised at the time of the sale. They also assured their continued employment, since U.S. Steel had no oil executives with whom to replace them. "They had their cake and ate it too," says *Wall Street Journal* mergers-and-acquisitions reporter Tim Metz, who followed the deal closely. "If they had accepted the higher Mobil bid, they still would have gotten the money from the options, but it would have been 'Goodbye, boys.'"

Many major institutional investors thought the deal inadvisable. They sold their U.S. Steel stock, thus driving down the price to the point where U.S. Steel itself became a candidate for takeover. Months after the Marathon deal, the steel company was again pleading with the federal government to restrict "unfair" steel imports.

The record of huge corporate acquisitions does not do the acquirers proud. In the spring of 1982, *Fortune* magazine made a careful study of the ten largest conglomerate deals of a decade earlier and concluded that "investing in unfamiliar businesses is unduly perilous."

Social scientist Herbert Simon won the Nobel Prize in Economics for, among other things, arguing that instead of "maximizing," modern managers "satisfice." That is, they satisfy a minimum performance level — whatever it takes to insure their tenure at the top. What they try to maximize is not the return to stockholders, but the return to themselves.

When they diversify their companies, they are protecting their own careers against the decline of any one line of business. Their companies' stockholders, after all, could diversify all by themselves — and at much lower prices.

It's not difficult to see how such behavior can devolve into economic irrationality. A 1982 survey showed that fully 40 percent of the Fortune 500 considered themselves likely targets for takeover attempts. Add to that every company that is planning or executing one, and you have accounted for a significant portion of management time and money that could otherwise be spent on running a business or making it more productive.

Management is not alone in this. Just imagine that you are the investment banker advising U.S. Steel on the soundness of its bid for Marathon. The true value of a corporation is, as we've seen, an elusive and controversial matter, susceptible to all sorts of value judgments. This is particularly true in the oil business, where the price is quite volatile and no one can say for certain how much it will cost to turn reserves into revenue. Of course, if U.S. Steel's investment banker, Goldman Sachs, suggests the steel company bid high for Marathon, it doesn't necessarily mean the bank did so because of self-interest, even given that investment bankers are paid as a percentage of the total deal. Yes, Goldman Sachs stood to make \$10 million in cash if the bid for Marathon prevailed, and only \$1 million if it failed; and yes, the investment banker for Mobil was in precisely the same situation; but that certainly doesn't prove that an investment banker's professional evaluation of a company's worth to its client is based largely on greed. It does suggest, however, that if you were an investment banker for an acquiring company,

you might just find yourself developing some very persuasive arguments for the financial soundness of a very high bid.

Numbers, after all, are often quite arbitrary. "Garbage in, garbage out" is what they say in the computer industry: that is, numbers are only as good as the assumptions behind them. This means that all quantitative judgments are a function of qualitative choices, no matter how concrete the numbers themselves seem. This also means that the whole notion of "cost/benefit analysis," which underlies "rational" management, may be somewhat suspect.

No industry is immune from the uncertainties of the corporate battlefield — not high tech, agribiz, or manufacturing, not even oil.

Perhaps the most hated and feared of all businesses the past few years have been the oil companies. But consider the nation's number one industrial, Exxon, and its foray into high tech. By the mid-1970's, Exxon was rolling in money and looking for new lines of business to hedge against the uncertainties of oil. But what could Exxon buy or start that wouldn't be picayune when compared with its main business — oil — which has generated more wealth than that of all but a few dozen countries?

Why, the industry of tomorrow: telecommunications. Exxon began several years ago to buy up high-tech companies and in 1981 merged them into one subsidiary called Exxon Office Systems, Inc. Who could possibly compete against a company with such enormous resources?

Howard Anderson, president of the Yankee Group, is one of the nation's foremost consultants on telecommunications. It's his company's business to watch the Exxons of this world take on the AT&Ts, the IBMs, and the Xeroxes. He makes a great deal of money explaining these companies to one another and to prospective competitors and suppliers.

He laughs at the mention of Exxon Office Systems.

"The idea was good, I'll admit," he says. "The oil companies were too dependent on fossil fuels. So they said to themselves, 'What's going to be the *next* oil industry?' Their answer? 'The information industry.'"

So Exxon looked around and asked itself, "Who, besides the giants, succeeds in this business?" And here the answer was small entrepreneurs. It's how almost all the high-tech firms began.

"Exxon bought a bunch of the hottest entrepreneurial companies and began to force-feed them with money," says Anderson. "If it had to bury a few, it would bury a few, but it assumed the winners would pay for the rest. And in the process, Exxon would get a piece of all the possible new technologies, instead of having to bet on just one."

"The last element of the Exxon strategy was not to wait for product development, for the products of the

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Thomas Friedman is the senior editor of Enterprise and has produced and/or written many of its episodes. He has been news editor of WGBH-TV's Ten O'Clock News and executive editor of The Real Paper.

Life and Death on the Corporate Battlefield by Paul Solman and Thomas Friedman will be published in January by Simon and Schuster. Copyright © 1982 by Paul Solman and Thomas Friedman.

future. Instead the motto was 'Buy market share today.' In other words, Exxon tried to build a broad customer base right away by coming in with current products — nothing too fancy, nothing much better than anyone else's."

It sounds like a good strategy, doesn't it? Unfortunately, developing an entrepreneurial company is an uncertain art. You have to understand the company and the people well. And you can never be sure of the future. The gestation period of a new company is unknown and unknowable.

Finally, says Anderson, "you need a lot of guts to make it in this industry. You can't pull the plant up by the roots all the time just to see if it's growing. J. Paul Getty once told of a meeting he had with the top management of the Seven Sisters. His company was a midget compared with theirs. But while he was personally worth a billion dollars, they were working stiffly earning two hundred thousand a year. They were afraid for their jobs, accountable to everyone. It was amateur night.

"Exxon's foray into the information business was highly vulnerable. Top management was continually being replaced by new teams that didn't understand the necessary commitment. Meanwhile, Exxon would suddenly decide it needed all available funds for wildcatting. Five years of hard work in telecommunications could be destroyed overnight."

The results of Exxon's plunge into the industry were disappointing, to say the least.

Anderson sighs. Partly, it's his natural sense of the dramatic. Partly, it's because he has seen it before.

"You have to invest in product development," he says. "That's the key to the technology business. It's like storming a medieval castle. You start with the flamethrowers — your basic products — and they start a fire inside the walls. But if you don't follow up with foot soldiers — a second round of products which can't be denied — the flamethrowers get it through the heart when the castle counterattacks — and the siege is over. To enter a market like this, you need the precision of a Rommel, the technical backup of a Krupp, the commitment of a Speer, and more luck than the Germans had, thank God.

"Exxon's strategy was beautiful in its conception and bungled in its implementation, because that's usually how the world is."

One need not feel compassion for the mighty, of course, but one should at least acknowledge when they have fallen — flat on their faces.

One of Exxon's biggest mistakes may have cost it \$600 million. That's what *Fortune* estimates Exxon had lost by late 1981 on its 1979, \$1.2-billion purchase of Reliance Electric.

Exxon had paid an enormous premium for Reliance (almost twice Reliance's market price of \$40 a share) because it wanted an electric company that could mass-produce its "alternating-current synthesizer," an energy-saving device it had developed to raise the efficiency of

most electric motors. Exxon thought the synthesizer was just about ready to bring to market, and Booz, Allen & Hamilton, the consulting firm, advised the oil company that unless it introduced the device in a big way, imitators would soon overtake it. So Exxon rushed ahead and bought Reliance.

There was one small flaw in the plan. Exxon based all its calculations on a false assumption: that its device could be produced cheaply enough — by Reliance or any other firm — to make economic sense. As events soon proved, it could not. The Exxon synthesizer was neither a technological breakthrough nor cost-effective. It was a total bust.

Exxon would have been happy to let it go at that, but the Reliance story soon took an even worse turn. Reliance, on the eve of its acquisition by Exxon, had made an acquisition of its own. It had bought the Federal Pacific Electric Company from UV Industries for \$345 million. What Reliance (and Exxon) didn't know was that Federal Pacific had cheated for years on tests of its circuit breakers by Underwriters Laboratories. (Without UL certification, the circuit breakers would have been unsalable.) Federal Pacific was found out in late 1979, after it had become Reliance's subsidiary. In 1980, the company lost UL certification on all its circuit breakers (which had accounted for \$100 million in sales the year before) and faced a \$200-million recall.

According to *Fortune*, Reliance would have had to earn \$375 million in 1980 to match the rate of return on Exxon's energy operations. In Reliance's best recent year, it earned only \$65 million. In 1980, it lost \$42 million.

This was one takeover in which the taker was taken.

All businesses, from Exxon to Al's Widgets, share another huge problem: they must try to predict the future. With virtually every product, the lag between an idea's inception and its corporeal reality is long enough so that businesspeople are forced to divine the environment into which their products will be thrust. But as virtually every oracle from Delphi to Dixon has demonstrated, divination is no piece of cake.

The television industry is a perfect example, as the experience of Maury Carr clearly demonstrates. Maury (whose name has been changed) went to Hollywood at the age of 25 and carved out a successful career as a television writer. But he knew, as all Hollywood writers do, that the real money in television is not in writing, but in developing your own series, so in the early 1970's he came up with an idea for a show titled *O'Hara* and wrote the pilot.

O'Hara was a detective who had just quit the overly stressful New York City Police Department and gone to work as the chief of police in a small Vermont town. At first his life had little excitement; the high point of his day was the arrival of yesterday's copy of the *New York Post* by Greyhound bus. But then a dog was found dead on Main Street, and when O'Hara investigated, an apparently simple case of houndicide turned into homicide.

O'Hara was taken under the wing of one of the many

independent Hollywood production companies and then discussed with the networks. It made it all the way to step three or four of the review process. Unfortunately, there are about seventeen such steps, depending on who's counting. *O'Hara* was headed for the same fate as the dog on Main Street.

Maury professed no surprise. He explained, in his native Brooklynese, that any series idea is an incredible long shot. He described, as he imagined it, the desk of the then president of NBC, Fred Silverman:

"He must have piles of series ideas lying there in front of him, with every human situation a person could think up: a man, a woman, and two kids living on a houseboat; three midgets running a newsroom; a million monkeys trying to write *Hamlet*. You name it, Silverman's got it in front of him on his desk. In that crowd, *O'Hara* isn't likely to stand out."

It was also the wrong time for another ugly hero. There had been a bunch of funny-looking cops at the time — Columbo, Kojak, McCloud — all "off-center" heroes. Both Charles Durning and Jackie Gleason were contacted about playing *O'Hara*. But by the time *O'Hara* made it past the first couple of hurdles, a trend toward glamorous actors was emerging, with *Charlie's Angels* and *Starsky and Hutch*.

O'Hara was part of an earlier trend which, around the networks, was called "a reverse *McCloud*," since *McCloud* was a small-town cop in New York, and *O'Hara* was a New York cop in a small town. In general, that theme appealed to them. "A fish out of water always works," they would tell Maury reassuringly. "Like *The Beverly Hillbillies*."

"*O'Hara* was hot for about a year," explains Maury, "but by the time people were taking it really seriously, the shift had come. Someone had sensed a new trend. Oahu was in, Vermont was out."

But then one day several years later, Maury received a call from the head of the production house. It had just talked to the horror novelist Stephen King, who was receiving an enormous amount of publicity in the wake of the movie *Carrie*, which was based on his book of the same name. King had several other best sellers, some of which were slated for, or already in, movie production. For a sizeable percentage, he was willing to lend his name to a television series (any television series) made by the production house.

Now, Stephen King had no track record in television, but both horror and King were hot at the moment. If King was hot, then he was "bankable" (salable to a network). His name alone was worth money, in that it might induce a network to buy a pilot, even though the series would not go on the air for at least a year, probably two, and by that time, for all anyone knew, the public would be clamoring for sex comedies.

At any rate, the head of the production house had an idea he wished to bounce off Maury. Did Maury remember

O'Hara, lying fallow all this time?

Maury did.

Well, how about using the same characters, the same setting as *O'Hara* with one little difference: when the chief of police's investigation culminates at the climax of each episode, it will turn out that the crime has a supernatural explanation, as horrible and Stephen King-like as possible?

"You want to know how crazy this business can be?" asks Maury. "I told them to go ahead. I knew that the series had a better shot with Stephen King's name than without it, despite the fact that he had never done anything in television other than switch channels, that he wouldn't be really involved, that the horror-and-supernatural genre hadn't taken hold on television, and the series idea was totally ridiculous. But everyone was playing the future. Stephen King was *going to be* hot on television, so he was hot, and the production houses went after him."

Since the future is unknowable, businesses desperately search the present for clues. What will the public want in two years? Maybe what it is beginning to want today. Who would know best what the public wants? Other companies. So businesses watch one another, looking for trends and then often following them with herdlike instinct.

"The people in the television and film business are full of platitudes," says Maury. "They sound intelligent — a lot of them are Harvard- and Yale-educated, with a sprinkling of M.B.A.s — but the degree of self-delusion is very high. No one will admit it's a crapshoot."

"'Nobody wants to see a show about a mean mother,' they'll say. Then a show with a rotten mother is a hit and they all put rotten mothers in their shows."

"'Don't do sports pictures' is an industry rule. But I know a guy from United Artists who, after seeing *Rocky*, decided that the rule no longer applied. 'Let's do sports pictures,' he said. Can you imagine? He actually thought the success of *Rocky* was due to its being a sports picture. He thought he had discovered a new trend."

"In the past ten or so years there have been only two very successful Westerns, and one of them was *Blazing Saddles* [the other, *Butch Cassidy*]. So studio heads decided that people don't want to see Westerns. Television executives wouldn't give the most distinguished writer in the world five minutes to pitch one. After the disaster of *Heaven's Gate*, Sherry Lansing, the president of Fox, said flatly, 'We'll never do another Western.'"

"But there's no doubt in my mind that if someone breaks through with a Western hit — say, a Lucas or Spielberg — then everyone who says you can't make it with a Western will be scrambling to produce one."

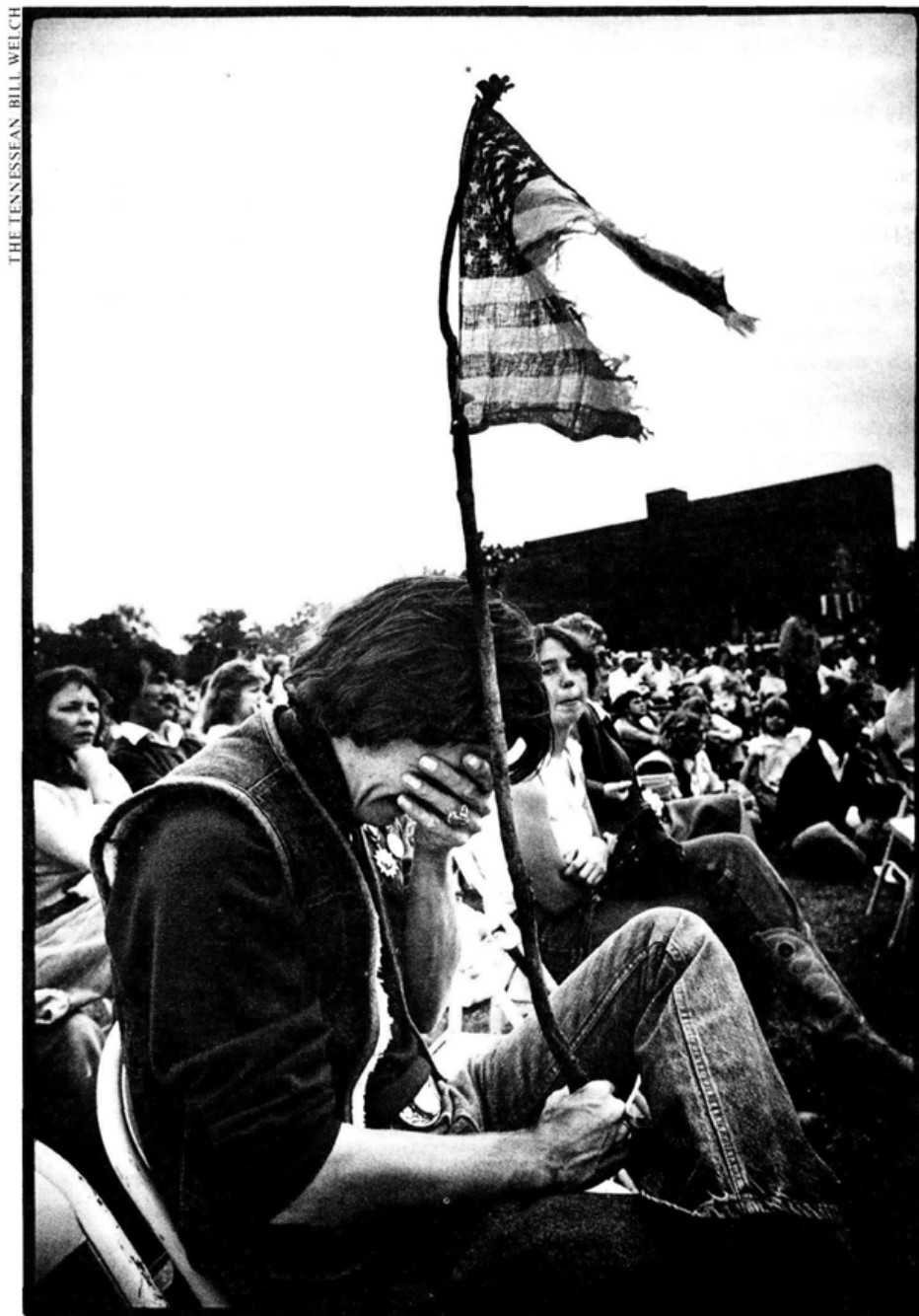
As Hollywood mogul Sam Goldwyn once said, "Forecasts are dangerous, particularly those about the future."

continued on page 69

Fragile Moments

BILL WELCH

A sensitive photographer deals with the difficult assignments.



THE TENNESSEAN BILL WELCH

Through the viewfinder of my camera I could see people looking sympathetically at the Vietnam veteran, tears in his eyes, the tattered American flag in his hand.

His very private moment was on public view — and I was photographing that moment for thousands of newspaper readers. I was depicting his personal sadness, his inner pain, his solitary reminiscence of his experiences in Vietnam.

I had come to Centennial Park that day, October 4, 1981, to observe and to photograph events as Nashville paid its salute to the near-forgotten veterans of a controversial war.

By chance I had come across this former soldier who was consumed by the hurtful impact of remembering lost friends and shattered dreams.

I have no idea how other photojournalists feel at such moments, but I suspect that no matter how experienced or “professional” they are, somewhere within them there is something of what I felt: a sense of intruding on an almost embarrassingly intimate time.

Suddenly I sensed the mood of other people nearby.

I was “news media” preying on grief, exploiting tragedy, exposing the raw nerve of sadness. I was a “flesh fly.”

Through the viewfinder I could see people glaring at me as if I were committing some obscene act.

I understood what my job was. I had come to this huge gathering in the park to try to capture on film the

essence of the community's day of tribute to veterans who had been denied even words of thanks for what they had done for our country.

The point of the assignment, ideally, was to give thousands of newspaper subscribers, through their viewing of photographs, a means of understanding and even sharing what this event was all about.

The picture of the suffering of Scott Summer — the veteran I was photographing — symbolized that day for me. It was a day of mixed emotions, a celebration with tears.

I attended that day with a good deal of personal curiosity, as well as a journalistic interest. I wondered, given the complexity of the issues surrounding the war, what form this salute would take. How would the city honor veterans of a war most citizens were trying to forget? How would veterans, who strongly feel their service had been demeaned and who believe society wanted to forget them, react to the day?

I had not gone to Vietnam. I had been just the right age. I had tried to go and had been turned down for physical reasons. But I experienced that time at home. For my part, I never want to forget about it.

In the park that day I was struck by the military hardware on display. There seemed to me to be irony at the sight of children climbing at play all over an M-60 tank. By chance I bumped into a friend and I expressed surprise at the presence of the military weaponry.

"It was part of the war," he said, "just like the men who were there."

There were special events — a helicopter taking off and a paratrooper

from the 101st Airborne parachuting to earth, an American flag streaming behind him. There was music, and there was speech-making.

A TATTERED FLAG

I worried inwardly about "celebrating war." I took pictures of what was going on, the speech-makers, the parachutist, the children on the tank. But still I was looking for a single scene that would communicate the symbolism of this unique funereal festival.

Then I saw a man waving that small tattered flag. There was an isolated presence about him — a man alone in a crowd. I began to photograph him, attempting not to invade what seemed to me to be his reverie of controlled misery.

As some participants in the ceremony were retiring the colors, I approached him to ask his name, address, and something about his service in Vietnam.

Scott Summer was friendly. The ragged flag had belonged to his best friend, Kenny Brown, he said. They had come from Fort Scott, Kansas, and joined the army together. Kenny was a door gunner on a helicopter; Scott, a medic.

Kenny had been killed November 3, 1970 — Scott's birthday. On this day Kenny was on Scott's mind. Scott was remembering times when the two of them would get together in Vietnam. Scott loved chocolates; Kenny loved beer. They would meet and swap beer and chocolates — and enjoy talking about home.

Somehow, Scott said, he did not feel that he was "home" from Vietnam yet. It was, this day, almost as if he were still in Vietnam. Tears welled up in his eyes. He started to cry. Again, I began to photograph him.

He put his head in his hand. The drama of the moment peaked. I stopped photographing.

I said goodbye. I had the picture that to me symbolized the day. I

should have been happy. Somehow, as I walked to my car, I didn't like myself very much.

Driving back to the newspaper I tried to evaluate why I felt that way. I knew that what I had on film was powerful. If anything could move people to understand the Vietnam veteran's situation — first rejected, then forgotten but still clinging to what remained of national idealism — it was the picture of Scott Summer.

But how would Scott and those who had been around him feel when they viewed the photograph, knowing that I had taken advantage of his most vulnerable moment?

REACTION FROM THE VETERAN

The picture ran on the front page the next morning — and the response was immediate.

The Associated Press selected it and sent it out to newspapers in other cities. It made the front page in Boston, and a reporter called to ask how I had come to take it. Locally, people began to telephone me. Two women who said they lost friends in Vietnam asked me to send them copies of the picture.

Then Scott Summer called. His voice was warm. He said he appreciated the picture. It had helped him to see himself weeping publicly. His attitude made me choke up. I started crying on the phone. Scott said the torn flag expressed the way he and many other veterans felt — "torn up and dilapidated inside."

Journalists need to care about what they do and about people they deal with in covering the news. Since that experience with Scott Summer I have reflected on other assignments.

LIFE-OR-DEATH ENCOUNTER

On Father's Day, last June 21, I was driving across the Shelby Street bridge in Nashville and observed a

Bill Welch, with The Tennessean in Nashville, has been a newspaper photographer for eight years. Prior to that, he worked in urban planning. This article first appeared in The Tennessean and was also published in The Gannetteer. It appears here with permission.



police officer turning back traffic. I sensed a suicide attempt: a news picture.

I parked my car and reluctantly walked up the bridge. I could see a knot of police officers grouped together. But at first I didn't see the young man who was poised nonchalantly on a huge pipe outside the bridge railing.

When I first noticed him, he was looking down at the water. His name, I would later learn, was Steve Young.

I was afraid that if I approached I might disrupt an intense, emotional scene in which officers were trying to coax Young back over the railing to safety.

Suddenly I was looking at him through my 500 mm lens. He seemed detached, but his face was all too close. I began pressing the shutter release from a distance.

It was a life-or-death encounter, and I felt the tension. I was afraid that

in the flicker of an eye a human life would be lost. For a moment the pressure got to me, and I took my eye away from the viewfinder. Suddenly the police grabbed the man and overpowered him, hauling him to safety. Automatically I clicked the shutter release.

The pictures I developed told the story. They told how a young man, so involved in this pressure-cooker society, thought of taking his life. Police later said he had argued with his wife, and the argument had touched off an emotional upheaval. The photographs showed dedicated police officers working carefully, cautiously, then quickly and effectively to save a human life.

The photographs said something about how people can be lonely in a crowded city. They said something about how people are alienated — especially men who in their own way are culturally deprived because they

are taught it is unmanly to talk about their problems.

So often people are unable to reach out to others when they need help.

And the rest of us are so involved with our own problems in our own lives, we fail to reach out to those who need us. We don't take the time to listen to the quiet cries of anguish all around us. We rely on institutions to provide networks of communication for people in trouble.

And in such cases as that of Steve Young, as the photographs indicate, the institutions also fail. In this case the police department, the institution that has often taken a rap from the news media, did not fail. It saved a life.

The messages may be subtle in such a news story. Yet I believe that there are values in such photographic accounts.

But how do those values balance against the cold reality that I capital-



ized on the emotional trauma of one person? How do they balance against the possible stigma that Steve Young will thereafter be known as a man who seriously contemplated suicide? This is the dilemma of the journalist.

REACTION TO TRAGEDY

I have never enjoyed or even felt comfortable about covering a news story where violence or tragedy had occurred. I know there are journalists who feel differently.

I remember with sadness my first job as a photographer on a small newspaper in Kentucky. One night there was a traffic accident in an adjoining county. The wife of a public official had been killed. As the news developed during the evening, we learned that the four children of the public official also had died in the crash.

I recall the shock and disgust I felt when an editor callously said:

"This story gets better and better."

He seemed to relish the opportunity to report on sorrow multiplied.

I hope that most news people I know would react as I did, with revulsion, to such a statement. Still, there is always an ambivalence that most of us feel when confronted by the realization that bad news can make big news.

We deal with the same sort of dichotomy when we look at violence and crime in our community. There is no joy in photographing it or reporting it. Still, news about it often depicts society as it truly is.

A BEATEN CHILD

On August 21, 1981, I stood with three other photographers outside General Hospital waiting for a picture of a three-year-old girl, Brandi Doolittle,

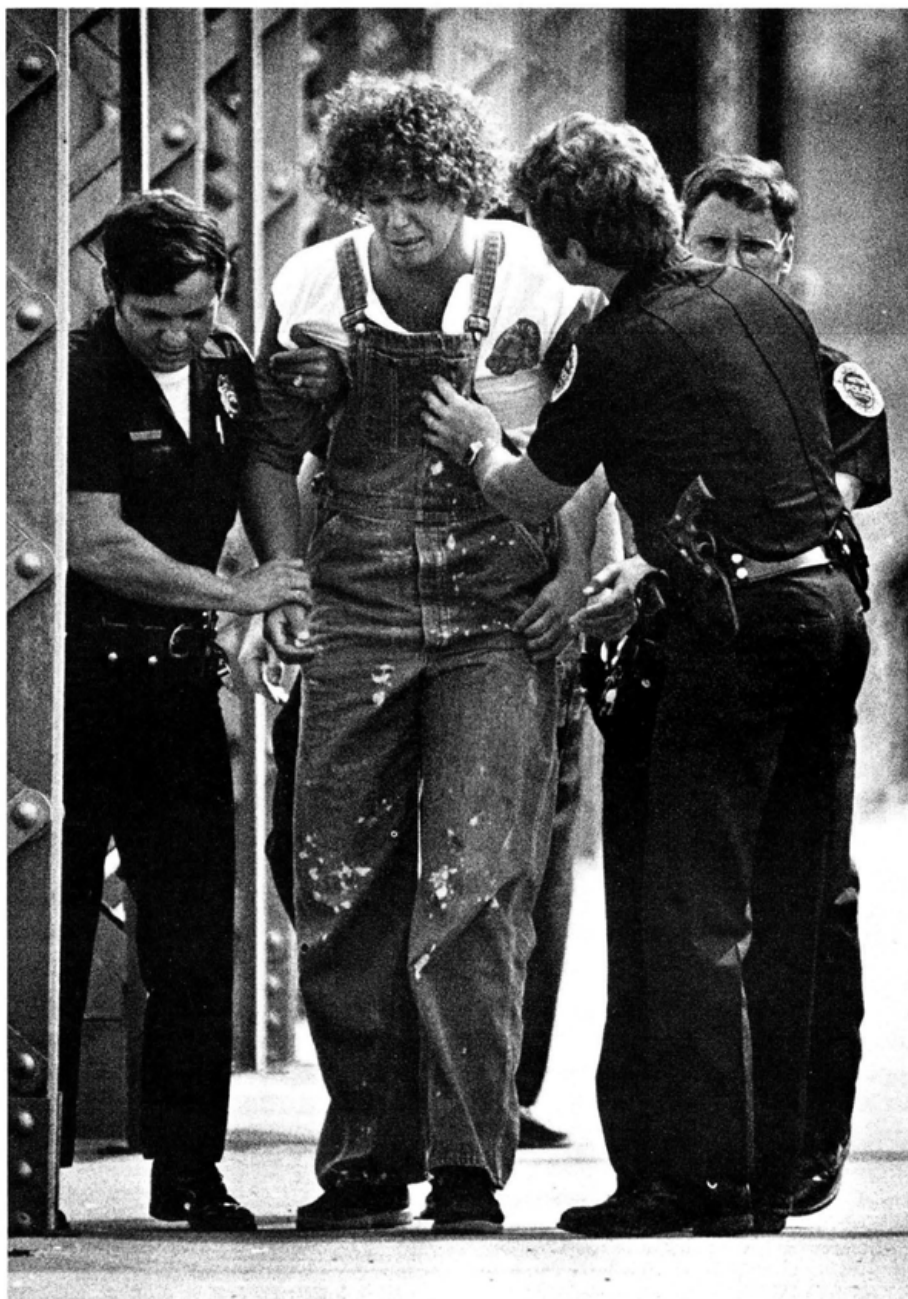
who had been beaten and sexually molested. It was a grim wait. To think of it in one way, it was a gruesome assignment. Still, child abuse is a frighteningly real problem for this country and for our community. And so I waited.

I never saw the picture through the viewfinder when I took it. It was not until I had printed it that I saw the photograph so excruciatingly painful that I could hardly bear to look at it.

Even then, hours after it was taken, I had no idea that the life of that child was ebbing at the moment the shutter snapped. But it was obvious that she was gravely injured.

She died.

Her death makes it all the more difficult for me to look at that picture. And still it is important to look at it and remember — as it is to look at the photographic reproductions of the face of the man who is charged with her death.



In my view, there is no more heinous crime than child abuse. The tragedy of victims like Brandi Doolittle is that they lose their lives to those who act in patterns of learned behavior.

I believe that those who think about the story of Brandi's death, as recounted in news reports, at least are forced to think about the senselessness of why she was beaten and why she died.

TWO WASTED LIVES

Sometimes photographers are sent to cover assignments about which they know little. Reporters who cover crime are assigned to stories at their inception and often keep current by reporting on subsequent developments.

I recall an emotionally charged photograph I had made of a young man weeping openly in criminal court. The picture appeared in *The Tennes-*

sean, showing Charles Michael Gentry, 18, sobbing uncontrollably and near collapse as his attorney, William C. Wilson, stood stoically at his side, helping support him.

In the background the word "murder" — underlined — appeared on a jury-room blackboard.

The picture sent me to the newspaper morgue to dig out earlier clippings and find out all I could about this young man convicted of killing a Metro police officer.

Since the age of 14 he had been in trouble with the law. There had been a series of burglaries. On one occasion he took an overdose of drugs along with whiskey and his family rushed him to the hospital to have his stomach pumped.

Home from the hospital, he went immediately to the kitchen and got a butcher knife and tried to take his life.

His parents said he had "an obsession" for marijuana.

At his trial numerous psychiatric and psychological experts testified about his sanity. There was no agreement. There was enough evidence to indicate to the court that he knew right from wrong, and so he was convicted of murder.

One psychologist described the young man as "a nice, clean-cut case" of a psychopathic personality. He had above-average intelligence.

The psychologist said that Gentry's self-control was so weak that he could not abide by rules and regulations when he felt frustration. Minor upsets could "throw him out of control," according to the testimony.

In October 1975 a Juvenile Court judge had put young Mike Gentry under the care of a psychologist.

The following February, when Patrolman George Hall tried to arrest him, Mike Gentry shot the officer to death.

There are those who will say Mike Gentry was a "bad seed." Others will say he was emotionally unstable and sorely needed more help than either society could give him or he wanted to accept.

The photograph in the courtroom



reflects two wasted lives: that of Officer Hall and that of Mike Gentry. I have no idea whether the picture I took made many people think. I know it made me think.

JOURNALISTS AND VIOLENCE

Violence is all around us. It hits people we know, sometimes those who are close to us.

I was jolted on May 15, 1981, when I learned of the murder of the Reverend John Jay Jackson, a Catholic priest who was killed in the Parish House in Jackson, Tennessee.

We had graduated from Tullahoma Senior High School together in the spring of 1964.

I couldn't acknowledge it at the time, but I think I was envious of Jay. He was an athlete. He was outgoing. He was popular. I fear I was none of those things.

I lost track of him after we left high school, but he continued to excel. After college he became a U.S. Air Force pilot transporting bodies and the wounded from Saigon to the United States.

He was in that war where I had tried to be. After two years he decided that he couldn't participate in the military any longer, and he applied for status as a conscientious objector. That took real courage. He was given an honorable discharge.

He was ordained a priest in July 1980, after spending time as a newspaperman and then changing careers to work for the Jackson Area Council on Alcoholism.

A friend of his described him as "the most giving person you'd ever meet in your life." My envy now is admiration.

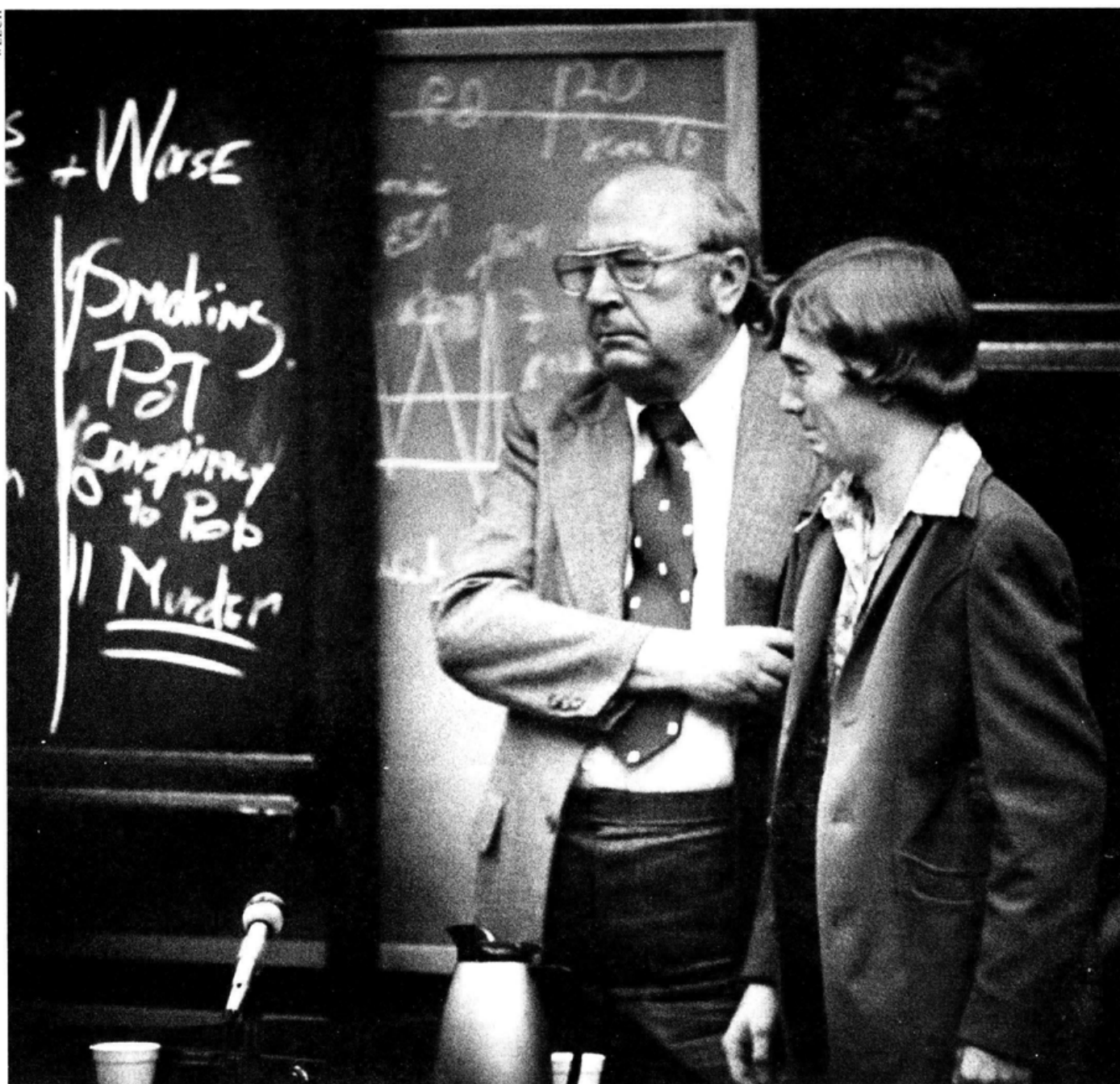
Another friend of mine was the victim of violence — Harry Walden, who worked at Johnny's Sak-Full Market.

He was the person on duty there when I would walk the block from my house to shop. I didn't know his name before he died. But I still knew him well. He was polite, helpful, friendly. I remember him as a good man.

On the night of August 1, 1981, the store was robbed and he was killed accidentally by Officer Joyce Allen. I walk to that store still almost daily. And it is hard to go in there and not think of this friend whose name I never knew until violence claimed his life.

There is a tendency to say of the people accused of killing Brandi Doolittle and Father Jackson, "burn them" or "stick them away in a dark hole" or "torture them." Still, killers are products of a society that always has tolerated and frequently taught violence.

Journalists, especially those who use their cameras to report on society, don't pretend to have answers to the



violence, death and tragedy they expose. As human beings we are as stunned and awed and frightened by some of the stories we cover as are news readers who find out from us what is going on in our cities.

But it does seem to me if more people reached out to others and said it was okay to hurt, and that people were willing to listen, then maybe more people would open up.

People seem to react to natural

disasters with great charity but also frequently to overlook the many small human disasters all around us, not realizing — until the numbers are added up — how big the total is.

A GLIMMER OF TRUTH

Most journalists I know reject the idea that "bad news is good news." But bad news is news. And pictures that

vividly portray real life scenes of tragedy are part of that news. They tell us how acts of violence threaten to consume us.

That is less than profound. But as long as such photographs provide at least a glimmer of human truth, I will continue to make them, believing that society needs to be reminded regularly of its dark side — unless and until I am consumed by the feeling that I am not a photojournalist but a "flesh fly."

Afrikaner View Of Press and Government

BERNARD RUBIN

Every day, dominant political figures in the National Party have to deal with stories in the press that they consider unfair.

Condemnations of the foreign press, especially of allegedly distorted accounts carried by media in the United States and Western Europe, are frequently expressed by Afrikaner leaders. The dominant political figures of the National Party, led by Prime Minister Pieter Willem Botha, feel beleaguered in a world that disapproves of the apartheid policies and programs which they support. In their collective view, virtually every day they have to deal with stories ranging from sports to business, from military affairs to human rights, that they consider unfair.

The paranoia on the subject of the media environment (which they do not control) is very real, and becomes heightened when dramatic events increase the number of reporters who track South African events.

Concerns about bias directed against South Africa, real or imagined, are not limited to those in government circles or to the foreign press: scholars, businesspeople, and farmers tend to share a *laager* (defensive) attitude about unfriendly media.

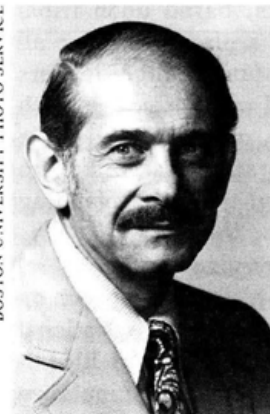
Reports filed abroad about abysmal conditions in the black township of Soweto, contiguous to Johannesburg; the mysterious death of Dr. Neil Aggett (a white organizer of a primarily black trade union) who was found hanged in his jail cell in Pretoria's security police headquarters last February; military adventures in Angola; these are a few samples of what is derided.

At home, many supporters of the government urge a "disciplined" press, to use their terminology. The "liberal" or "progressive" newspapers and magazines published primarily in the English language by opponents of apartheid are felt to be very troublesome. There is the desire to do something about the problem. Restraint claimed to be shown by government officials does not extend to hesitation about warning the domestic press to censor itself or face harsh official actions.

There is also a contravening body of opinion in the Afrikaner community — definitely of minority standing — that centers on a new realism about the need to change the country in order to end its international status as a pariah nation. Much anti-South African feeling abroad is triggered by lamentable governmental actions there on the human rights fronts.

In connection with a series of lectures and seminars arranged under a cultural program of the United States Information Agency, this observer had the rare opportunity last July to discuss the press-government relationship with a cross-section of white Afrikaner leadership from the private and public sectors in the Transvaal — in Johannesburg, Pretoria, Bloemfontein, and Potchefstroom. These discussions and meetings, marked by a

BOSTON UNIVERSITY PHOTO SERVICE



Bernard Rubin is Professor of Government Affairs and Communication, Boston University. He spent a month this past summer traveling and lecturing in Malawi, Zimbabwe, Lesotho, and South Africa under the sponsorship of the United States Information Agency. He spoke on "The New World Information Order: American Viewpoints" and "Communication for National Development: Roles for Free and Responsible Media." This account of his discussions with Afrikaner leaders in the Transvaal is first of a two-part series.

candid and friendly exchange of views, were reflective of those brought up in the Afrikaan cultural traditions.

One has only to spend a couple of hours at the historical museum in Bloemfontein, the city many consider the heart of conservative thinking, to understand how deep certain Afrikaner feelings flow. There the exhibits display in graphic detail the travails of the Boers in their struggles to fashion a homeland despite all the opposition from the British or from the "ethnics" — primarily the Zulu, Xhosa, and Basutu peoples. Wars and privations are recorded, reminding Afrikaners of terrible times before and at the turning years from the nineteenth to this century. Concentration camps in South Africa, where thousands of women and children perished, concentration camps in Ceylon to which thousands of Boer fighters were consigned are portions of the history highlighted in that museum. One senses links between Afrikaners and Israelis who look into the mirrors of tragic circumstances.

For all that, there are those — primarily younger leaders — who look to find new ways to escape old national dilemmas. They recognize that races will have to live together in reasonable harmony; that equality under the law is a standard accepted by the democratic world; that South African development is hamstrung by preoccupation with the subject of racial identities; that the health of any single community is realistically dependent upon the health of all other communities.

So, there is a real crack in the unity of the Afrikaner community when it comes to the support of apartheid. This is not to suggest that the Afrikaner does not fear the population numbers which show how small the politically and socially divided white population is as compared to blacks. Even the government of Prime Minister Botha is forced to tempt fate by toying with the ideas of reform. Even loyalty to the prevailing notions of dividing the territory of South Africa in order to separate whites and blacks by the creation of independent nations for each is shaky. The "homelands" for blacks, based upon tribal affiliations, are simply one result of a plan to deprive all blacks of South African citizenship. Many younger leaders appreciate that the rest of the world will not accept such clear and dangerous racial divisions, promoted under the guise of enfranchisement of people strictly according to tribal origins. It has been pointed out that such planning also creates the myth of a white tribe there.

Certainly, Mr. Botha did not respond to the liberal opinion in his party and country with his curious speech on governmental reorganization, delivered to the National Party faithful in the Transvaal heartland city of Bloemfontein on July 30, 1982. Among other manipulative changes in structure, he proposed a three-chamber legislature divided for whites, coloureds, and Indians. The racial ratios for the would-be legislature are not yet announced, but implications can be drawn from the proposal for a President's Council to consist of twenty

whites, ten coloureds and five Indians elected by their respective chambers, plus twenty-five members appointed by the President. The President is to be elected by an electoral college composed of fifty whites, twenty-five coloureds and thirteen Indians elected in a peculiar procedure by their respective chambers. Blacks are not included in the scheme; there is the announcement that meetings will be held later in the year with leaders of the "homelands" ("independent" or otherwise), about how South Africa might become a confederation of self-governing entities.

The opposition to the government for apartheid was quick to respond. The Reverend Cecil Begbie, vice president of the Witwatersrand Council of Churches, felt that the changes were meaningless so long as the blacks were excluded from participation. Dr. Farouk Meer, of the Natal Indian Congress, declared the Botha proposals to be a "sham and an attempt to alienate the Indian and coloured people from their natural allies — the remainder of the black population of South Africa." Mr. Steve Kgama termed the new plan a "three-legged mockery of a parliament." ("I feel conned," says Indian leader — and others agree" appeared in *The Star*, Johannesburg, July 31, 1982.) The 4,000 party stalwarts assembled to listen to the Prime Minister cheered only at his pronouncements that a separate state for coloureds was "entirely impracticable" and that provincial boundaries would remain unchanged for the present. To this observer, watching Mr. Botha on television outlining his plans in Afrikaans was somewhat frustrating. Why were his listeners in that great hall so stone-faced most of the time? The next day, reading the speech (long-awaited in the country by both optimists and pessimists of the political spectrum), I realized why the stares of the faithful were so blank. For them, for better or worse, it was akin to a visit to the dentist: "No extractions this time" — after his examination of the problem — was as good as the pronouncement of health.

The presumption that Mr. Botha spoke for his nation or for his fellow Afrikaners just doesn't bear up. Truly, as it was given to me to understand by many thoughtful people, within miles of Bloemfontein there are unreconstructed apartheiders who would never give an inch. On the other hand, those same thoughtful people claim (perhaps wistfully) that the diehards are a minority.

The Afrikaner is willing to move progressively, or if you will, liberally, but doesn't know with any degree of certainty what moves to support.

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Mr. Barend Du Plessis had just been appointed Deputy Minister of Information when I met with him. His task is formidable, coming as he does on the heels of government information scandals of recent years, involving heavy-handed attempts to influence the press at home and

abroad — for example, the attempt to acquire *The Washington Star* by using secret funds. Such skulduggery ended the regime of former Prime Minister John Vorster, when the story was made public. Barend Du Plessis responded to my questions in a most direct manner — candid and anxious to have me understand the situation he faced. Mr. Du Plessis has an administrative rather than an information professional background. Although many observers consider him to be one of the more important younger politicians, they tend not to overestimate his chances, conceding that he has more diplomatic prowess and popular appeal than most Afrikaner leaders. He is presently acceptable with most middle-level scholars and younger politicians.

Mr. David Dalling, spokesman for the opposition Progressive Federal Party, told me that Du Plessis might have the best of intentions but will face considerable inertia from the arch-conservatives in his National Party who see any conciliatory efforts towards blacks as part of an attempt to deprive Afrikaners of power to rule. (The PFP supports universal suffrage in a federal system and also fair civil rights for all.)

What, I asked Du Plessis, was his reaction to the Steyn Commission Report, a tome of some 1300 pages? (The product of a government commission composed entirely of whites, the report supports the licensing of reporters, the establishment of standards of conduct for the press by government appointees, and the reorganization of the English-language press, which is so strongly opposed to many government policies.) In particular, I wanted to know why the South African government would support the licensing of journalists and the attendant press restrictions, when leading Western powers, especially the United States, were opposing such pernicious and anti-free press concepts. Registration or licensing of journalists has been a feature of the so-called New World Information Order, pushed since 1976 by UNESCO, with Second World, particularly Soviet-inspired, support of Third World sloganeering about the sensational press practices of Western news agencies.

Du Plessis suggested that the government was sensitive to pressures on that matter and that the Steyn Report was definitely a matter for study rather than immediate action. We discussed the implications of licensing, in terms of its ramifications for reporters, publishers, and creative people in general. I felt that we agreed that professional standards were better left to professional associations, privately agreed upon codes of ethics and well-drawn democratic laws defining such subjects as libel, defamation, invasion of privacy, security and information, etc.

The conversation then turned to such subjects as the bad press which Afrikaners claim South Africa receives abroad. Were the reports in the main unfair, I inquired, or were subjects objectively treated and unfavorable to the South African government? Even while I was posing the



NEALE MORGAN

Bishop Desmond Tutu, General Secretary of the South African Council of Churches, is one of his nation's leading opponents of apartheid.

On August 3, 1982, Columbia University awarded him an honorary doctorate in sacred theology. The President of Columbia University and three colleagues traveled from New York to Johannesburg in order to confer the honor personally, because Bishop Tutu's passport had been revoked in 1981 after he spoke against apartheid on a European tour and urged other governments to put pressure on South Africa by cutting off their trade.

Nonetheless, as a result of strenuous efforts by the Presiding Bishop of the Episcopal Church, John M. Allin, and by the former and present ambassadors to South Africa, the government was persuaded the next month to issue a special 19-day permit allowing Bishop Tutu to travel to the United States to attend the General Convention of the Episcopal Church. At the New Orleans gathering in September, he told those present with wry amusement that the document he had been given indicates that his nationality is "undeterminable at present." □

question, I could not help but notice that the only document on the table beside the tea and cakes was the March 14, 1982, magazine section of *The Sunday New York Times*. A photograph of Bishop Tutu dominated the cover, calling attention to a piece inside by Joseph Lelyveld. Someone had provided me with a cue, so I went on to ask why Bishop Tutu, the black leader suggested for the Nobel Peace Prize by his supporters, was denied permission to travel outside of his country. Was it "bad press" in that situation because of distortions by journalists upholding democratic standards of human rights?

Before dealing with responses from Mr. Du Plessis — which were honest and thoughtful — let me mention other questions I asked, pertinent to the Tutu situation.

Why was Mrs. Helen Joseph kept under banning

orders — house arrest — for so many years? Her ardent anti-apartheidism was the root cause, as was her alleged danger to the nation, in government eyes. A persistent critic of the system, she was among the first singled out for banning, beginning in 1962. Recently released, she said she would speak out again and, she added, probably be banned again. Were the stories about this elegant septuagenarian woman unfair to South Africa?

Were stories printed abroad about conditions in Soweto township unfair to South Africa?

Mr. Du Plessis appreciated where I was heading with my questions. He recognized that selective perception was at play in his party and in his country. He accepted my premises as worthy of most serious study. As a visitor who knew the United States fairly well, he understood that the American views on freedom of speech, press, assembly, petition, and religion were strongly held. He personally wants changes of a constructive nature, but he knows how constrained he is by deep-rooted Afrikaner political sentiments ranging from the conservative to the reactionary.

In my view, Du Plessis wonders whether I was right about Tutu and Joseph. Like many of his colleagues, he has yet to fully understand why Americans can be as incensed about house arrest without trial as about an unjust prison sentence after it. It is said by South Africans that for those trained in the modified Dutch-Roman legal tradition, the basic premise of *habeus corpus* is not as clear as it is for those of us in the common-law/American juridical tradition. Bills of rights are not held to be as basic as they are here. Thomas Jefferson is seen as a romantic by many Afrikaner scholars and not one of the great pragmatic politicians. That is why we agreed, Du Plessis and I, that South Africa is trying to accommodate itself to new realities in the struggle between democracy and totalitarianism. He senses that most Americans don't really understand that governments can label themselves or be labeled authoritarian while veering toward totalitarianism.

Du Plessis may fail as his predecessors have. He may take the easy way out of the struggle. Like so many of his colleagues he wants change but doesn't know which changes he wants. Unlike those in his Nationalist Party who cling to more extreme rightist ideology, Du Plessis is one of the many younger Afrikaner leaders who have opened serious dialogue with critics of apartheid.

The ombudsman of the *Rand Daily Mail*, Mr. James McClurg, wishes Du Plessis "well in his difficult assignment," but is worried about some language the new minister has used. In particular, the Du Plessis suggestion that news be "toned down" during the period when the government is working on "reform" bothers McClurg. He doesn't give Du Plessis much of a chance to change the overall informational picture because "The harsh truth is that most of our Ministers prefer to work in the dark and dole out information grudgingly when it suits them.

Nothing but a revolution can change that. And the only man who can mount such a revolution is the Prime Minister."

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The Steyn Commission Report on the press, although kept on the back burner as a residual threat that the government can use against the press, has given stimulus to the Registration of Newspapers Amendment Act. Promulgated in the *Government Gazette* in June 1982, it will come into effect on a date to be announced. Mr. Peter McClean, President of the Newspaper Press Union, has demanded that the government suspend its enactment indefinitely. Rightfully, McClean condemns the Act as designed to put the press into the hands of "arrogant and intolerant bureaucracy." The Act would frustrate reportorial initiatives in such interesting areas as governmental maladministration, disregard for human rights, misuses of public monies, injustice and violations of public trust, according to John Battersby, writing in the *Rand Daily Mail*, July 28, 1982.

At the Institute for Contemporary History of the University of the Orange Free State, a unique computerized service keeps track of the ways that the press reports on its own problems vis-à-vis the government and related subjects. It monitors 33 South African newspapers and 40 South African periodicals, as well as selected foreign publications, collecting and filing more than 10,000 reports and articles. Information can be retrieved instantly on the basis of key words or subjects. I asked the director of the Institute to retrieve a sample of clippings that I had selected at random from the first week in June, 1982. As one basis of insight into the situation, they are interesting.

On June 2, Professor P. J. Cillie, head of the Journalism Department at the University of Stellenbosch, was quoted as calling for "all institutions and authorities, as well as all men of good will" to stand with the Newspaper Press Union to protect a free South African press (*The Argus*, June 6, 1982). The next day, the son of the distinguished editor of the *Friend* (published in Bloemfontein) recounts how his father faced persistent attacks on freedom of the press. (He had been the editor from 1906 to 1939.) One excerpt dealt with a reply to the Secretary of External Affairs, in 1934, who appealed to the S.A. press not to "allow themselves to be used as a means of making propaganda against other countries... and to guard scrupulously against giving other countries legitimate grounds for offense." Mr. T. W. MacKenzie, responding to Dr. H. D. J. Bodenstein, said that his newspaper did not accept the right of the Union Government to dictate on such a matter (*The Argus*, June 3, 1982). A week later, *The Star* in an editorial entitled, "Press: A Case of Volunteer or Die," opened with "The contents of the new Press Bill confirm the first impression... namely, that the Minister of Internal Affairs seems

Among the Afrikaner leaders I met with on the tour were the following:

Dr. Michael Hough, Director, Institute for Strategic Studies, University of Pretoria

Mr. Willie Breytenbach, Department of Constitutional Planning, Office of the Prime Minister

Professor Piet Liebenberg, American Studies Department, Rand Afrikaans University

Dr. P. E. J. Jordaan, Institute for Communication Research of the Human Science Research Council

Professor J. J. Roelfse, Acting Head, Department of Communication and International Relations, University of the Orange Free State

Mr. Barend Du Plessis, Deputy Minister of Information

Professor Pieter Fourie, Department of Communications, University of South Africa

Professor J. de Jager, Chairman, Communications Department, Potchefstroom University

Mr. Christian Rudolph De Beer, Deputy Dean, Law Faculty, Potchefstroom University

In addition, I met with Mr. David Dalling, M.P., and spokesman for the Progressive Federal Party; the news commentary staff (radio and television) of the South African Broadcasting Corporation, and, of course, hundreds of university students.

To all, I owe a debt of appreciation and thanks.
—B.R.

intent on destroying most of South Africa's remaining Press Freedom" (*The Star*, June 10, 1982). In a pessimistic article in the same issue, the intent of government was digested. "You can see how it works: Introduce a law to ensure that newspapers are disciplined. Deregister newspapers which do not submit to such discipline. . . . The days of Press freedom are slowly but surely coming to an end. . . . The newspaper industry tends to run scared when the Government introduces a press measure. For often it falls over backwards to ensure there is a compromise." The next day *The Star*, in another editorial "Another Step Closer to the Brink," concluded "The authorities chop and chop away. Each successive authority wants a little more power over public opinion. . . . The unorganized voices and the independent Press — including those supporting the government — retreat and compromise until, suddenly, they reach a brink on which both sides teeter. . . . the Government has taken another step to the brink. It is very close to the last." *The Sunday Tribune* quoted Mr. Harvey Tyson, the editor of *The Star*

who represented the Conference of Editors trying to fend off press curbs contained in the proposed Press Bill. "We are in the claws of a tiger" (*Sunday Tribune*, June 13, 1982).

The general reaction of the independent press was consistent. Contents of articles and editorials are in keeping with what has been given here. "A Law to Gag Afrikaners" (*Sunday Express*, June 13, 1982), "New Blow to Freedom" (*Sunday Tribune*, June 13, 1982), "Ominous Press Bill" (*The Cape Times*, June 9, 1982), "New Law First Move to Press Control" (*Evening Post*, June 10, 1982), "Yes Men: That's What the Government Wants for the Media" (*The Argus*, June 17, 1982). Other clippings from the period selected are in the same vein.

There is, however, one indication that the United States was anything but officially aloof when the Press Bill was going through the South African Parliament. Mr. Herman Nickel, the U.S. Ambassador who is a former writer for *Time* and editor of *Fortune*, "made a rare appearance in the VIP bay of the Assembly for the second reading of the bill last Thursday — a gesture which a U.S. Embassy spokesman has described as a 'conscious effort' by a former journalist who has strong feelings about press freedom." Among other signs of U.S. concern was release of a U.S. State Department statement "reiterating its opposition to infringements on the freedom of the press." The statement was clear. "U.S. opposition is well-known to any infringements on the press that would contravene the principles contained in the First Amendment to the U.S. Constitution and Article 19 of the United Nation's Declaration on Human Rights." Ambassador Nickel was also scheduled to address a crucial meeting of the Conference of Editors in Durban, in late June (*The Cape Times*, June 17, 1982).

Dr. Alex Boraine, M.P., analyzing the issues for *The Argus*, was tough in his opposition to the Government maneuvers.

A government that, as part of its history, bans people and newspapers, cannot be trusted with the freedom of the Press. This government has a basic distrust of democracy and in that lies its determination to control.

The threats which flow from the Government with monotonous regularity have undoubtedly had their effect, sad to say. Editors have been driven to a form of self censorship which in itself is not a good thing in South Africa, but they have chosen this way as being the lesser of two evils, always seeking to avoid statutory control.

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One fails to get nearer the truth if the tired adages about the English "liberal" or "progressive" mentality or the Afrikaner "Great Trek" or *laager* mentality are repeated in rote fashion. Substance conveyed through generalizations is accepted, and such worn conclusions do

not reveal the turmoil in the minds of all thoughtful leaders of South Africa.

Reform may be too strong a word for what is in the air. For many Afrikaners it means revolutionary change and the loss of power. As several were quick to point out to us, "We would be another Rhodesia." To such persons, Zimbabwe represents the end of white influence and power, not a multiracial society fostering intergroup protections. Mr. Mugabe, the Zimbabwean Prime Minister, will inevitably, in their view, make it intolerable for whites to stay and create a totalitarian one-party, one-leader state. They tried to persuade me that the American experience with minorities is entirely different since in our country white Europeans dominate in culture and numbers.

However, those same elements are displaying amazing, for them, flexibility in allowing voices of dissent to be heard. One example is the play on the boards this past summer at the Laager Market Theater in Johannesburg. Phillip Makone's drama *Encore Bra Joe* concentrates on the morbid environment in the dormitory "locations" where great numbers of black male workers are forced to dwell, and is a powerful indictment of apartheid. Squalid, dehumanizing, prison-atmosphere living quarters and the repression of hopes make for a terrible social situation. Some endure, beaten by the system. Others plot to secure a way out. Two lead actors portray a variety of such residents ranging from the numbed to the revolutionary; the male deprived of his family; camp prostitutes; and from the policed to the tormented. Tribal rivalries, primeval fears, glimmers of salvation mix together to provide a theatrical piece that leaves few illusions about how the blacks of South Africa have been oppressed.

Thoughtful white leaders from all parts of the political spectrum are anxious to redress the worst of the grievances soon, and failing to know how to do that politically, are easing the informational restraints in some areas. There is much talk, and some evidence, that liberality is increasing about matters pertaining to sex in the mass media — especially in the entertainment field — while at the same time clamps are tightening on materials dealing with violence. A great deal of discussion goes on about how to renew necessary cultural identities among the millions of urban blacks who have lost traditional ways and learned to abide with crumbs from the white man's cultural table.

Afrikaners have virtually no idea of the words "South African" taken to embrace nationality for all individuals; they do not understand such motivations for creating a united people. The way it was put to me on several occasions was, "We'll never accept one man, one vote!"

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Obviously no individual I interviewed would find agreement in the entire spectrum of comments, but

several themes kept surfacing as I talked with a variety of Afrikaner leaders. In no particular order of importance, these concerns are the following:

- First, change is coming to South African political and social environments but no plan has yet surfaced to make a broad outline of specific alterations visible.

- The "homeland" ideology invented by the Afrikaner politicians is still fundamental to Nationalist Party ideas of how to retain white sovereignty over most of the country.

- Something must be done to make living conditions more acceptable for the bulk of urban blacks and for rural blacks.

- Urbanization which produces ghettos or *favellas*, à la the Latin American scene, is anathema to the white Afrikaners, even those who see the end of "locations" and Sowetos in the near or distant future.

- Cultural distance has so increased between the long deprived blacks and the dominant whites that there is little present evidence of groups talking to one another, even in anger at times, as is now usual in the United States.

- South Africa sees itself as beleaguered on an African continent where its democratic instincts are being subdued by one-party governments in newly independent states. Apartheid is considered as a separate issue.

- South Africa is a major technological First World power with strong elements of Third World life and situations. The schisms are almost too much for the government to figure out on any given day.

- The outside world is generally hostile to the South African realities.

- True democracy will come to South Africa but Americans bandy the word about to suit their own history and traditions and not South Africa's.

- The Afrikaner is ever mindful of the sufferings of his people. Ladysmith and the concentration camps in Ceylon make the turn of the century very real today in his mind. He has overcome enormous odds and is determined to do so now.

- Opposition party liberals in their view will win more democracy for the nation, because what is so much of apartheid policy is nonsense and contrary to the hopes of South Africa.

- The young people, particularly those in the largely white universities, are in the mood to think seriously about change.

- The United States is a beacon that no South African can or will ignore.

- A bill of rights in the vein of the first ten Amendments of the American constitution is ultimately in South Africa's future.

- South Africa's people, all of them, will write the crucial pages of South Africa's history.

- Black people are restless and their aspirations will have to be met. □

To be concluded next issue.

The Fateful Photograph

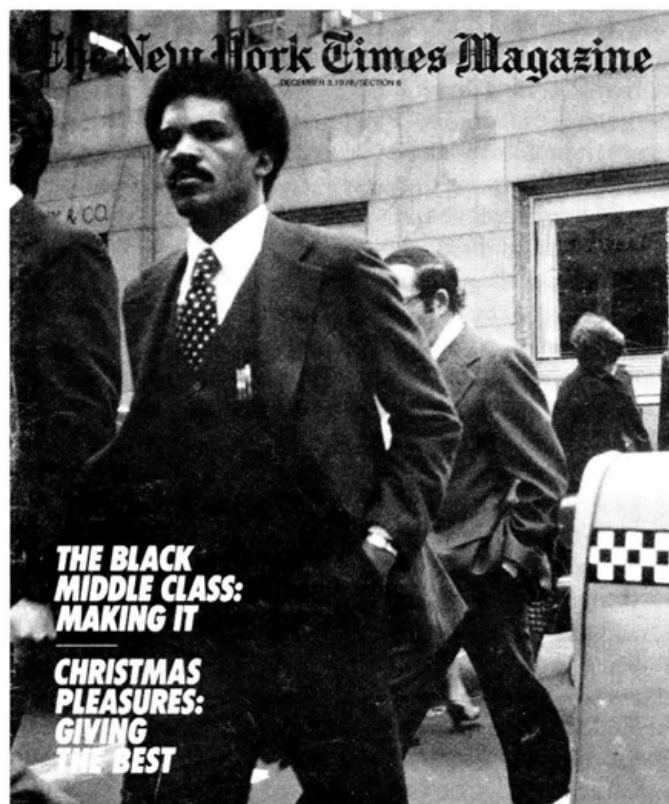
TIM MALYON

On December 3, 1978, *The New York Times Magazine* published a controversial cover story by William Brashler entitled "The Black Middle Class: Making It." In the article, Brashler contended that an increasing number of blacks were achieving success in American society, and that this newly affluent black middle class was turning its back on the black lower class. "It is not a total economic transformation, to be sure," Brashler wrote, "and the troubling problems of the ghetto and the black underclass have not suddenly gone away, but a strong, mobile black middle class is carving a distinct identity for itself. In the process, it is drifting more and more distant from its less fortunate brothers."

The piece was criticized for some of its characterizations of middle-class blacks and its conclusions. At one point, for instance, Brashler considers the plight of "the well-meaning black guy with a job and middle-class aspirations. On the one hand, he is called a pig if he whips his woman into line, and on the other hand, he is hooted for being something less than a man if he doesn't." Summarizing the changes that have occurred in the black community, Brashler wrote, "'Black power' has come to mean 'green power.'"

The cover picture by Italian photographer Gianfranco Gorgoni illustrating this article depicted a good-looking, well-dressed black man named Clarence Arrington, who was working at the time as a financial analyst for General Motors. He is now with the Ford Foundation. Arrington was not named, nor was he quoted in the article. When the *Times* hit the streets, Arrington was enjoying a quiet Sunday morning in bed at home. Telephoned by a friend and informed of his newfound fame, he immediately picked up a copy. "I had no knowledge that my picture was taken at all," Arrington says today, "so I was quite frankly shocked, and even more so once I had the opportunity to read the article. My reaction was one of dismay." During the next few days, he found himself fending off questions from friends and business colleagues who, he

says, were appalled by the article and curious to know if Arrington was moonlighting as a model. As a result, Arrington contacted the *Times* through his lawyer, Herve Gouraige. He asked for a printed apology and financial compensation. The *Times* refused. Arrington sued: the *Times*; the photographer; the photographer's agency, Contact Press Images, Inc.; and the agency's president, Robert Pledge, for a total of \$1,150,000.



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According to *Times* attorney, George Freeman, "The *Times* does not settle cases like this that involve First Amendment rights for money." If Arrington had simply asked for a printed apology, might the *Times* have conceded that? "It's conceivable," according to Freeman. But Arrington did sue, with the result that, three and a half years after its publication, this one photograph seems to be threatening the livelihood of freelance photographers, photographic agencies, and all the media outlets that depend on them.

Tim Malyon is a British freelance writer and photographer whose general news stories have appeared in a variety of newspapers and magazines in Europe and the United States. This article is reprinted with permission from Camera Arts magazine (October 1982); copyright ©1982 Ziff-Davis Publishing Company.

The New York Times Magazine art director at the time, Ruth Ansel, commissioned Gorgoni to shoot the pictures. She hadn't read the article, but had enough information to ask Gorgoni to photograph well-dressed black people on the street to represent the middle class. "I don't usually, or typically, have the article when I have to commission a photograph," Ansel said. "The editor-in-chief tells us what direction he wants us to go in on any given photographic assignment. We did not feel that anybody on the street, photojournalistically, was having his privacy invaded. I think on that premise, we believed we were within our rights. I can be sympathetic on one level with Arrington, but on another level I find this legal decision a little outrageous. I don't think there was any intent to classify him in any denigrating manner. As a matter of fact, I thought it was a good photographic image."

The decision referred to by Ansel was handed down in April by the New York State Court of Appeals, whose rulings can only be overturned by the United States Supreme Court. The Court of Appeals was addressing a motion by the defendants — *The New York Times*, Gorgoni, Contact, and Pledge — to dismiss Arrington's complaint and was, therefore, only ruling on *how* the law should be interpreted, not on the facts of the case or the allocation of damages, if any. Those latter questions must be determined in a civil trial in the New York State Supreme Court, which, despite the name, is the state's lowest court. The Court of Appeals' reading of the law, however, is of paramount importance to freelance photographers. That court dismissed Arrington's complaints based on concepts of common law and constitutional rights of privacy, but upheld his complaint against the photographer and agency based on sections 50 and 51 of the New York State Civil Rights Law. Section 50 states that "a person, firm, or corporation that uses for advertising purposes, or for purposes of trade, the name, portrait, or picture of any living person, without first having obtained the written consent of such persons... is guilty of a misdemeanor." Section 51 makes the transgressor liable to damages claimed in a civil suit.

The Court of Appeals ruled in Arrington's case that *The New York Times* could not be held liable under this law, since his picture had been used to illustrate an article of public and common interest, not for trade. Had the *Times* used a staff photographer to take the picture, the matter apparently would have ended there. But having been commissioned as a freelancer by the *Times*, the photographer and his agency were found to be subject to liability because they had, in the words of the Court, "'commercialized the photograph' in 'furtherance of trade'" in selling it to *The New York Times*.

The decision has sent shivers through the media industry. The consequences of this expanded definition of "trade" under the law are potentially enormous. In the majority of previous cases involving published "news" photographs, the agency and photographer have not even

been mentioned; when they have been sued, they have been granted the same First Amendment rights as the publisher and generally been treated in a similar fashion. Ironically, it is irrelevant to the decision that Gorgoni's picture is flattering. Arrington himself has said, "I have no problems with the picture itself." His argument is really with the *Times* for the way in which the picture was used.

Following the New York State Court of Appeals' April decision, one further legal remedy remained open. The same court could be persuaded to change its opinion via "reargument." All parties to the case, defendants and plaintiff, submitted thick legal briefs expressing grave reservations about the decision, and pleading with the Court of Appeals to change its mind. On July 2, the Court of Appeals responded: The decision would stand as stated. No further explanation was offered.

The ruling seems to satisfy nobody. Arrington is not content; he had wanted the Court of Appeals to reconsider on the basis that the photographer was *The New York Times'* agent, acting on its explicit instructions. He feels the publication should be held responsible for Gorgoni's actions and commented: "To some extent it's synonymous to a situation where one receives stolen goods. The individual who receives the goods is not let off the hook." He also objects to the *Times* being absolved of liability for publishing a photograph that had no direct connection with the article beyond representing a man they assumed to be a member of the black middle class. He feels his permission should have been sought and that he should have been afforded the opportunity to review the article before being associated with it. Herve Gouraige summed up the case: "All we are saying is that the individual who is walking across the street should not have to do so at the risk of having his photograph taken and his person associated with any article of public interest with which a picture editor chooses to associate that person."

The Court of Appeals rejected this claim that "no real relationship" existed between Arrington and the article when it let the *Times* off the hook. The judges asserted that since Arrington did resemble in outward appearance a member of the black middle class, this lack of "real relationship" boiled down to his disagreement with the contents of the article, an area of dispute with which the court did not wish to become involved.

From the photographer and his agent's side, the fact that the picture was sold to a newspaper to illustrate a matter of public interest was no defense, according to the Court of Appeals. Because it did not distinguish between freelance photographers who sell to newspapers and those who sell to advertising agencies, the ruling would appear to effectively exclude freelancers and photographic agencies from the news-gathering process. Magnum, the agency founded by Henri Cartier-Bresson, David Seymour, and Robert Capa — which has some three million photographs on file — has been informed by its lawyers

that according to a strict reading of the decision, they "could be liable to a subject if they sell a photograph for publication in any form of media, if the subject did not give his or her consent, even if the photograph was taken in a public place and even if it is an accurate or flattering image of the subject." Thus, Magnum has been legally advised not to sell pictures of identifiable subjects unless the subject has given consent, or unless the purchaser will indemnify the agent and photographer against all putative costs and damages stemming from a lawsuit by the subject. Agencies are considering adding such a clause to their standard sales contract that demands such an indemnity. As for photographers, while some freelancers may be aware of the need to obtain written subject releases, they also know that actually obtaining them for the majority of candid shots taken in public will be, in fact, virtually impossible.

Lawyer Tennyson Schad represents Gorgoni, Contact, and Pledge. A lawyer for eight years with Time Inc. and founder/owner of New York's Light Gallery, he sees the wider implications of this case. He wanted the Court of Appeals to reverse its decision on the basis that photographers and agents have been and should always be protected by the same First Amendment rights as publications. If the court was correct in dismissing the case against *The New York Times*, and he feels it was, by the same reasoning it should have dismissed the case against his clients. Schad was originally optimistic about the chances that the Court of Appeals would change its mind. "Reargument has happened twice in four years, and here we have a unanimous decision. On the other hand, I don't think the court has goofed to this extent in the last four years, so I'm pretty sanguine about the chances for a modification of that opinion."

After the Court denied reargument, he commented: "We're all just totally in shock." He believes, as do several other lawyers, that the court had sympathy with Arrington's position and wanted to give him something, but did not think through the implications of the decision. Schad is, in fact, now concerned about the prospects for fine art photography. "If you read the court's opinion literally," he commented, "Garry Winogrand could not photograph anyone out in the street, in a parade, or in Central Park, without getting a release. If he uses a photograph, if he sells it to a gallery or publishes it in a book, he is potentially exposed to liability."

According to Schad, four basic situations existed in the past under which publishers and photographers could be sued for the editorial use of a photograph: when a photograph was taken in a private place without the permission of the subject; when a photograph was so embarrassing to the subject that it offended public taste without having overriding news value; when the subject was being harassed by the photographer, as in the Jackie Onassis/Ron Galella situation; and finally, when a subject was wrongly identified, as in an article on unwed mothers, for

instance, in which a pregnant woman was labeled unwed when she was, in fact, married. Now, however, Schad believes that the most innocuous photographs of people in public places could become liable.

He depicts a scenario that is indeed frightening, and one that goes beyond the restrictions on freelance photog-

"...the individual who is walking across the street should not have to ... risk having his photograph taken and his person associated with any article of public interest..."

raphy already mentioned. "Technically, if Malyon writes a story about me, or if you just happen to use my name and I was not a source, and you sell that story to *The New York Times*, are you not using my name for commercial purposes? Is it any different? But that's scary. If this decision applied to photography, it sure as hell has to apply to writing. It would knock everybody out: We'd have no more freelance writers, and we'd have no more freelance photographers. Obviously, the Court of Appeals didn't mean that.... All we're doing is chipping away, chipping away, chipping away at press freedom."

Cornell Capa, Director of the International Center of Photography (ICP) in New York, is appalled by the prospects. He sympathizes with Arrington's position, but compares the consequences to a car accident on a wet road involving bad drivers. Should one such occurrence stop all car driving? "Are they going to legislate against taste next? This is a matter of opinion, of taste. Photography deals with life. If you can't photograph life without a picture release, it's a monstrous notion. It would kill what we now know as photography."

The extent of concern in the publishing industry over this decision can be gauged from the legal briefs submitted in support of Gorgoni and Contact's unsuccessful reargument motion. Many of the major photo agencies, including The Associated Press, submitted such briefs as *amici curiae* (friends of the court). In addition, Time Inc., Newsweek, Inc., NBC, CBS (the decision would involve independent television camera crews to the same extent as still photographers), Gannett Co., and many publishers' associations have grouped together in support. In sum, they asserted that freelancers are "a vital source of supply" for the media, and that restrictions on the freedom of freelancers to gather and sell news photographs would cause publishers "a drastic curtailment in their sources of supply or the prospect of financial ruin."

As a dramatic example, included in one legal brief is a copy of *Time* dated April 12, 1982, in which only one

editorial photograph, aside from advertisements, was taken by a *Time* staffer. In the future, all photographs of recognizable subjects taken by freelancers could give rise to legal action, including, according to the brief, "pictures of a president being shot, a politician making a speech, citizens chasing a mugger, an athlete participating in his sport, or a public official accepting a bribe."

New York Civil Liberties attorney Steve Shapiro also criticizes the Court of Appeals' ruling: "Our position is that the decision makes very little sense, that the freelance photographer must be entitled to precisely the same constitutional protection as *The New York Times* if the system of free expression is to function effectively. The court's effort to cut the baby in half doesn't make constitutional sense."

While this decision directly involves only New York State law, its implications and influence could spread far beyond state borders. A picture taken in Bangor, Maine, for example, if sold through a New York-based agency, such as The Associated Press, and published by Time Inc. or broadcast by CBS, which are both based in New York, could well attract liability. What is more, New York is home to more magazines, photographers, agencies, and publishers than any other state. Because of New York's prominent position in publishing, other state courts often look to its courts for precedents in matters of publishing law. Some states, such as Massachusetts, have privacy laws framed along similar lines as New York's. Sharp lawyers outside of New York may well pick up the scent and start advising clients to sue freelancers and agencies in other states.

The Arrington case may be in the courts for another year or longer. The case against Gorgoni, Contact, and Pledge can now proceed in the New York State Supreme Court. The amount of damages will depend on how adversely the jury deems Arrington to have been affected by the publication of the photograph. The possibility also exists that Arrington, through his lawyer, might seek a United States Supreme Court review of the case, either before or after any suit for damages. While the judicial process runs its slow and expensive course, a move is being contemplated to persuade the New York State legislature to amend Sections 50 and 51 of the New York State Civil Rights Law so as to afford agencies and freelancers the same protection that publications enjoy.

Despite ramifications that could affect the entire media industry, it's the freelance photographer who is most immediately endangered. I sought the reactions of three professional freelancers: Burk Uzzle, who specializes in annual report and current affairs photography for magazines and books; Larry Fink, more involved in the fine arts field; and Gianfranco Gorgoni, the man who almost unwittingly finds himself in the middle of this mess.

Burk Uzzle has been a freelance photojournalist for 25 years and is a former member of Magnum. His pictures have appeared on the pages of *Life*, *Paris Match*, *Stern*,

Geo, *Fortune*, and *Sports Illustrated*, as well as in books and annual reports. Candid coverage of the crowd atmosphere at the famous Woodstock Music Festival in 1969 helped make his reputation, as well as landing him in his one and only lawsuit. A skinny-dipper whom he had photographed after asking permission sued when her photograph was published on the album cover, but the matter was settled out of court. This year a powerful picture of a young child, by Uzzle, appeared on the cover of *Newsweek's* April issue on poverty, with parental permission.

"The *Newsweek* photograph was very quiet, very intimate," he said. "There has to be a chemical, personal collaboration between photographer and subject to achieve that kind of photograph, which involves not only asking permission, but a meeting of personalities. That's quite different from doing street photography. You can't really ask permission to do the quick, candid things on the street. If an editor had asked me to go into the mainstream of American society and photograph what generically symbolizes the middle class, the visual imperatives upon a scene like that would have to do with the flow of people up and down a sidewalk, how quickly they want to cross an intersection, how the light strikes them. There's a sense of energy, motion and electricity about the street and about the people themselves. All these considerations speak to candid photography, photography done very quickly in response to things moving. It would be quite impossible to stop people and ask for releases. But it's a serious responsibility for a photographer to take upon himself, to select a subject at random and offer that subject up in his photograph as symbolic of something that the subject may not feel is representative. It's a very presumptuous thing to do. And the only way I think you can live with that presumption is to feel that you understand the theme of the story you are illustrating in a broad way, that the theme is something you can agree with, something with which you can feel at peace."

Uzzle is strongly opposed to any obligation to obtain releases for candid photography in public. "In the public domain it's fair game. People are doing what they are doing openly and for everyone to see. I'm one of the many spectators; I simply happen to use a camera." How could this court decision affect him? "Sharp, hungry, unemployed young lawyers will view it as a license to steal. The decision doesn't really speak about the responsibility of journalism, which is one of the big problems with it...it leaves us wondering what our rights are, how we should be working, or whether we should be working, or whether we should work at all in areas in which we have always worked. And if we aren't able to work in those areas, it's a pity, because that's where not only the best, but I think some of the most responsible photographic work is done."

continued on page 69

Reporting the Courts

DONNA LEE DICKERSON

There are many questions in communications law which have yet to be answered by the U.S. Supreme Court. When dealing with these questions, each state must find answers that fall within the broad mandates of the First Amendment.

In this excerpt from *Florida Media Law*, the author explains current law for those who cover the courts.

First of a two-part series.

In December 1916, a Florida newspaper editor published an editorial charging the Florida Supreme Court with hostility toward lawyers, "stubbornness," partiality, ignorance of the law, and partisanship." The editor was found in contempt of court for the publication of a libel against the court. This is the first reported case dealing with contemptuous action by a journalist in this state. Apparently, the court had made a controversial decision upon a point of evidence in a criminal case. The supreme court did not appreciate the editor's comments, calling him a "pseudo-journalist" who dipped his pen in the ink of morbid thoughts. Other epithets were also used: "enemy of his people," "disloyal," and "traitor."

While publishers have the right to bring to public notice the conduct of the system, said the court, this notice must be a true account and "fair in spirit." The liberty of the press is subordinate to the independence of the judiciary. To allow the media the privilege to "scatter abroad suspicion and distrust is not only an insult to the public, but it impairs the efficiency of the courts." The court prayed that the good sense of the people would restrain the "impulsive and ill-natured words of those

among us who seem to be so alert to suspect and ready to condemn and that proceedings of this nature may not be necessary in the future to restrain the vicious tendencies . . . which lead [the media] to attacks upon the integrity and authority of our institutions."

Needless to say this was not the last time the media would attack the integrity and authority of the courts. Nor was it the last time that the media would be chastised for doing so by the judiciary. While editors today rarely experience the type of problem that the editor in the above situation faced, they are still encountering problems, but of a different nature: closing of courts and court records as well as the gagging of the press and trial participants.

THE CONTEMPT POWER

Historically, a judge has enjoyed great power within his courtroom, including the prerogative to act as witness, accuser, judge, and jury in contempt cases. This awesome power can be abused, but more often than not, this power is wielded by a judge who genuinely feels, rightly or wrongly, that he is the only one who can protect the fair trial rights of the defendant.

The contempt power grew out of ancient Anglo-Saxon law when a judge was a substitute for the king. Just as the king would have absolute power if he were reigning over the court, so too would his proxies, the judges. Out of this system has grown the traditional formality which accompanies any court procedure — the black robes, the bench (usually set above the rest of the room), calling the judge "Your Honor," and the ceremony of rising upon the judge's entry and exit.

The law of contempt as it has developed in British and American court systems recognizes several different classifications of a contemptuous act. First is civil contempt, which normally involves a refusal to do something, such as a refusal to obey a court order or to abide by a court ruling or judgment. A civil contempt is handled in a summary procedure in Florida courts and any fine assessed or jail sentence imposed lasts until the individual agrees to obey the court. Usually, civil contempt is not used to punish those who create a threat to the administration of justice but to punish those who would affront administered justice. For example, if a court orders an individual to repay certain monies to another and he refuses, then a civil contempt action can be brought and the person jailed or fined until he agrees to pay the amount. Media are rarely involved in civil

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contempt actions.

The second classification is criminal contempt. Florida law recognizes two types of criminal contempt: indirect (or constructive) and direct. Direct criminal contempt is a contemptuous act which occurs in the presence of the court or "so near thereto" that it affects the judicial proceedings in progress. For example, if a reporter, once on the stand, refuses to testify about his source of information, he may be held in contempt of court. Criminal contempt is punished summarily if the judge witnesses the contempt. The judge merely recites the facts, informs the defendant of the accusations, orders the defendant to show cause why he should not be held in contempt, gives the defendant opportunity to present evidence of the circumstances, signs and enters the judgment of the court, and pronounces sentence. The maximum sentence for direct criminal contempt in Florida is one year or \$500. If the sentence is six months or more, the judge must impanel a jury to hear and decide on the facts, unless the defendant waives a jury trial.

Indirect criminal contempt is the type of contempt most often adjudged against newsmen. This is conduct which occurs away from a court, but which the judge feels presents a clear and present danger to the administration of justice. The two typical causes for indirect contempt actions against the media are reporting of information from closed proceedings and refusing to appear to give testimony. Indirect contempt is handled in Florida as a summary proceeding but with notice and hearing. The procedure set down by law is as follows: The judge first signs and issues an order stating the facts giving rise to the contempt action and orders the defendant to appear at a hearing where he must show why he or she should not be held in contempt. If the defendant does not enter a plea of guilty, then a hearing will follow the arraignment. At the hearing, the defendant may have his lawyer and any witnesses for his side. At the conclusion of the hearing, the judge enters his judgment at which time the defendant can produce any mitigating evidence. Sentence is then pronounced. If a contemptuous act directly involves a judge, the judge must disqualify himself from the proceedings. The defendant may be fined or may be placed in jail and remain there for the duration of the original proceedings. Because of the indefinite length of any trial or proceeding, the law does not specify a maximum jail sentence. However, if a judge can reasonably foresee that a proceeding before him will last more than six months, he must grant the contempt defendant the right to a jury trial.

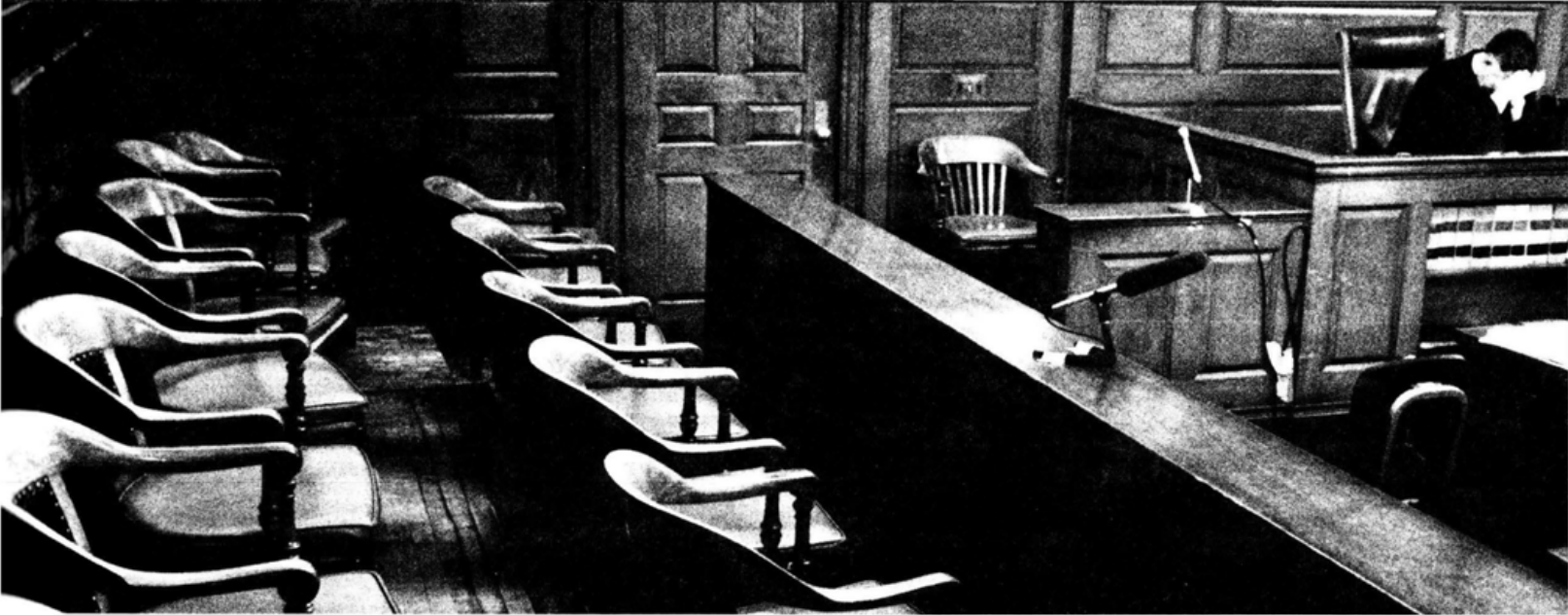
When the federal Congress passed the Judiciary Act of 1789 which established the federal court system, it authorized federal judges to punish at their discretion any contempts of judicial authority before them. However, it became clear that judges were interpreting the term "judicial authority" much too broadly, and Congress passed another law in 1831 to limit the use of the contempt

power. The new law said that summary contempt proceedings should be used only when contemptuous activity occurred in the presence of the judge or "so near thereto" as to obstruct justice. Because of the pervasiveness of the media and the interest of the public in court news, the term "so near thereto" eventually received broad interpretation. In *Toledo Newspaper Co. v. U.S.*, an editor criticized a judge who was taking an inordinately long time deciding the constitutionality of a rate fare change for city streetcars. The *Toledo News-Bee* was found in contempt of court. The newspaper argued that the editorial, written and published miles from the judge's court or chambers, was not "so near thereto," and hence the newspaper could not be punished. The U.S. Supreme Court disagreed and held that any action which has a "reasonable tendency" to obstruct justice was near enough. The case was eventually overturned in 1941 when Justice William O. Douglas held that federal judges must limit their contempt power to activities that take place either within the courtroom or geographically near it.

While federal judges were limited in their use of contempt power, state courts were operating unrestricted. State courts had held for almost a century that legislatures could not limit judges' powers because that power was inherent in the very existence and creation of the court system. This notion, forwarded in an 1855 Arkansas case, *State v. Morrill*, became the ruling precedent until the 1940's. In *re Hayes*, the case described at the opening of this chapter, demonstrates this assumed power. In that case, the Florida high court stated that "the liberty of the press is subordinate to the independence of the judiciary." And it was common for temperamental judges to cite newspapers for contempt whenever an editorial or story offended them.

Beginning in the 1940's, the U.S. Supreme Court began pulling some of this power from state judges, particularly when that power was being used against the news media. In a series of cases from Florida, Texas, and California, the Court acknowledged that contempt citations against the press for editorial comment and opinion before and after trials were unconstitutional, unless the judge could establish that such comment presented a "clear and present danger to the administration of justice." These three cases, all very similar in their attacks on judges, were the first step in promoting open discussion of the judiciary in this country.

The first decision, *Bridges v. California*, is actually two cases, the tandem case being *Times-Mirror Co. v. Superior Court*. Both cases involved comment upon cases before separate courts. The comments, while capable of being characterized as criticism, were not critical of the judges as much as they were critical of the decisions being made. Both defendants were cited for contempt of court. The U.S. Supreme Court stated that the judges' fears of being intimidated were not sufficient reason to punish the comment. The contempt citations were issued at the



Judge Thomas Needham pauses in relief after the final juror has been selected for the trial of Claus Von Bulow. Rhode Island's longest trial is about to begin. Providence Journal-Bulletin photograph by Norman A. Sylvia.

precise time when public interest in the matters discussed would naturally be at its height. The ban, said the court, is likely to fall not only at a crucial time, but upon the most important topics of discussion. The only time a curtailment of expression can be justified is when the expression might cause "a serious substantive evil of unfair administration of justice." Such an evil was not found and the contempt convictions were overturned.

The second case came five years later when the Court heard *Pennekamp v. Florida*, the first Florida First Amendment case to be heard by the Court. *Pennekamp* involved two editorials published in the *Miami Herald* that criticized the circuit court judges in Dade County for allowing the courts to be "subverted into refuges for lawbreakers." The editorials cited recent cases before the courts to demonstrate that judges were using "obstructing technicalities" to ensure that criminal defendants were getting "delay when wanted and prompt decision when requested." The editorials were based upon false information. The U.S. Supreme Court stated that while courts must have the power to protect the interests of prisoners and litigants before them, "freedom of discussion should be given the widest range compatible with the requirement of justice." The test to be used in determining the constitutionality of a contempt citation such as this was whether "the editorials are a clear and present danger to the fair administration of justice in Florida." The Court reversed the contempt citation and suggested that if the false information amounted to a defamation, any of the judges could sue for libel.

The third case in this series was *Craig v. Harney* in which the *Corpus Christi (Texas) Caller-Times* severely criticized a lay judge for "arbitrary action," "travesty of justice," and a "gross miscarriage of justice." The judge, concluding that the editorial was designed to portray falsely the proceedings and to prejudice the court, cited the newspaper for contempt. The U.S. Supreme Court stated on appeal that no matter how vehement or unfair the criticism, the comment is protected unless there is a

threat to the administration of justice. "That danger must not be remote or even probable; it must immediately imperil."

This series of cases in the 1940's virtually ended the use of the judge's contempt power to punish newspapers who commented upon and criticized the actions of a judge. However, still left were large areas of contempt, such as gagging the press before or during a trial, restricting access to judicial records, excluding the media from a courtroom during proceedings and restricting access to court or trial participants.

TRADITIONAL SAFEGUARDS FOR A FAIR TRIAL

Trials, particularly criminal trials, draw a great deal of public attention and publicity. It is this publicity that creates the tension between a defendant's right to a fair trial and the press's right to cover that trial. The concern of judges and lawyers alike is that the defendant's Sixth Amendment right to a "speedy and public trial by an impartial jury" does not become less important than the public's right to be informed by the press of the judicial process. The constitutional mandate of an "impartial" juror makes it incumbent upon the judge in any trial to assure that those who will sit in judgment of an accused will be open-minded and able to render a verdict after fair consideration of the testimony. Open-minded does not mean ignorant, it means only that the juror be free from any deep impressions and influences which will distort his ability to weigh information clearly and fairly.

The legal system has developed a set of six procedures to safeguard this impartiality. Four of these safeguards are aimed at making sure those influenced by publicity do not serve on a jury and two are to prevent a seated jury from being influenced by publicity during a trial. These traditional safeguards date back to the seventeenth and eighteenth centuries, and because they deal with the influence of publicity rather than the publicity itself, they

have raised few First Amendment problems. Nevertheless, the journalist must be aware of these traditional safeguards for two important reasons. First, the traditional safeguards protect not only the defendant, but also the public. If any one of these safeguards is abused by the court, the defendant would not receive a fair trial and any conviction could later be overturned and a new trial required — all at a cost to the state and taxpayers. Journalists should be constantly vigilant over the court system for the protection of both the guilty and the innocent. Second, Florida courts require that before any restraints can be placed upon media coverage of a trial, the court must prove that the existing safeguards were not sufficient to guarantee a fair trial. The journalist must look after himself and report laxity or abuses of the traditional safeguards in order to avoid being the victim of restrictions upon his own coverage. For example, it is more convenient and less costly to exclude a reporter from a courtroom than to sequester a jury. Journalists must be constantly vigilant of the system to ensure that convenience and necessity are not confused. The failure to use these safeguards properly has resulted in convictions being overturned. These traditional safeguards are voir dire, continuance, change of venue, change of venire (not used in Florida), admonition, and sequestration.

VOIR DIRE (to speak truthfully)

The process of jury selection is a tedious one, often lasting as long or longer than the trial itself. Yet, it is probably the best technique for ensuring that those who will hear and try a case will be the least influenced by information they have read or heard about a crime.

Criminal lawyers are specially schooled in the fine art of juror selection, using sociology, psychology, religion, and numerous other social sciences to ferret out those jurors who may not only be prejudiced by the facts in the case, but who also may be unfriendly to one side or another for various reasons. Each attorney is given an unlimited number of chances to reject a prospective juror "for cause." A challenge for cause is based upon some obvious prejudice in the juror. All the attorney must do is convince the judge that whatever prejudice the individual holds will make him incapable of serving as an impartial juror. Typical challenges for cause are exercised when a prospective juror states that he or she is unable to be impartial, when the juror is found to be racially prejudiced against the accused, or when the juror is an acquaintance, relative, or business associate of the accused.

In addition to challenges for cause, each attorney is given a limited number of peremptory challenges. The number is determined by the law and the gravity of the crime. In Florida, ten peremptory challenges are allowed if the defendant is being tried on a capital offense or an offense demanding life imprisonment, six for other felony

charges, and three for misdemeanors. The judge does not have to be informed of the reason for the challenge, nor may the judge refuse the challenge. Peremptory challenges are often used to challenge jurors the judge refused to dismiss during a challenge for cause. A lawyer is often rated by how effectively he or she uses the limited number of peremptory challenges.

Numerous studies have been conducted since the mid-1960's to learn just what the impact of pretrial publicity is on a jury. The results are varied but seem to indicate that persons can be prejudiced by extensive pretrial publicity and that the voir dire process can only be as effective as the honesty of the juror or the intensity of the questioning. The failure of a judge to oversee the voir dire process properly or the failure of the lawyers to question prospective jurors carefully can be a cause for reversing a conviction.

In 1975, the U.S. Supreme Court heard an appeal from Florida for reversal of a conviction for robbery. *Murphy v. Florida* involved the notorious Robin Hood of Dade County, "Murph the Surf." Murphy was convicted of breaking and entering with intent to commit a robbery and of assault with intent to commit robbery. He had broken into a Miami Beach home but was apprehended while fleeing. Extensive media attention was brought on Murphy because of his flamboyant life style and because of other criminal charges, including murder, theft of the Star of India sapphire from a New York museum, and conspiracy to transport stolen securities in interstate commerce. At first, he was committed to a hospital after being declared mentally incompetent to stand trial for the robbery. He was then indicted in the securities case and then convicted on the murder charge; all before he was tried for the Miami Beach robbery. During the jury selection process, seventy-eight prospective jurors were questioned. Thirty of those were excused for personal reasons, twenty were excused for prejudice, twenty were excused peremptorily, leaving eight to serve. Murphy's lawyer moved to dismiss the remaining eight because they were aware of Murphy's previous convictions. That motion was denied and he was convicted.

The U.S. Supreme Court upheld the conviction, saying that just because jurors have information about prior criminal records does not presume prejudice on their part. The Court could not go along with the proposition that juror exposure to information about a defendant's prior convictions or crimes deprives the defendant of due process. Evidence indicated that none of the jurors had any hostility toward Murphy. Some had only a vague recollection of the robber, and each had some knowledge about one or more of his past convictions. In fact, during the voir dire process, one juror did not know of the theft conviction for the Star of India until Murphy's attorney told him. Another did not know of the murder conviction

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BOOKS

A Range Of Insights

Hearts and Minds: The Anatomy of Racism
from Roosevelt to Reagan

Harry S. Ashmore. McGraw Hill Book Company, New York, 1982.

by JOHANNA NEUMAN

About a year ago I was privileged to have breakfast with Harry Ashmore at his home in Santa Barbara. We had, as best I recall, scrambled eggs and bacon, homemade breads, marmalade, and good strong coffee.

The conversation rambled across the South, where both of us had history. Ashmore, who in 1954 won a Pulitzer Prize for his editorials in *The Arkansas Gazette* urging desegregation of the Little Rock schools, delighted us with tales that poked fun at "the segs." One, included in this book, stemmed from a trip to Washington in which Ashmore, then an aide to Democratic presidential candidate Adlai Stevenson, lobbied against the "Southern Manifesto" against integration authorized by South Carolina's Strom Thurmond.

Ashmore asked Thurmond's South Carolina colleague, Olin Johnson, if he could persuade Thurmond at least to hold off issuing the manifesto until after the primaries. Though others could be lobbied, Senator Johnson told Ashmore, "It's no use trying to talk to Strom. He believes that shit."

Ashmore laughed heartily at the story. I supposed it appealed to his Southern sense of irony. But neither the charm of his breakfast conversation nor the punch of his war stories prepared me for the insightful depth and solitary perspective of Ashmore's eleventh and most valuable book.

It begins with a dedication to "Nathaniel, and all others similarly situated." We are a dozen pages in before we learn that Nathaniel is the black companion "assigned" to Ashmore when he visited his relatives at their country plantation during his South Carolina youth.

Nathaniel "was waiting each morning when we came out after breakfast, and at noon he shared the meal Aunt Tee handed out to us on the back porch," recalls Ashmore. During the day they played as equals, with Nathaniel usually winning the games of summer. "On my side the consciousness of racial difference vanished under this intimacy," Ashmore writes with quiet candor, "but I doubt that it ever did on his, for he could not forget that when dark came on and we headed home he would pass on to one of the shacks across the road as I turned into the big house to wash up and join those who were his masters."

This young Ashmore is sensitive to people and history, and is willing to share his own effect on both. Like a curious child inspecting a rose bush, he is not afraid to bleed in order to feel, to touch in order to know.

The Ashmore to come is more illuminating, not quite as compelling. The adult author takes us through the major civil rights history of the 1950's and 1960's with a range of insights but without the agonizing empathy that marked his earlier ventures. Harry Ashmore to me, a child of the 1960's,

is no radical. But in the South that produced demagogues like Mississippi's Theodore Bilbo, Ashmore would be called "a raving liberal." He cares but he is a pragmatist. It makes him less romantic as a narrator, but more pointed.

He notes, for instance, that in choosing to go after *Plessy v. Ferguson*, the ancient Supreme Court decision that for decades upheld a doctrine of separate but equal, the NAACP attacked segregation, not racism. And because the civil rights organization cared more for legal precedent than practical result, Ashmore suggests, it failed to select better testing grounds for its integration lawsuits.

Ashmore makes no apology, though, for the silent complicity of politicians who perpetuate an unspoken racism. The history of the struggle might well have been different, he argues, had President Eisenhower learned to lead.

"The ostentatious neutrality of the executive branch encouraged denigration of the Court, which now began to come under direct fire from right-wing organizations," says Ashmore. "As the opening of the next school term approached, moderate leaders in the Upper South fell silent."

He demonstrates telling perception on the weakness of human character as represented by Orval Faubus, the governor of Arkansas who caved in to the segregationists on the warpath in Little Rock.

"If he yielded to the federals, or even seemed to, he would have to forget his plan to stand for re-election," Ashmore writes, "and this was a peculiarly difficult decision for a man who quite literally had no option that would maintain any approximation of the prestige and standing he now enjoyed."

Finally, Ashmore recaptures so well

the tension that you find yourself rooting for the civil rights leaders, hoping that courageous figures like Daisy Bates, head of the local NAACP, will triumph over malicious tongues who spread rumors that she had given birth to twins, "sired by me, and had named one Satchmo and the other Ashmo," as Ashmore tells it.

There are many ironies here. It is a shock to learn that the white segregationists — who would later scream "communists!" and "outside agitators!" at the Yankee civil rights workers come South to register blacks to vote — that these same people started the resistance toward integration by carpet-bagging from state to state, spreading slime.

There are also nuggets here. Ashmore quotes Hodding Carter [NF '40], former publisher of the *Delta-Democrat Times* in Greenville, Mississippi, on the essence of reaction from the community to editorials urging compliance with the law, editorials that once exploded and now seen tepid, even tame.

"Southerners will generally treat you politely," Ashmore quotes Carter as saying, "until they make up their minds to kill you."

Mostly there is spirit. The chapter on the bus strikes in Birmingham begun by Rosa Parks is a fine synthesis of Martin Luther King's power and effect. The section on Lyndon Johnson's efforts to ram through Congress the historic civil rights bill is likewise a most dramatic and inspiring account.

In short, the writing has dignity, the story has bite, and the author has credentials. When he argues that "the 1960's... ended at Kent State," you trust history in Harry Ashmore's hands. When he repeats the worst editorials of the day, such as the one by Richmond editor James Jackson Kilpatrick who wrote that "the Negro is fundamentally and perhaps unalterably inferior," you know that Ashmore will not retreat from remembering the shame of our history. And when he reports on the unassuming courage that began the flow of *Gazette* editorials which would even-

tually lose the newspaper \$1 million in circulation and advertising revenue, you can take pride in a profession that stood up and spoke out.

"Those of us on the news and editorial side were ready to man the battlements, but I didn't think I had the right to make that decision since it was the owners, represented by J. N. Heiskell and Hugh Patterson, who would suffer the heaviest penalty," reports Ashmore.

"Mr. J.N. turned his chair to look out across the quiet streets and said, 'I'm an old man and I've lived too long

to let people like that take over my city.' Patterson's testy response was, 'It's a silly question. I don't see why the hell you even thought you had to raise it.'"

It is called history, and in Ashmore's hands it is worth reading again.

Johanna Neuman, Nieman Fellow '82, covers Mississippi for Gannett News Service in Washington, D.C.

Harry Ashmore is a Nieman Fellow from the Class of 1942.

The McCarthy Experience

Joe McCarthy and the Press

Edwin R. Bayley. The University of Wisconsin Press, Madison, 1981, \$18.95.

by WILLIAM PINKERTON

McCarthy came late to the game, Ed Bayley relates. Having defeated Helen Gahagan Douglas for a seat in the house in 1947, Richard M. Nixon found an active role in the work of the House Un-American Activities Committee. In 1948, Alger Hiss was indicted for perjury. In the Senate, the Internal Security Committee was plowing the same field. In 1947, a weekly newsletter, *Counterattack*, started publishing "citations" of "Communist front" connections of prominent citizens; it defined a "front" as any organization that "helped Communism." *The Chicago Tribune*, the primé newspaper of the Midwest, regularly carried editorials and dispatches from Washington about individuals there it considered dubious rascals ("Tells How FDR Shrugged Off Red Spy News). President Truman tried to build a backfire: a hard line against Russia, "loyalty boards" to screen government employees, and the attorney general's

list of Communist and "front" organizations. (An odd mixture of public and private groups joined in the list business and many people — especially in Hollywood — were injured.) And McCarthy, who had defeated Robert M. LaFollette Jr. in 1946 for the Republican nomination to the U.S. Senate, served quietly until February 9, 1950, when he addressed a Lincoln Day dinner of a women's Republican club in Wheeling, West Virginia.

A local reporter, the only journalist present, quoted McCarthy as saying: "While I cannot take time to name all the men in the State Department who have been named members of the Communist party and members of a spy ring, I have here in my hand a list of 205 that were known to the Secretary of State as being members of the Communist party and who nevertheless are still working and shaping the policy of the State Department." Bayley gives a fascinating account of how McCarthy arrived at the figure.

The AP had its stringer in Wheeling check the number "205" with McCar-

thy, and then moved a 110-word story over the wires. United Press caught up with the story next day, by eliciting a State Department denial. (Denials always provide a news reason for a second-day rehash of charges.)

A few days after the speech, two Wisconsin correspondents in Washington asked him for the 205 names. McCarthy is quoted as replying: "Look, you guys. That was just a political speech to a bunch of Republicans. Don't take it seriously." McCarthy years later told a reporter that he had had in his hand "a laundry list."

Bayley shows that the story neither "exploded across the nation's front pages," as some said, nor was it ignored, as others claimed. In Bayley's sample of 129 papers, 19 carried the AP story and 10 others carried the UP story the next day. But McCarthy had risen from anonymity. He followed up with a series of speeches and interviews in which the number 205 became 207, 57, 81, 4 "specific cases" — only one of whom, it developed, was then in the State Department. (One, identified as "Howard Shipley," turned out to be the astronomer, Harlow Shapley.)

Bayley observes:

The Wheeling episode raises questions about newspaper practice of the day. Why didn't Desmond, the only reporter there, ask McCarthy to let him see his list of 205 Communists? . . . Why didn't the AP ask Yost, their correspondent, to demand the list? Why didn't . . . someone from the radio station even sneak a look at McCarthy's list? . . . They might have all thought the charge was preposterous and that while it was their duty to report it, it wasn't necessary to do more than that.

Objectivity as then understood — in effect, "That's what the man said, isn't it?" — worried thoughtful reporters. Bayley quotes several, including Richard L. Strout of the *Christian Science Monitor*:

The business of "straight reporting" never gives the reader a chance to catch up. If the reporter

had been permitted the freedom of interpretive reporting customarily followed by the great dailies abroad, he could have commented as well as reported. He would have been a historian as well as a photographer with words. But he would have violated one of the dearest rules of American journalism.

Elsewhere in the book, Bayley notes:

Newspaper editorials in the 1950's were more important in the information process than they are now, when the role of the interpretive reporter is well-established, when opinion writing and alternative news outlets have proliferated, and when many are willing to glean their understanding of the issues of the day from the tone of a television anchorman's voice. In those days, the editorial page was the place where most readers sought help in trying to make sense of the puzzling, sometimes contradictory, news reports.

But, he adds: "Most of the editorial writers and the editors and publishers who took part in making judgments about the McCarthy issue seemed as timid as the bureaucrats who sought to appease McCarthy or as ill-informed as their unfortunate readers."

Like the cult of objectivity, the headline of that time played into McCarthy's game — with the headline's tendency to sharpen, and heighten, the facts. "Reds" was a good headline word for what were sometimes roundabout or ambiguous statements. After a talk in Reno, in which McCarthy spoke of spies "planted in the State Department to shape the policy of our government and rob this nation of its potency," a reporter asked him if he had called these people — whom he had named — traitors. "I did not," he said, "and you will notice that I didn't call them Communists, either."

Yet, Bayley tells us, "Headline writers exaggerated McCarthy's charges to the point of libel, making McCarthy seem bolder than he was, and implanted the idea that McCarthy actually did call individuals Com-

munists." Headlines stipulated, he says, that the Communists were there.

Samples: "Senate to Probe Department Reds," "Reds in High Places Face Senate Quiz," "Senate Asks Ouster of Reds in State Department," "McCarthy Insists Truman Oust Reds," "Knows the Names of 57 Reds."

Inaccurate headlines thus "helped McCarthy convince the public that there were Communists and spies in the State Department."

Remembered experiences with McCarthy from reporters and editors at more than a dozen leading papers across the country give the reader fine human interest and a true sense of what living with McCarthy could be like. He was a jolly companion for traveling or drinking, and wanted to be liked. Yet the ardor of his followers often put reporters in jeopardy — when, from the stage, McCarthy addressed reporters by name as coming from the Washington Daily Worker (in reality, the *Post*), the Madison Daily Worker (*Capital Times*), the Milwaukee Daily Worker (*Journal*), the New York Daily Worker (*Times*). "Stand up, Dick," he would say, "and show them what a reporter for a Communistic newspaper looks like," or "This fellow is a pro-Communist, too, but he's a nice fellow who just does what he's told."

Then, recounted Richard J. H. Johnston of the Chicago bureau of *The New York Times*:

. . . when Joe started to speak and I stopped taking notes — there wasn't any press section and I was in the front row of seats — the guy on one side of me said "Go ahead and write." I said, "He said all that before." The guy said, "When Joe talks, put it down. What are you, some kind of Communist?" Then later when I did take notes, a guy on the other side said, "Boy, they don't miss a thing, do they? They're going to hang Joe with this one."

Out of such personal accounts, the reader begins to compile a list of heroes: Robert H. Fleming and Bay-

ley himself and Paul Ringler of *The Milwaukee Journal*; Miles McMillan and William T. Evjue of the Madison *Capital Times*; Peter Edson of NEA; Jack Bell of the AP, Johnston and Cabell Phillips and James Reston and Turner Catledge of *The New York Times*; Philip Potter and Gerald Griffin of the *Baltimore Sun*; Alan Barth, Murrey Marder, Robert Albright, and Al Friendly of *The Washington Post*; Richard L. Strout and Joseph C. Harsch of the *Christian Science Monitor*; Irving Dilliard and others on the *St. Louis Post-Dispatch*; Palmer Hoyt of the *Denver Post*; Oliver Pilot, William V. Shannon, and James Wechsler of the *New York Post*; John Steele and Fred Othman of UP; Drew Pearson and Joseph and Stewart Alsop; and, among others, young Mary McGrory of *The Washington Star*.

The community pressures on management, especially in the "isolationist" West, are reflected by the precautions of such sturdy figures as Evjue in Madison, the Pulitzers in St. Louis, and Hoyt in Denver. Much of the press stood firm against direct attacks by McCarthy on James Wechsler and later by Senator James Eastland on some employees of *The New York Times*.

The book ends with McCarthy's experiences on radio and then ("Four Crises") on television: a smear against Adlai Stevenson ("Alger...I mean Adlai"); committee hearings on an Army dentist named Peress; Ed Murrow's *See It Now* program in 1954; and the Army-McCarthy hearings — followed, off camera, by censure hearings of the Senate.

Could it happen now? Read the book and decide for yourself.

In his speeches, McCarthy often called for a boycott by subscribers and advertisers of a newspaper or broadcast outlet he disliked. Only one such boycott seems to have succeeded — against Martin Agronsky of ABC, who lost more than half of his sponsors.

McCarthy only once sued a paper for libel. *The Syracuse Post-Standard* ran an editorial based on reports that could not be proven. The case was

settled out of court for \$16,500 and a "clarification of facts" in the editorial column.

The University of Wisconsin Press provides an appendix listing all of Bayley's meticulous research data, but no illustrations. This reader wishes he could again see cartoons by Herblock and Fitz and draftsmen who supported McCarthy. Samples of contrasting play would have reinforced the text.

"Summing up," Bayley comments:

But it was not enough to say, as Senator Benton and Palmer Hoyt, the *Denver Post* editor, had advocated, simply that McCarthy was lying; it was necessary to demonstrate the lie, and for a long time, as McCarthy shifted from one accusation to another, it was not possible to prove that he was lying. This was a source of great frustration, especially to the wire service reporters in Washington, at the key point in this dilemma.

What is most surprising in the examination of newspaper performance in the McCarthy period is not that so much news of McCarthy was published in some papers, but how little was published in many others, especially in the first few years. The timidity of the wire services, the

fear of controversy on the part of publishers, and an apparent lack of understanding of the importance of the issue by many editors worked to deprive many readers of full information....

[Yet] McCarthy's tactics produced lasting changes in the media. Newspaper people realized that it was not enough simply to tell what had happened or what was said, but that they had to tell what it meant and whether or not it was true.

The author closes with this benediction:

But for those journalists who recognized the threat to American principles posed by McCarthyism, who took a stand when opposition to McCarthy rendered one's patriotism suspect, and who did it when it mattered, before the election of 1952 — even though it put them in the position of seeming to defend a Democratic administration that many of them detested — it was a glorious time. History has given them too little credit. □

William Pinkerton, Nieman Fellow '41, lives in retirement in South Orleans on Cape Cod, Massachusetts.

Respondents and Correspondents

The Politics of Crisis Reporting: Learning to be a Foreign Correspondent

John Crothers Pollock. Praeger Publishers, New York, 1981.

by MURRAY SEEGER

After reading John Crothers Pollock's study of foreign correspondents, I re-read Stephen Hess' analysis *The Washington Reporters* (Brookings, 1981). I immediately found what was missing from Pollock's book.

The Hess product reflects a real world of working journalists, while the Pollock study is filled with the jargon

and tenuous conclusions of social science which may or may not have anything to do with being a foreign correspondent.

In the first place, the Pollock book promises more than it delivers. It is a statistical study of 102 correspondents who worked in Latin America at some point in their careers. The data was collected in 1978 and 1979 so that respondents did not include the new

flood of reporters sent to Central America for the Nicaragua and the El Salvador civil wars.

Although he interviewed many journalists in order to develop the questions for his poll, Pollock drew his conclusions from the data spewed forth from his computer. The essential testimony of working reporters is missing. Thus, we find correspondents classified as "chroniclers" or "examiners," terms few foreign correspondents would recognize. The 102 respondents were asked to rank the importance they placed on reporting subjectively (examiners) and objectively (chroniclers).

Not surprisingly, the results showed that 59 percent of the respondents were most favorable or very favorable toward playing the role of examiners.

The questionnaire was very complete in soliciting from the respondents personal data on their experience and education; views of their "craft" friends, associates, and sources; views of political and economic issues and how to report them. Through the miraculous workings of the computer, the collected data was then cross-referenced so that the author could draw his conclusions. For example: "This study reveals that for some professional perspectives, foreign affairs reporters who have spent a great many years working for wire services hold different orientations than those working outside wire services...."

Pollock concluded the reporters surveyed had many common characteristics including being first or only children, studying similar college majors, and following common career patterns.

Yet after all the analyzing and cross-referencing, we are left with conclusions like this: "Journalists with divergent family experiences and educational and career path choices are likely to approach crisis reporting in different ways."

Hess, in his study, did not try for the deep sociological approach. He sent long questionnaires to 192 work-

ing reporters, held 150 personal interviews and made 194 follow-up interviews by telephone.

His results are labeled "impressions." His statistics offer an interesting, realistic view of who Washington journalists are, how they work, and how they view their profession. For one who has worked in Washington nearly ten years, the Hess study is rewarding: It told me things I did not know and reinforced general conclusions with clear evidence.

The Pollock study, on the other hand, is inadequate to someone who worked as a foreign correspondent for nearly ten years. Some of the faults are scientific: the sample is too small and too narrowly focused. Latin America, in the period studied, was not an area where American publishers invested very much in talent or interest. Nearly half of those sampled worked for The Associated Press or United Press International, and 21 percent for either *The New York Times* or *The Washington Post*.

The conclusions probably tell us more about the personnel policies of those four news organizations than they do about the broad cross-section of foreign correspondents.

The proportion of correspondents who preferred to be "examiners" is almost exactly the proportion in the sample who worked for individual newspapers or magazines and not the wire services. The "specials" usually prefer writing the features and analysis pieces that the "wires" can only do in their spare time with the indulgence of their editors.

Pollock puts great emphasis on the attributes of "self-reliance" on which reporters depend. He notes that 49 percent of the respondents were first-born children which contributes to a child's self-reliance. This finding would have been more significant if it could have been related to another sample of high-achieving professionals, even another group of easily identified correspondents such as the Washington press corps or those who have worked in Europe. (Hess did not ask that question.)

Pollock also put stress on the personal associations of Latin America correspondents, their friends and local contacts. But since most resident American correspondents lived in only a few Latin American cities and many traveled in the area without establishing residence, the answers seem less than significant.

Certainly, a broad study of foreign correspondents along the lines of Hess' study of the Washington reporters would be a worthwhile project. It is unlikely, however, that a sociologist could come any closer to offering scientific conclusions than does Pollock in this book. Trying to predict how American journalists will react in political crises based on such data is a chase after mirages.

Even with today's better-educated journalists filling the correspondents' ranks, it is inherently an unscientific world. Reporters are still sent overseas willy-nilly. Sometimes it is a reward for good work on other assignments; other times it is an exile for failures; sometimes it is the editor's favorite who gets the job; and sometimes the reporter who was recently divorced and wants a dramatic change.

In other words, a comprehensive study of foreign correspondents should be a subjective presentation based on an analysis of their characteristics compared with domestic journalists. The researcher should start with a sound background in foreign reporting and a wide knowledge of the American press. Unfortunately, these features are missing from Pollock's work. His conclusions will be largely of interest to other social scientists.

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Foreign Nieman Fellows Named

Six journalists from abroad have been appointed Nieman Fellows at Harvard University for the academic year 1982-83. The foreign Fellows will join the twelve American newsmen whose names were announced in June as members of the forty-fifth class of Nieman Fellows to study at Harvard University.

The group of newly appointed Fellows includes one each from television, radio, and a magazine; three are from newspapers. They are:

Salomon de Swardt, 38, assistant editor of *Beeld* newspaper in Johannesburg, South Africa. Mr. de Swardt is a graduate of the University of Stellenbosch. His Nieman year will include studies in economics, sociology, and personnel management. The United States-South Africa Leader Exchange Program is sponsoring Mr. de Swardt's Fellowship.

Bernd Kühnl, 30, Bavarian parliament correspondent for *Munich Abendzeitung* in West Germany. Mr. Kühnl, who attended the University of Munich and the German School for Journalists, plans to use his year at Harvard to study eighteenth-century world history, constitutional history, and German-American relations. His Fellowship is supported by a grant from the German Marshall Fund of the United States.

Bruce Stannard, 36, producer for *Sixty Minutes* in Sydney, Australia. While at Harvard, Mr. Stannard will focus on China and its relations with the West; comparative religion; American literature; and drama. His Fellowship is supported by The Nine Network in Australia.

Nigel Wade, 35, Moscow correspondent for *The Daily Telegraph*, London, England. Mr. Wade graduated from Auckland University in New

Zealand. While at Harvard, he plans to study contemporary society, politics, and conversational Russian. Mr. Wade's Fellowship is supported by *The Daily Telegraph*.

Andrzej Wróblewski, 47, editor-in-chief, *Scientific Study for Organization and Management*, Warsaw, Poland. From 1959 to December 1981 Mr. Wróblewski was employed at *Polityka* weekly, most recently as political editor. His Nieman year will be used for the study of various forms of government; management; and Japanese society. Grants from the Ford Foundation and from the Council for the International Exchange of

Scholars will support Mr. Wróblewski's year at Harvard.

Dezheng Zou, 52, editor, Radio Beijing, People's Republic of China. Mrs. Zou studied at Wells College (1948) and Hunter College (1949), both in New York. She received her diploma from the College of Journalism in Beijing (1951). The first Chinese woman to be awarded a Nieman Fellowship, she will concentrate on American history, contemporary English, and American literature. Her Fellowship is funded through the Asia Foundation, with a grant-in-aid from the Council for the International Exchange of Scholars. □

Nieman Foundation Receives Grant for Minority Journalist

Harvard University's Nieman Foundation for Journalism has received a \$20,000 grant for the support of a minority journalist to study at the University as a Nieman Fellow in 1983-84. The gift was announced by Eugene C. Dorsey, President, and Gerald M. Sass, Vice President/Education, both of the Gannett Foundation, a philanthropic organization based in Rochester, New York, whose primary national interest is in journalism-related programs.

The Gannett Foundation's grant is the first gift specifically designated for the funding of a minority journalist the Nieman Foundation has received in its forty-five year history, according to James C. Thomson Jr., Curator of the Fellowship program. The first black Nieman Fellow was a member of the Class of 1947, and to date a total of twenty-five black and Hispanic American journalists have been awarded Nieman Fellowships. American Nieman alumni/ae now number more

than five hundred.

The Gannett Foundation was established by the late founder of the Gannett Group of newspapers. Since 1973, it has given more than \$18 million to journalism-related programs. The Foundation also contributes locally to charitable causes in the more than one hundred communities in the United States and Canada served by Gannett Co., Inc., newspapers, broadcast stations, outdoor advertising companies, and other properties. □

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Laurels For Two Curators

Tributes to the late Louis M. Lyons and Archibald MacLeish continue to arrive in the mail from Fellows who remember their Nieman Curators with affection and esteem, as shown by the following gleanings from accumulated correspondence.

I am sure that all of us who knew both men were struck by the fact that Louis M. Lyons and Archibald MacLeish died within a fortnight this spring.

The two had more to do with molding the Nieman program than any individuals other than James B. Conant, and the lawyer (and loyal Harvard alumnus) who persuaded Mrs. Agnes Wahl Nieman to make her gift honoring her late husband as and where it was made.

MacLeish's personality and brilliant achievements won sufficient tolerance from the Harvard community for the new and suspect program to have some chance of success. Under a lesser leader it would have been cold-shouldered out of existence.

MacLeish set the pattern of the (then) weekly dinner bull sessions that most of us remember, over the years, as perhaps the highlight of our Nieman year, because he could provide the show horses. No Lippmann or Luce, or Henry Wallace or Felix Frankfurter, seemed able that first year to pass up Archie's invitation to come down to engage in verbal fisticuffs with his uninhibited bunch of roughneck newspapermen-on-leave.

I'm certain MacLeish must have made Jim Conant see the wisdom of naming Louis Lyons to succeed Archie as Curator. For the next 25 years Louis proved how sound was that wisdom.

I will always remember Louis as a human being of the highest integrity. I think he was also one of the most entertaining and stimulating I ever had the good luck to know. He and Ed Lahey and I were allowed to become

part of a weekly seminar in administrative law conducted by Felix Frankfurter in the fall of 1938, just before he went down to Washington to take his place on the Supreme Court. Frankfurter liked to challenge his students but couldn't endure fools or dullards. He made a habit of inviting one of them to review in his seminars, and comment upon some notable case of administrative law at almost every session. Lyons handled these difficult assignments brilliantly on at least two occasions, Lahey on one. They were memorable. Most of the rest of the class, including myself, were never invited, which was just and proper I thought.

Both Lyons and Lahey befriended me that year, perhaps because they, the eldest in that first Nieman class, took pity on the youngest. They remained my valued friends until their respective deaths. MacLeish was kind and thoughtful, but busy and preoccupied as he was with the epochal job of trail-breaking he faced, had not time enough to cultivate new friendships.

*Edwin J. Paxton Jr. ('39)
Cocoa Beach, Florida*

Louis was so special to all of us, and forever will be. We are fortunate also in that Louis brought Archie in for the Fellows' seminar season during my year and I suspect he did this as often as their schedules combined to make it happen.

Of course we celebrate their lives and the excitement and fun and thoughtfulness they share with us. But this does not mean we do not mourn a little, too — even though their lives were full and well-charted and they had earned the quiet.

I remember always at a moment like this what a dear friend cabled when my own father passed away at a full

and active age of 84: "No matter how many years there were, when it's all over we wish there had been a little more, just a little."

*David B. Dreiman ('49)
La Jolla, California*

I had a forceful reminder of the intensely loyal and appreciative audience Louis Lyons commanded, from the beginning of WGBH, on radio and then on television, from one of my colleagues in the Friends of the Snow Library, an economist from Washington. He mentioned that during his first summer in Orleans, back in 1947, he had heard Louis on the radio, and after that he had listened to his broadcasts whenever he could. Louis Lyons was like Ed Murrow, he said, and there's nobody like Louis on the air today.

*William M. Pinkerton ('41)
South Orleans, Massachusetts*

*To the Editor of
The New York Times:*

To your editorial tribute (April 17) to the New England Yankee rectitude of Nieman Curator Louis Lyons I should like to append a personal experience.

Just before the Christmas break during my 1956-57 Nieman year at Harvard, a cablegram arrived from Peking authorizing a visa. Courtesy dictated that I notify the Curator, inasmuch as the Nieman Foundation is tax-exempt, and U.S. policymakers were violently opposed to any travel to China.

With Calvinistic fervor, Secretary of State Dulles was proclaiming that (1) the First Amendment protected only the right to publish the news and not the right to gather it; and (2) the presence in the People's Republic of

U.S. journalists would "lend respectability" to an "outlaw regime."

Without a moment's hesitation, Louis Lyons bestowed his blessing on my going. During my six weeks in China, when Harvard began to feel the heat, he never wavered in his defense of the right to travel and the public's right to know. Washington was especially disconcerted because my CBS broadcasts contradicted the official nonsense about the "imminent collapse" of Mao's government. Deputy Under Secretary of State Robert Murphy personally telephoned CBS president William Paley, and Assistant Secretary Walter Robertson tried to pressure the editor of *The Baltimore Afro-American* into summoning me home.

On my arrival back in the U.S. early on a wintry Sunday morning, Louis Lyons and two Nieman classmates (Anthony Lewis of *The Times* and Hale Champion of *The San Francisco Chronicle*) met my plane in a much appreciated — in fact, indispensable — gesture of solidarity. Officials in the State and Justice departments who had begun threatening prosecution under the 1917 Trading With The Enemy Act got the message.

Several weeks later, at a private luncheon at the Nieman Foundation, Louis Lyons assembled Mr. Lewis and Harvard Law Professors Paul Freund and Roger Fisher to coach me for testimony before the Senate Subcommittee on Constitutional Rights, where I disclosed all the improper governmental arm-twisting that had gone on behind the scenes.

When a Louis Lyons passes from the scene, one's pessimism, indeed despair, about the future of this country and its impact on the outside world tends to deepen.

But then comes the healthy reminder that Louis Lyons was not some disparate, disembodied journalistic phenomenon, but rather a true heir to Boston's rich legacy and vanguard traditions — from Tea Party to Abolitionist movement and Underground Railroad, from anti-manifest destiny and imperial expansion to suffragette

movement, from anti-Vietnam to anti-El Salvador.

It's true, as Lillian Hellman has said, that this is "scoundrel time." But there's no reason to worry that our present moral crises at home and abroad won't produce stalwarts of the Louis Lyons mold who will refuse to fawn upon the scoundrels and who will (as the Quakers put it) "speak truth to power."

William Worth ('57)
New York City

The following article was printed in the weekly news, Iowa City, Iowa, and sent to the Nieman Foundation by its author, John Harrison ('52).

A couple of things have happened in the last four months about which I wanted to say something, but — for one reason or another — couldn't or didn't.

One was the death on April 11 of Louis M. Lyons, retired Curator of the Nieman Foundation at Harvard University. The Harrisons read about Louis' death in the April 12 edition of *The New York Times* just about two hours before we were scheduled to leave the Cedar Rapids airport on our departure for Yugoslavia. There was no time then to write anything more than a hurried note of sympathy to his widow, Totty.

The other was the announcement some weeks ago that the *weekly news* was to receive the American Bar Association's Silver Gavel Award for its remarkable series of reports on the alleged mishandling of two trust funds by Jay Oehler, a local attorney.

Then, after the award had been made at the San Francisco convention of the Bar Association earlier this month, it struck me that there was something to be said about both of these events that is sufficiently timeless to be appropriate, no matter how long after the fact it happens to be said.

What occurred to me was how much Louis Lyons would have approved of

the enterprising and courageous kinds of journalism that earned this prestigious award for a fledgling weekly newspaper whose owners and editors had to put so much on the line just to publish the information contained in this series of reports. It's exactly the kind of journalism Louis kept insisting the press in this country is obligated to provide if it is to deserve the broad privileges granted it by the guarantees of freedom in the First Amendment.

The truth is that Louis Lyons — although his name was scarcely a household word — probably had greater influence on the press in the United States in the twentieth century than any other single individual. A New Englander who was graduated from the University of Massachusetts, then went to work as a reporter on *The Boston Globe*, he became Curator of the Nieman Foundation at Harvard in 1939 — the year after he had been one of the nine newspapermen chosen to be members of the first Nieman class. So it was Louis Lyons who largely shaped this unique program, established with a generous bequest in the will of Agnes Nieman, widow of the publisher of *The Milwaukee Journal*, with no more specific suggestion than that it was to be used to "elevate the standards of journalism in the United States."

It was Louis Lyons who shaped that program and who — in the 25 years before his retirement in 1964 — made his influence felt in so many different ways. Through *Nieman Reports*, the quarterly publication he established, he saw to it that what is probably the most systematic appraisal of the performance of the American media is carried on. In the scores of eloquent articles he wrote and stirring speeches he delivered, he continually held the press accountable to the highest standards. And to the hundreds of young American journalists who participated in the Nieman program — a dozen or so each year — during his Curatorship, he imparted a concern for courage and integrity in the practice of their work which has had an inesti-

mable impact.

Harvard awarded him an honorary degree when he retired in 1964, calling him "the conscience of his profession." It was an appellation richly deserved, for Louis Lyons was one of the few critics of the performance of the press in this country who did more than make eloquent speeches and publish stirring articles concerning the importance of both freedom and responsibility in every aspect of the performance of the news media. He would no more have backed off from criticism just because it might in some way hurt or displease the objects of his criticism than he would have knuckled under to pressure from those in high places.

"Reporters," Louis Lyons declared, should "dig under censorship, secrecy, and classification of information to get at the facts." On another occasion, he said that "a bold press is called for to prevent, by vigilant reporting, the overriding of individual rights." And he scorned newspapers that "do not seek to inform, but only to excite, their readers."

It would be too much to suggest that the media generally have risen to these standards of performance in response to the urgings of this one man. For, in the first place, far too large a proportion of their numbers continue to hold the making of maximum profits as their principal concern. And, with that as a principal goal, very little emphasis is put on the obligations of either freedom or responsibility. Their principal concerns become to avoid upsetting the powers-that-be and exciting as many of their readers — or viewers — as possible.

Louis Lyons had no use for that kind of journalism and it disturbed him greatly that so much of American journalism was of precisely that sort. He never gave up his adherence to the highest standards of freedom and responsibility and he managed to convey his concern about these matters to everyone who had the privilege of association with him, and to a fairly considerable proportion of the movers

and shakers in the nation's media.

But though he dealt with these problems most often in terms of general principles and in relation to the larger units of the media, nothing pleased Louis Lyons so much as to come across individual instances of the kind of courage and enterprise that is represented in the series of reports which won this Silver Gavel Award for *the weekly news*.

It would have been a pleasure to see

his face as he read the details of this instance of investigative reporting by a couple of young people, just getting started in the newspaper business, who dared to publish information that certainly would not soothe the powers-that-be, nor even do much toward exciting large number of readers. It would have been rewarding to hear him say, as he certainly would have, something to the effect that "this is what journalism is really all about."

Epic Television

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makers. Corporations which are nearly eternal entities would almost always get the funds they need even if they are in deep trouble.

By dealing only with what happens inside the family, the film suggested the very notion that Brecht so much deplored: blaming fate for human misery.

Act II. Can the news be renewed? More than any other specific program on television, the news carries the marks of epic theatre.

The narrator, the reporters, the actors who are promoting a product, all of them stand between the audience and the event and/or product. The four narrators of WCVB's news program sit as judges of the events and of the spectator. Christopher Lydon, the anchorman of WGBH's *Ten O'Clock News*, aloof and neutral as he looks, can be described as a perfect Brechtian actor.

The medium presents itself honestly and doesn't pretend to be something else. For example, the studio where the broadcast is made doesn't look like a public place or a home; it is clearly a studio. WGBH even shows the sources of lights; a camera; a podium; a chair.

Additionally, the medium itself is referred to a number of times: an intercut of a cameraman chewing gum during a press conference with the President; the mayor who asks "the media" to leave the room; the phrase "We will be back in a minute" before each set of commercials is presented.

The constant use of slides as the narrator's background as well as the use of printed information no longer has elements of alienation because they are so regularly used. Although they demand different decodifying techniques than spoken words, they function as punctuation signs in the never-ending verbal fountain. (On WGBH, the weather forecast, the sports scores, and the Dow Jones information all appear over a slide with the same simple background music. All three are perhaps the most important news items for many viewers — and all of them can do without a narrator.)

There is nothing more fragmented than television news. And it's not only because of the number of items and commercials within a confined time. Each has its own path, its own structure. The color is not properly graded in many film reports and the result is very often a bizarre juxtaposition of purple doctors treating green patients and red right-wing politicians stating their minds.

There is no distinct connection between form and content. Sometimes there is no necessary connection between various simultaneous ele-

ments. For example, the narration over the Falkland Islands dispute was general and the pictures bore no direct connection to what was said. Other times the connection was too simplistic. A still picture of Margaret Thatcher which had her name at the bottom and her function at the top over a picture of Big Ben served as the background for her voice which sounded extremely unclear as she spoke in the British Parliament.

As a whole, endless change within a constant pattern is the contradictory feature of the news. The same familiar narrators, the same set up of the studio, the same construction of the sentences on one hand and the flow of events on the other.

In short, the fixed elements are much more powerful than the changing element. The result is a feeling that the chaotic world is actually organized and under control. It has, to my mind, a highly stabilizing effect. It doesn't stimulate thinking.

The following suggestions try to shake this orderly impression and change the news viewer's position from a passive to an active one.

- If the initial goal of the news is to stimulate thinking, then the first thing is not to take the news so seriously. Important figures are presented and their comments are presented even when there is no importance to them. (Haig: "I take with me to London new ideas"; Reagan: "I have nothing new

to say.") The narrators' faces are almost always very serious. The frame is often highly symmetrical. Jokes are permitted usually only during the weather forecast, or during special "light-hearted" topics.

One of the anchormen (or anchorwomen) should be a Jester. He should be allowed to interpret the items of the news. Sometimes he might even remain silent, but his very existence might be fruitful in awakening people's awareness.

- The news items which have been chosen to be broadcast are only one way of looking at what's important in today's events. Some other possibilities should be present in a short-cut way, like glimpses into second-best news items which were thrown into the dustbin. The decision-making process regarding choosing news fit to be broadcast should be exposed from time to time as news.

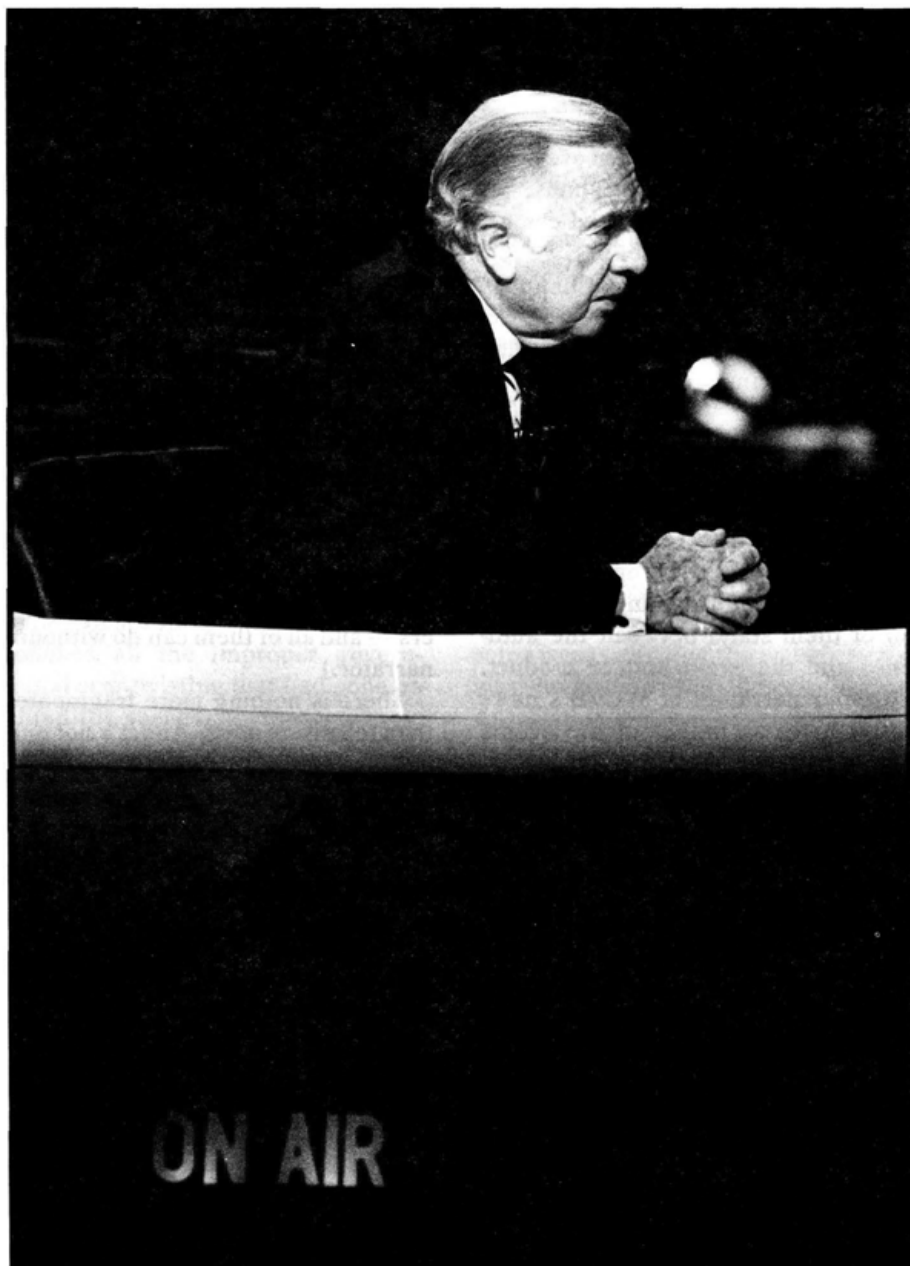
- The news is now highly verbal. Almost everything is interpreted by an "all-knowing" anchorman or reporter. The ignorant viewer is led by these guides into a superficial cause-and-effect kingdom. After presenting a few facts and figures, the anchorman or the reporter should remain silent for a while. The camera and the microphone should be free to explore glimpses of the reality, without too much interpretation.

In the case of the Argentina-United Kingdom dispute, about two minutes were devoted to describing the feelings in the streets of Buenos Aires and London. Most of the visuals were covered by the voice-over of the reporters. Perhaps the extremely enthusiastic Latin crowds should have been juxtaposed with the more reserved Britons, using the natural sounds. The impact could have been much stronger if most of the narration were eliminated.

All the necessary material existed in the items. But the never-ending narration flattened everything.

- Doubt is very rarely expressed in the news. Most of the information claims to be the truth, nothing but the truth, and if time permits it even tries

DETROIT NEWS/ELI REED



to pretend that it's also the whole truth. Typically the only issue in which doubt was expressed extensively was a longer scientific item on the *Ten O'Clock News*. It had to do with a rare disease which can hardly be cured.

A most elaborate machine was invented in order to circulate the blood of the patient outside his body — a horrifying notion. The scientist was uncertain about the result of using it. Compare his modest approach based on so much knowledge with the arrogant self-assured attitude of politicians and journalists.

Doubt, in this case, as much as in most others, is an appropriate stimulus for thought.

Act III. Bloody Love Boat. Salvation — the final resolution of chaos — is an intrinsic need of human audiences. Even Azdak at the end of *The Caucasian Chalk Circle* brings Grusha and Simon back to each other, and says:

Now I'll take off this Judge's robe — it has become too hot for me. I'm not cut out for a hero. But I invite you all to a little farewell dance, outside, in the meadow. . . . You won't mind dancing with each other.

And the Singer adds:

But the people of Grusinia did not forget him and often remembered His time of Judgment as a brief golden age that was almost just.

Having Brecht's idea in mind, *Love Boat* should almost remain as it is — almost. Because it won't harm anyone if occasionally a perfect, beautiful girl will open her mouth and a big golden tooth will be noticed, or that the captain will from time to time inject heroin into his blood, or that a bloody corpse will be found on board without anyone taking notice of it.

Life is beautiful. Why not?

The Commercials. In a short unpublished fragment headed "representation of sentences in a new Encyclopedia" Brecht states a few criteria to understanding sentences:

- Who is the sentence of use to?
- Who does it claim to be of use to?

- What does it call for?
- What practical action corresponds to it?

These criteria could be applied to television. Take the case of the commercials. "Aren't you hungry for Burger King now?" is said by an actress at the end of a series of extreme close-ups of pieces of meat, salad and catchup. Hunger is provoked, and her question claims to provide a way to satisfy it. Obviously, the actress recites these words because she is paid to. She is actually saying, "I have received \$2,000 to make you hungry."

The corporation willing to pay that much is actually saying, "We hope you'll be provoked by the actress' smile to increase our revenues. After all, we paid her so much money to do so."

In "Sixteen Notes on Television" Todd Gitlin says: "The commercial is the purpose, the essence; the program is the package." Whether one takes this sentence exactly as it is said or not, it is clear who actually benefits from television. In 1974, the one hundred largest companies in the United States (out of about 400,000 existing companies) accounted for 76 percent of network television ads. In 1975, 40 percent of all public television programming was paid for by the same one hundred companies.

So, Brecht's questions, put to the television phenomena, can be fairly answered in the following manner:

- Who is American television of use to? The top hundred companies in the United States.
- Who does it claim to be of use to? The public.
- What does it call for? Consuming consumer goods.
- What practical action corresponds to it? Stop and shop.

Where Do We Go From Here?

When radio was in its infancy Brecht made a number of suggestions as to its future:

. . . There was a moment when technology was advanced enough to produce the radio and society was not yet advanced enough to accept it. The radio was then in its first phase of being a substitute: a substitute for theatre, opera, concerts, lectures, cafe music, local newspapers and so forth. . . . radio is one-sided when it should be two. It is purely an apparatus for distribution — for mere sharing out. . . . change this apparatus from distribution to communications. . . . That is to say, it would be if it knew how to receive as well as to transmit, how to let the listener speak as well as hear, how to bring him into a relationship instead of isolating him.

In the fifty years that passed since Brecht made these comments the radio has taken a small step forward in that direction. Live conversation over the phone with listeners seems to establish a beginning of a two-way flow of communication.

Recent experiments in television try to follow a pattern of greater participation of the audience in the program. The Qube experiment, done by the Warner Cable Corporation in Columbus, Ohio, seems to call for a greater involvement of the audience. In the Qube experiment the audience is constantly asked for opinions regarding televised programs ("Should we go on with this show?"). Subjects which are discussed on air ("Should a homosexual teacher be allowed to teach?") and commercials ("Would you like to buy this product?") — these questions are answered by pressing buttons which are directly connected to a computer.

Does all this mean that the viewer is driven out of his passivity; does it take him out of his isolation or bring him into a relationship?

For the time being the answer seems to be negative. Until each individual has the technical capacity and the will power to broadcast whatever he wants, the prevailing pattern will be the ancient one, that is, a small group of broadcasters and opinion leaders will try their best to manipulate his emotions and his ideas.

The viewer might perhaps get his salvation elsewhere.

If, indeed, in the near future the viewer will be able to choose from numerous possibilities, cable television programs, programs which are made all over the world and broadcast via satellite, or programs chosen from a library of video cassettes, then tele-viewing might be a different experience altogether. For better or worse, television might stop being a tool of the community. For better or worse, it might become non-political, neither preserving the status quo nor promoting change. Neutral.

Television was almost never neutral. On the rare occasions when it took a stand (McCarthy, the Vietnam War, Watergate), it helped to bring a significant change. In all these instances it needed accumulation of time. Or to put it in Brecht's terms (when he compares the epic theatre with Marxist dialectics):

Accumulation of incomprehensible factors until understanding occurs.
(Conversion of quantity into quality.)

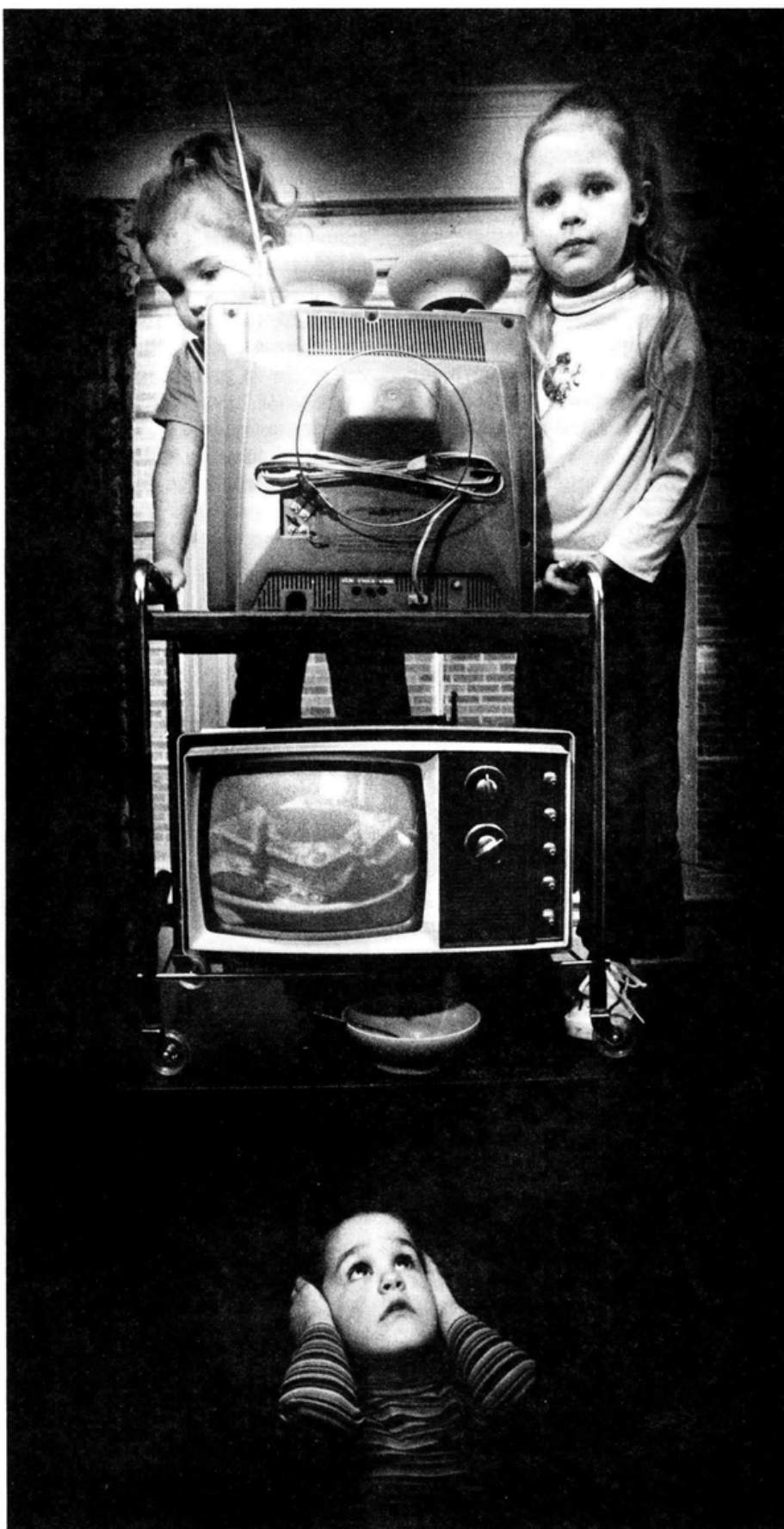
In these cases the television epic theatre has been a revolutionary force. But these were clearly exceptions to the rule.

Most of the time television is producing the very product it is expected to produce. To use Brecht's metaphor from the song quoted at the beginning of this work, it's highly unlikely that the cow will shit into its milk. It is simply uneconomical.

It seems that the question which Brecht has put at the end of his *Über Experimentelles Theatre* is still very relevant to the problem facing television.

How can the unfree, ignorant man of our century, with his thirst for freedom and his hunger for knowledge; how can the tortured and heroic, abused and ingenious, changeable and world-changing man of this great and ghastly century obtain his own theatre which will help him master the world and himself?

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Reporting the Courts

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until told by the defense attorney. Another was informed about the securities case for the first time during the voir dire questioning.

CONTINUANCE

Continuance means postponing a trial until a time when the community's attention is no longer riveted to the facts of the case. Continuance makes the assumption that time is the best way of retarding memory as well as prejudice. The only problem with the assumption is that once a delayed trial begins, the media will pick up and rewrite all of the old stories, retelling the information in as much detail as before. So, for crimes which originally receive a great deal of coverage, continuance is probably not an effective legal safeguard. However, for trials with only temporary interest, a continuance may be the best solution.

CHANGE OF VENUE

Although expensive, moving a trial from one county to another has been seen as a moderately effective way of reducing jury prejudice. In change of venue, the judge, defendant, witnesses, defense attorneys, and court personnel move to another community from which a jury is selected. It is hoped that prospective jurors in the new community will not have been exposed to as much publicity as have persons in the original community. Change of venue is effective in large states such as Florida that have dispersed concentrations of population, where circulation of newspapers is intensive rather than widespread and where radio and television coverage is limited geographically. For

example, the first murder trial of Theodore Bundy, accused of several murders in and out of this state, was moved from Tallahassee, where he allegedly killed two college women, to Miami. Again, his trial on charges of killing a Lake City girl was moved from that town to Orlando. While most Floridians knew of the charges against Bundy, those in cities such as Orlando and Miami had not been exposed to the intense and in-depth coverage by the newspapers in the northern part of the state.

Two Florida cases and one from Indiana point out the problems encountered when a change of venue is not considered. *Shepherd v. Florida* dealt with the murder conviction in 1950 of four young black men in Lake City who were found guilty of raping a 17-year-old white girl at pistol point. The incident created a serious confrontation in the small town: mobs burned several homes of black families, several families were removed from town by police to prevent midnight lynchings, and other families fled the town. The National Guard and the 116th Field Artillery from Tampa were called out. Newspapers reported that a confession had been given police, yet no confession was ever offered at trial. The information about the confession came from a press release written by the sheriff. During the grand jury deliberations, a newspaper ran an editorial cartoon depicting four electric chairs with the caption "No Compromise — Supreme Penalty." The Florida Supreme Court, in refusing to overturn the convictions, reasoned that the inflamed public sentiment was against the crime and not the race of the young defendants. There was evidence that the judge did try to control the courtroom by searching all persons who entered. But as Justice Robert Jackson said in his concurrence to the U.S. Supreme Court's reversal, the "very need for this type of security reflected the prejudicial atmosphere which permeated the trial." Although the defense attorney entered motions for continuance and

change of venue, they were denied. The U.S. Supreme Court's per curiam reversal was not based upon the atmosphere and the racial prejudice that engulfed the community, but on the manner in which the all white grand jury had been selected. Justice Jackson's concurrence said that the prejudicial influences were brought to bear upon the jury with such force "that the conclusion is inescapable that defendants were prejudged guilty and the trial was but a legal gesture to register a verdict already dictated by the press and the public opinion which it generated."

The U.S. Supreme Court has consistently placed its stamp of approval upon the use of change of venue as a proper means of trial management. In *Irvin v. Dowd*, the defendant's conviction in southern Indiana on six counts of murder was reversed because the judge not only had failed to exercise his prerogatives during the voir dire process, but he also had not appropriately used his power to grant a second change of venue. Leslie Irvin was arrested in Evansville and charged with six murders. The newspaper, radio, and television coverage was extensive and vitriolic, detailing former convictions, AWOL charges during the war, parole violation, a confession, police lineup identification, and running extensive interviews with the sheriff. Irvin's lawyer moved for a change of venue, which was granted to the adjoining county where publicity had been just as rampant. Ninety percent of the prospective jurors from that county said they entertained some opinion as to Irvin's guilt. The lawyer sought another change of venue to a county sufficiently removed from Evansville, but the second motion was denied because Indiana law allowed only one change of venue.

The state called 430 prospective jurors. Over half were excused for stated prejudice, 103 were excused because they did not believe in the imposition of the death penalty, and 30 were challenged peremptorily. Of the ten seated, eight said they had an

opinion about the defendant's guilt but felt they could be impartial. The U.S. Supreme Court, reversing the conviction, found that a pattern of deep and bitter prejudice existed which was brought about by extensive

incident and accompanying prejudice that jurors from the community could not possibly try the case solely on the evidence presented in the courtroom. ...the general atmosphere in this rural community was sufficiently in-

cameras in the courtroom policy has said that jurors, intrigued by seeing themselves on television, will be hard put not to turn on the television set and watch themselves.

Admonition is probably the weakest safeguard against such exposure. An admonition is a simple warning by the judge not to read or watch anything about the trial, nor to talk about or discuss the case with anyone. If a juror does receive information during the process, he may be penalized by contempt of court if the information was obtained purposefully. However, if the information came about by accident the juror may be questioned by the attorneys to determine the effect the information had on the individual's ability to keep an open mind. If prejudice has occurred, a mistrial may be declared or the juror will be replaced with an alternate.

Once a jury is impaneled, it is always a fear of judges and lawyers that jury members will read or listen to accounts of their own deliberations and the court's activities reported in the media.

media publicity. The Court chastised the judge for not taking the proper measures to ensure that an impartial jury was selected and for not granting a change of venue the first time to a place removed from the furor of the public and the media.

In *Murphy*, Florida judges were given a test for determining when to grant a change of venue. The state supreme court required a determination to be made as to whether the general state of mind of the citizens is so infected by knowledge of the incident and the accompanying prejudice, bias, and preconceived opinions that jurors could not possibly put these matters out of their minds and try the case solely on the evidence presented in the courtroom. A 1979 case did not properly apply that test. In *Manning v. State*, Derrick Manning was found guilty and sentenced to death for the murders of two sheriff's deputies in Columbia County. Following Manning's arrest, publicity was intense, inflammatory, and contradictory. Manning's attorney filed a motion for change of venue, citing the inordinate publicity, pronounced prejudice, and hostility toward the accused. The motion was denied and a jury was seated that knew of the crimes through the local media accounts and community discussion. The Florida Supreme Court reversed and granted a new trial based on a finding that the "inhabitants of Columbia County were so infected by knowledge of the

flammatory to require the trial court to grant a change of venue...."

CHANGE OF VENIRE

Changing the composition of a jury is not allowed in Florida. The Sixth Amendment states that a jury shall be selected from the district wherein the alleged crime occurred. However, some states hold that a judge may select jurors who do not live in the same county where the crime occurred and still hold the trial in that county. It may be less expensive to house a foreign jury than to transport the court and all of its personnel to another county. Change of venire is also used whenever it would be impossible to change venue because of the stationary character of evidence. For example, change of venue would be impractical if it were necessary that jury members actually visit the site of the crime, perhaps several times.

ADMONITION

Once a jury is impaneled, it is always a fear of judges and lawyers that jury members will read or listen to accounts of their own deliberations and the court's activities reported in the media. This is particularly so in Florida where television cameras are allowed to film court proceedings. More than one critic of Florida's

SEQUESTRATION

Sequestering of the jury is the most effective way of preventing prejudicial influence from the press. Jurors are housed together, eat together, and are transported to and from the court together. Visitation with families is restricted and so is exposure to the media. It is not uncommon for a policeman to be assigned the job of cutting out of the paper any stories which might be prejudicial before delivering the paper to the jurors. Most judges avoid the use of sequestration when they know the trial will be a long one. However, with the presence of cameras in Florida's courtrooms, sequestration, although very costly to the state, is being used more often.

The case which points out how one judge abused his discretion to initiate any of these traditional safeguards, particularly sequestration, and which opened the door for other types of questionable safeguards is *Sheppard v. Maxwell*. In that case, Dr. Samuel Sheppard, a Cleveland osteopath, was charged in 1954 with murdering his wife. Despite denials by Sheppard and testimony that he struggled with

someone in the home and was hit over the head, the Cleveland media did not believe him and called for his immediate arrest. The reports were unimaginable in light of today's professional attitude toward reporting sensational crimes. Various forms of trial mismanagement that resulted in "an orgy of sensationalism" included the following: no change of venue was granted; jurors were not sequestered; cameras with hot lights and snaking cables were allowed into the courtroom; police, prosecutors, and witnesses were given free rein to publicize their sentiments about the guilt or innocence of the defendant; the coroner's hearing was held in a school gymnasium and broadcast to the city; the judge and district attorney, who were up for reelection, held daily press conferences after the proceedings. The U.S. Supreme Court refused to hear Sheppard's first appeal for a reversal. Five years later, a young criminal lawyer, F. Lee Bailey, re-petitioned the Court to review the case. In 1966, the conviction was reversed. On remand, Dr. Sheppard was acquitted during a relatively quiet trial.

In reversing the conviction, the Court chastised the judge for his mismanagement of the trial and for allowing the media to take over the courtroom. The judge was scolded for not considering and using the traditional means of safeguarding Sheppard's fair trial rights, such as sequestration and change of venue. "We conclude that these procedures would have been sufficient to guarantee Sheppard a fair trial and so do not consider what sanctions might be available against a recalcitrant press." The Court went on to say that the "carnival atmosphere" could easily have been avoided by adopting stricter rules governing the use of the courtroom by the media. Specifically, the justices suggested that access to the courtroom by the media could be limited by selecting only a representative number of reporters to cover the trial. Second, the Court suggested that the judge should have restricted

statements and opinions from witnesses, police, lawyers, and other court personnel. Third, the judge should have admonished all of the media to report only material that was entered at trial and to be more careful about checking the accuracy of rumor. The latter suggestion raised many eyebrows among the legal profession as well as among the media. The Court in *Sheppard* did not say the judge could restrict the publication of prejudicial information, nor did the Court say the judge could not restrict such publication. The Court merely took the middle ground — admonition — and applied it to the specific facts of the Sheppard trial.

RESTRICTIVE SAFEGUARDS

Restrictive Orders — Prohibiting Publication

The *Sheppard* case and several other sensational trials in the late 1950's and early 60's prompted the American Bar Association to interpret the Supreme Court to mean that if judges felt a defendant's rights could be prejudiced, they could do whatever was in their power to preserve the decorum of the trial — even if it meant restricting what the media could publish. In 1968, the ABA made its recommendations in what has been historically referred to as the Reardon Report, but which is more accurately called the ABA's *Standards Relating to Fair Trial and Free Press*. This report, which has since been revised, sanctioned the use of restrictive orders against the press. Specifically, the report suggested that if anyone willfully publishes information which goes beyond the public records and which threatens the outcome of the trial, the judge may use his contempt power to punish that person. Additionally, any person who willfully disobeys a judge's restrictive order could also be held in contempt of court.

Although the Reardon Report was not law, only a guideline for judges to follow, it had the practical effect of

telling judges that restrictive orders were permissible. However, not all legal groups were telling the judges the same thing. While the Reardon Report was being passed by the ABA, the Judicial Conference of the United States also formulated recommendations in its *Report of the Committee on the Operation of the Jury System, Free Press-Fair Trial Issue*. This report, called the Kaufman Committee Report, took two years to prepare. It is an inventory of the various methods available to a judge to protect the defendant's fair trial rights. Unlike the controversial Reardon Report, the Kaufman Committee Report made no specific suggestions for controlling the content of the news. Only two suggestions touched on the media: (1) seating of media representatives so as to minimize disruption and (2) warning against the disruptive nature of television or still photographers.

Between 1964 and 1976, restrictive orders against the media and sources were almost daily occurrences. Media were restricted in their coverage of major civil disobedience trials during the late 1960's and early 1970's. Judge John Sirica of the U.S. District Court in Washington, D.C. issued dozens of restrictive orders during the Watergate trials of the mid-1970's. It is instructive to look at a sampling of Florida "gag" order cases to see how this state's media were affected.

During the 1972 Republican National Convention in Miami, eight young anti-war activists, later designated the "Gainesville Eight," were arrested and charged with conspiring to disrupt the convention. A federal district court judge issued an order before the pretrial proceedings began prohibiting the media from sketching in the courtroom. CBS artist Aggie Whelan obeyed the judge's order and did not bring any sketching materials into the courtroom; instead, she observed what transpired in the courtroom and went into the hall to do the sketches. After hearing of this affront, the judge ordered CBS reporters into his chambers, confiscated the drawings and issued another order that no sketches

were to be made of the proceedings in the courtroom "or its environs." The next day, Whelan did not go to the courthouse, but sketched the trial participants from memory. Four of the sketches were shown on the CBS

although the Fifth Circuit ruled that the sketching bans were too broad. A general warning is that reporters should not break orders but acquaint themselves with the law so they can successfully challenge unconstitu-

With the presence of cameras in Florida's courtrooms, sequestration, although very costly to the state, is being used more often.

morning news. CBS was found guilty of defying the order. The judge issued another order, this time prohibiting the publication of sketches regardless of where they were made. CBS appealed the order. The Fifth Circuit said sketching is not intrusive and can be done quietly or even away from the court. As for publication, the Fifth Circuit held that a total ban on the publication of sketches was far too broad and too remotely related to the danger sought to be avoided. Only when there has been a showing that the sketching is obtrusive and disruptive can a court prohibit it.

Since CBS was found guilty of disobeying the judge's second order, the network did not defy the third, but challenged it by appealing. In an earlier case, the Fifth Circuit warned the media that if they feel a judge's restrictive order or any order is unconstitutional, they should challenge the order first, rather than break it. As far as the law is concerned, a court order is considered constitutional until held otherwise. Unless an order is "transparently invalid" or "patently frivolous," it must be obeyed until reversed by orderly review or until it is withdrawn. The court reasoned that a deliberate refusal to obey an order of the court without testing its validity through established processes requires further action by the judiciary and therefore directly affects the judiciary's ability to discharge its duties and responsibilities. As for CBS, it was ordered to pay the fine assessed for the contempt conviction

tional orders.

While there have been numerous attempts in Florida to gag the press, only a few cases have ever reached the appeals stage. One case decided by a district court of appeals in Lee County is typical of the use of gags in this state's circuit courts. *Florida ex rel. Miami Herald Publishing Co. v. Rose* involved two orders from a judge trying a murder case. The judge issued the orders prohibiting photographs from being taken within a prescribed area and prohibiting the publication of information about the case except for testimony offered in open court before the jury. The newspaper appealed the latter order and the district court of appeals held the order invalid because it acted as a prior restraint on the First Amendment. While the judge has the power to control his courtroom, said the court, he also has ample power to ensure a fair trial without suppressing First Amendment rights. The court suggested that sequestration could have dealt with the problem of prejudice better than a restriction on the media.

It was not until 1976 that the U.S. Supreme Court heard a gag order case. In *Nebraska Press Association v. Stuart*, a Nebraska judge had issued a far-reaching restrictive order against publishing information about the murder trial of Edwin Simants, accused of murdering six members of one family. The judge's order followed the guidelines voluntarily adopted by members of the state bar association and the state's news med-

ia. Between October 22 and December 12, 1976, the media tried to have the order vacated by the state courts and twice by the U.S. Supreme Court. Each time the order was appealed it was modified, until it prohibited only the reporting of confessions and admissions and any other information "strongly implicative of the accused as the perpetrator of the slayings." Still not satisfied, the media applied to the U.S. Supreme Court for a third time to stay the order. The Court agreed to hear the appeal but denied motions to expedite review or to stay the order. The Court's opinion was not handed down until June 30, 1976, the last day of the Court's 1975 session and almost six months after Simants was convicted of murder and sentenced to death.

Despite the delays and frustrations, the Nebraska media received a decision that would virtually end the use of gag orders against the media. The Court stated that while most restrictive orders against the press are unconstitutional, there are certain extraordinary circumstances that might justify such restrictions. To help judges determine whether such circumstances exist, the Court set down a three-prong test that has since been labeled the *Nebraska* guidelines. The guidelines state that before issuing a restrictive order, a judge first should examine the nature and extent of the pretrial publicity to assess what probable effect it would have on prospective jurors. Second, the judge should exhaust all other measures, such as sequestration, continuance, voir dire, and change of venue, which would likely mitigate against the effects of the pretrial publicity. Third, the judge should not enter an order unless the gag is the only way of ensuring a fair trial.

In 1977, the Florida Supreme Court adopted the *Nebraska* guidelines in *Florida ex rel. Miami Herald v. McIntosh*. In that case, six stockbrokers were charged with securities fraud and were scheduled for trial in a Palm Beach circuit court. Before trial, the defendants moved to prohibit the

reporting of any testimony or evidence made outside of the presence of the jury until it was made a part of the public record or public trial. The motion also barred participants from commenting on the case. The judge granted the motion and entered the order. The media sought a revocation of the order and a hearing was scheduled. At the conclusion of the hearing, the judge refused to withdraw the order, saying that it was his assessment that publicity would injure the defendants' right to a fair trial.

On appeal, the Florida Supreme Court stated that without a fair trial, freedom of press could not exist and without freedom of press, fair trials could not be assured. "We firmly reject any suppression of news in criminal trials except in those rare instances such as national security and where a news report would obviously deny a fair trial. . . . News delayed is news denied." The court cited the *Nebraska* guidelines as the standard to be used in Florida to determine whether publication would "obviously deny a fair trial." Additionally, if a judge feels he has met the *Nebraska* guidelines, he must give the media reasonable notice and an opportunity to challenge before enjoining publication.

The *Nebraska* and *McIntosh* decisions do not prevent judges from issuing restrictive orders against trial participants.

PRESS REMEDIES

Gag orders are less common today than they were in the 1960's and early 1970's; however, it is not improbable that a circuit court judge may attempt to issue such an order to freeze information immediately. For that reason, it is important to understand the legal procedures that protect against such orders.

If a reporter is in a courtroom when a judge issues a verbal or written order restricting publication of information, or if the reporter receives a

copy of the order before the court is in session, the reporter should move immediately for a hearing on the order. If there is time, call the newspaper's lawyer to appear and make the motion. Many Florida media have made available to their reporters wallet cards which carry the words of such a motion. Reporters are instructed to deliver the motion to the judge or to stand up in court and be noticed by the judge and then to read from the card. Below is a suggested motion for Florida reporters covering trials in this state:

Your Honor, my name is.
I am a working journalist representing. As regards this court's order(s) not to publish (broadcast) certain information, I wish to move that this court convene a hearing without delay in order that my newspaper (station) may challenge this court's order(s). I request that any further proceedings in this case be postponed until such time as I can contact our organization's lawyer, who can appear on our behalf to challenge the order. According to the state supreme court, it is the court's duty to convene a hearing and to hear arguments for and against any motion to invalidate such an order.

Once this motion is made, the judge should set a hearing date and time at which the media's lawyers should appear to address all the legal arguments for invalidating the order. If the judge refuses to hold such a hearing or if the judge continues to uphold his order after such a hearing, the media may seek a stay of the order and a review from the district court of appeals.

In 1978, the Florida Supreme Court passed a rule which permits "quick" appeals from court orders that impinge on the freedom of the press. The rule allows the media, once an order is issued, to go directly to the district court of appeals and get a ruling as to the order's constitutionality. The district court of appeals has the power to stay the order pending a review. This appeals process may be carried to the

state supreme court and, if necessary, to the U.S. Supreme Court. If time is of the essence and the media feel a resolution is necessary immediately, it is possible to petition a member of the U.S. Supreme Court responsible for the Fifth Circuit to stay the order pending a full review by the court.

When an application for the stay of an order is made to a single U.S. Supreme Court justice, that justice may stay the enforcement only if the following four elements are present: (1) Irreparable harm will occur if the stay is not granted; (2) Reasonable probability exists that four justices will find the issue sufficiently substantial to grant certiorari; (3) A fair prospect exists that the majority of the Court will reverse the decision of the lower court; and (4) "Balance of equities" to parties and the public favors issuance of the stay.

Although a case may be moot by the time the appeals process has begun, the court may still hear arguments and reach a decision. It is a rule of American courts that a case must be a concrete controversy and "ripe" for adjudication. There are exceptions to the mootness doctrine because some cases and controversies simply do not have a long enough life span to still be "ripe" by the time all appeals have been pursued. For example, by the time the U.S. Supreme Court heard the *Nebraska* case, Simants had been found guilty. The Court has noted that many cases by their very nature evade review as actual controversies; however, the situations are capable of repetition. Under such circumstances appeals courts may still hand down decisions, although they resemble advisory opinions rather than actual holdings. From a legal standpoint, the rule allowing such review of a moot case is obviously a good one, but it does the reporter who is trying to give his readers information about an ongoing trial little good if the orders remain in effect for the duration of the trial. □

To be concluded next issue

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monthly wage. And on the T (Boston's public transportation system) I wonder what a Muscovite would make of an attorney's advertisement offering "common-sense fees for legal services," including "bankruptcy for \$225, simple wills \$50, and 24-hour divorce \$499."

On a Labor Day visit to Provincetown, we discover that, while Soviet law remains rigidly prudish, the American sexual revolution rolls on unabashed. Two male transvestites in gorgeous gowns are trying to raise money for sick children by touting kisses for a dollar each. A "P'town" bookstore displays the *Gay and Lesbian Community Guide to New England*, while a local entertainment magazine has a feature on a "gay sports weekend" and a poem called "Butch Bottom Boy." Only two weeks out of Moscow, I am not quite ready for this.

Safely back in Cambridge, we start to wonder how safe, in fact, we are. Crime, although by no means unknown in Moscow, does not pose problems there on anything like the American scale. We stop to ask a Harvard policeman if Christine can safely walk alone at night. He seems unreassuringly doubtful. The book *Unofficial Guide to Harvard* suggests that we "walk or jog in groups," "use the peepholes," and "get an emergency whistle from the police and carry it in your hand when walking alone." "Harvard," it continues, "is not entirely an insulated community; an element of the larger world often scales its ivied walls and crawls through its windows." Arkady Renko, where are you now that we really need you?

"If you are raped, call the police," the *Unofficial Guide* advises. We learn that the Harvard Police Sensitive Crime Unit gives tips on "avoidance strategies" for women. For \$24, the Cambridge Adult Education people offer a self-defense course called "Dirty Tricks for Women." I think of some of those fearsomely large Russian "babushkas" and dread what they might do with such skills. Three two-hour sessions teach "how to get someone's hands off you; to hold someone down who is twice your size and strength; to throw someone down and to prevent someone from hitting you." Or, for a possibly more radical solution, a Harvard-Radcliffe group called Amandla offers "self-defense" instruction for those who "feel threatened on the street or by the State" and who seek "the self-confidence that comes from knowing you have the skills to fight back." I can't see that sort of group lasting long at Moscow State University. In fact, apart from roaming drunks, the worst we had to worry about on Moscow streets was chunks of ice sliding off the rooftops and crippling a few passersby.

But we are not deterred from nocturnal excursions to sample the bourgeois entertainment in Harvard Square. We listen to the Triangle drumming band and a girl, singing late at night, to no one in particular, a song called "My Midnight Snacks Alone." A man coming out from



A street scene in Moscow...

the T drops a dollar in her hat. It occurs to me that I have never seen anyone in Russia singing or playing a musical instrument on the streets.

At Fenway Park, my attention strays from the Sox and the Tigers and fixes for a while on the crowd. Have I been reading too many Soviet accounts of American racial problems, or am I right in thinking that the only blacks in all this crowd are those playing on the field?

Two visits to that wonder of capitalism, Filene's Basement, and we are equipped for the Boston winter. Our Moscow winter coats, of Mongolian sheepskin, were too heavy to consider carrying on the plane. By the time autumn gets out its paintbox, we are well-accustomed to Cambridge life. Now we take it as almost normal when the announcer at the Harvard football game reminds ladies to "hold onto your handbags" or when we wake to a radio program "celebrating the music and culture of Israel." Moscow memories begin to recede and we become less conscious of the contrasts which seemed so obvious in the first stage of our re-entry to the West. Well, almost. On October 5 I hear a "buy now for Christmas" commercial. "Oh, no!" I groan. "Someone should stop these ads getting earlier every year." But then, what the heck, it's a free country, isn't it? □



...and in Boston.

The Corporate Stumble

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No matter how wise an executive is, he still must face the vagaries of the real world. The Greek philosopher Heraclitus compared life to a river, and declared, "You can never step in the same river twice." It is true for business as well. The marketplace is in constant flux; the only certainty is change. In the past thirty years, supermarkets have replaced groceries, discount stores have replaced "five-and-dimes," shopping malls have replaced downtowns, fast-food outlets have replaced diners, jet planes have replaced ocean liners and railroads, television has replaced network radio (after network radio replaced vaudeville), Xeroxing has replaced mimeographing, 33's have replaced 78's, stereos have replaced phonographs, calculators have replaced slide rules, ball-point pens have replaced fountain pens, and computers have replaced a good number of people.

In their heyday, the railroads seemed omnipotent; network radio, everlasting. And today we still assume that our largest and most powerful corporations are somehow beyond change, beyond failure.

Yet size is no guarantee at all. In 1917 *Forbes* magazine began covering American business. It introduced an annual tally of the country's one hundred largest industrial corporations (utilities and financial institutions excluded), in which *Forbes* ranked the companies by their assets — the total wealth that the companies controlled.

Sixty-five years later, *Forbes* has proved harder than most of America's major corporations. The number one company in 1917, for example, was U.S. Steel, almost five times the size of the number two company, Exxon (then called Standard Oil of

New Jersey). U.S. Steel was also, by far, the most profitable company in the world. But by 1982, it ranked seventeenth in assets among industrials and, as we've seen, was struggling to find a new line of business.

Industrial number three was Bethlehem Steel, which by 1982 was no longer in the top fifty.

Number four was Armour, the meat packer. By 1982 it was a middling division of the Greyhound Corporation, having been purchased in the 1960's when it was in dire financial straits.

Number five was Swift, another meat packer. It became the foundation of the Esmark conglomerate, but in 1980, Esmark sold Swift because it had become a major drag on Esmark's profitability.

Number six was International Harvester, which was on the rocks and

flirting with bankruptcy by 1982.

Number seven was DuPont, which by 1980 had dropped to twentieth place, but then rose to sixth place by merging with an oil company (Conoco).

Number eight was Midvale Steel & Ordnance, which was acquired by Bethlehem Steel in 1923.

Number nine was U.S. Rubber, now Uniroyal, which by 1982 was not even in the top two hundred in assets.

Number ten was General Electric, which by 1982 was still number ten.

These were the blue-chip stocks of their generation — the long-term investments that Americans have always been exhorted to make. Their performance, however, suggests that an investor might be better off with a shorter time horizon — and a keen understanding of the indeterminacy of modern business. □

The Fateful Photograph

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Larry Fink spent 11 years working as a freelance magazine photographer, publishing in such places as *Paris Match*, *Stern*, and the *Saturday Evening Post*. Around 1970 he began to concentrate on fine arts photography, often photographing people in candid situations where he had permission to be present, such as debutante balls, art openings, or with friends near his Pennsylvania home. Collections of his work are to be found in major museums. A *New York Times Magazine* cover picture that he shot during Columbia University's student uprisings in the 1960's demonstrates how versatile picture interpretation can be. A policeman and hippie were portrayed arguing. Radical students loved the picture because, they told Fink, it exposed the cop as a "fascist

pig." The Patrolmen's Benevolent Association called it "a great picture for democracy."

"I was a street photographer all the way down the line," Fink says. "Morally, it's ethical to photograph people who are unaware because what you are doing is universalizing their soul and leaving it behind for others to see. But it's painful for the practitioner, at least it was for me, because I don't want to mess anybody up or make them uncomfortable. After 11 years in the magazine business, it wasn't that lucrative, and I didn't have the satisfaction that I would have liked. It was just too frenetic. Also, you had no control over what was done with your pictures. They bought them and they were entitled to them."

Fink is critical of the role of *The New York Times* in the Arrington case. "They didn't have to take street photographs, I'm sure, of some anonymous black gentleman and never find him or identify him, then go ahead and run it. That's just bad editorial discretion. They could have sent a photographer to the key clubs

or some debutante ball or any number of occasions, examples of the sort of middle-class things they were talking about. They could have let everybody know the photographer was there, but it would have been the kind of occasion where he wouldn't be posing anybody, just ambling around taking pictures, part of the general ambience."

What should Gorgoni have done when given this assignment? "The photographer is really the innocent dupe," answered Fink. "He's been made to put his foot in his mouth without even stepping out. I could say he should have hassled the editors, gotten the script. But you know what would have happened there? He wouldn't have worked again for the next nine months. You know how they work in the editorial world. They're always doing things at the last minute. Someone's always getting a heart attack down the next hall. It's always hysteria, deadlines past. That's what you work with. I don't have a hell of a lot of good words to say about all this."

Gianfranco Gorgoni is a popular New York-based freelance photographer who has worked on assignment internationally for many publications, including *Time*, *Newsweek*, *The New York Times*, and — during the Pope's visit to England this past spring — London's *Sunday Times*. Gorgoni's comments concerning his fateful photograph of Arrington were disarming-ly frank: "I didn't know the article at all. The *Times* just told me they wanted pictures of black, elegantly dressed, executive-looking people. In our work, you don't have control of these things. They just assign you, use the pictures, and write whatever they want. Otherwise, everyone would like to have control: the people who are in the pictures, the photographer who takes the pictures, maybe the agency, the art director. So they just simplify that: They use whatever they like, the way they like. I feel I am for Arrington, in a way, because of the contents of the article. But this has nothing to do with the picture. This is

THE CASE HISTORY

DECEMBER 3, 1978

The New York Times Magazine publishes a cover story by William Brashler entitled "The Black Middle Class: Making It." A photograph of Clarence Arrington taken on assignment for *The New York Times Magazine* by freelancer Gianfranco Gorgoni appears on the cover.

JUNE 26, 1979

Arrington sues the New York Times Company, photographer Gianfranco Gorgoni, Contact Press Images, Inc. — the agency that actually sold the photograph to *The New York Times Magazine* — and Robert Pledge, president of Contact Press Images, Inc. Arrington charges that in publishing his picture, the defendants conspired to violate his common law and constitutional rights of privacy, and sections 50 and 51 of the New York State Civil Rights Law, which states in part that "a person, firm, or corporation that uses for advertising purposes, or purposes of trade, the name, portrait, or picture of any living person without first having obtained the written consent of such persons... is guilty of a misdemeanor." The suit is brought in the New York State Supreme Court, the lowest state court.

SEPTEMBER 1979

The defendants move to dismiss Arrington's complaint for failure to state a cause of action, a legal expression that means there are no legal grounds for suing.

MARCH 7, 1980

The Special Term branch of the New York State Supreme Court, which rules on procedural motions, dismisses the charges against all the defendants, basing its decision on two premises: 1) that sections 50 and 51 of the New York State Civil Rights Law do not allow a lawsuit when a photograph is pub-

lished in connection with an article of general interest, and 2) that it was *The New York Times*, and not the three co-defendants, that was responsible for the publication of the picture. In light of the latter consideration, the court grants Arrington permission to amend his complaint against the New York Times Company, but not the other defendants, and only on grounds other than those set out in sections 50 and 51 of the New York State Civil Rights Law.

APRIL 1980

Arrington and the New York Times Company each appeal the decision of the Special Term Court to the New York State Appellate Court, the second tier of the state judicial system.

NOVEMBER 25, 1980

The Appellate Court denies Arrington's appeal and grants the New York Times Company's appeal that the permission given Arrington to amend his complaint with respect to the New York Times Company be rescinded. At this point, all defendants seem to be in the clear.

JANUARY 5, 1981

Arrington appeals to the New York State Court of Appeals, the state's highest court.

APRIL 7, 1982

The Court of Appeals hands down a two-pronged opinion in which it upholds the Appellate Court's dismissal of Arrington's complaint against the New York Times Company, but finds that Arrington does have a cause of action against the three co-defendants — Gorgoni, Pledge, and Contact Press Images, Inc.

The Court exonerates the New York Times Company for several reasons. The paper did not violate sections 50 and 51 of the state Civil Rights Law as

Arrington alleges because it used his picture for an editorial, not a commercial purpose. Sections 50 and 51 "were drafted narrowly to encompass only the commercial use of an individual's name or likeness and no more."

The Court also cites a recent decision in which the New York State Court of Appeals held that "a picture illustrating an article on a matter of public interest is not considered used for the purposes of trade or advertising within the prohibition of the statute... unless it has no real relationship to the article...." Arrington's photograph, the Court concludes, bears a real relationship to the article in that it depicts a person who may "be perceived to be a member of 'the black middle class.'"

The Court denies Arrington's claim to a common-law right of privacy, citing several cases in which New York State courts have explicitly held that no common-law right of privacy exists in the state.

Finally, the Court writes that although Arrington's preference that his photograph not have been used on the cover of *The New York Times Magazine* is understandable, its publication "may be part of the price every person must be prepared to pay for a society in which information and opinion flow freely."

In the same decision, however, the Court finds that Gorgoni, Pledge, and Contact Press Images, Inc. are subject to a suit by Arrington. "Were the plaintiff to establish the truth of his allegations," the Court states, "the acts in which one or more of these defendants will have been proved to have engaged will, plainly and simply, have included that of a nonconsensual selling of the photograph," which it finds to be subject to sections 50 and 51 of the New York State Civil Rights Law. "That the sale was to a publisher of news and articles on matters of public interest would not, in and of itself, have clothed these defendants with the publisher's immunity from the reach of sections 50 and 51."

MAY 7, 1982

Contact Press Images, Inc., Robert

Pledge, and Gianfranco Gorgoni move for reargument, in effect asking the New York State Court of Appeals to change its mind regarding their liability under sections 50 and 51 of the Civil Rights Law. Some 20 organizations — photo agencies, publishers, and television networks — file *amici curiae* (friends of the court) briefs in support of the motion for reargument.

MAY 10, 1982

Arrington files a motion for reargument with the New York State Court of Appeals, in which he asks the court to reverse itself on its exoneration of the New York Times Company from liability.

JULY 2, 1982

The Court of Appeals refuses to read any of the *amici* briefs and denies both Arrington's and the three defendants' motions for reargument, thereby upholding its decision of April 7, 1982. No explanation for the denial is given.

THE FUTURE

Now that the Court of Appeals has established who may be liable, Arrington can continue his suit against Gorgoni, Pledge, and Contact Press Images, Inc., for damages in the New York State Supreme Court. Whether the court rules in favor of Arrington or the defendants, the decision can be appealed through the state court system once again. Both Arrington and the defendants can also seek a review of the recent Court of Appeals' decision by the United States Supreme Court, whose reading of the law could have profound implications for photography. At the same time, the New York State legislature could be persuaded to amend sections 50 and 51 of the New York State Civil Rights Law, which would change the calculus of the case once again and, possibly, its implications for photographers.

the editor's fault, the people in power at the magazine."

Despite such sympathy with Arrington's position, Gorgoni does not agree with his decision to take the matter to court. "If he really wanted to take a political stand, that's not the way to have done it. If he wanted to be political about the article, what's written about black people, he should have written something or held a press conference with the media. I don't know what ideal he started this with, if he wanted to take a political point of view or just an economic one. There's all this money being spent, and it's not doing anyone any good in the end, just making the lawyers richer. If it had been me, I would have gone and punched the writer.

"For this picture, I think I got \$350 for the cover," Gorgoni continued. "Out of that, 40 percent goes to the agency. So Arrington can have a part of it if he wants. People always think that if there's an agency involved, you make millions of dollars out of a picture. But it's not advertising, you know. Even if it's a big magazine, they really pay nothing, they pay peanuts. If he wins, and *The New York Times* wins, and I don't win, then he can come and get some of the money I got for that cover. I have a family. I don't think they'll take my tables and my flat. It's really a little pathetic."

Despite Arrington's claim that he did not see his photograph being taken, Gorgoni insists that he did see it, and that if he had objected, he could have stopped the photograph from being used. "I'm not a paparazzo, you know, shoot and run away. One day I'd like to meet Arrington and take a sitting portrait of him, a real one."

Gorgoni concluded with a strange anecdote about his crucial photograph: "Someone who is in that same picture, not right in the front, died. A good friend of his called me to find out if he could have a copy. That picture — just a simple, stupid picture — it came out to be so full of human interest." □

NIEMAN NOTES

In the previous issue of *NR* we mentioned the informal luncheon held on May 4 in Chicago in memory of Louis Lyons. Jim Squires ('71) and the *Chicago Tribune* were hosts. The guest list included: James Standard ('70), George Chaplin ('41), John Emmerich ('62), Robert Giles ('66), John Seigenthaler ('59), Dwight Sargent ('51), James Whelan ('67), John Zakarian ('69), J. Thomas Pugh ('61), William German ('50), Ralph Otwell ('60), John Strohmeyer ('53), Richard Harwood ('56), Gene Roberts ('62), Watson Sims ('53), Robert Clark ('61), Norman Cherniss ('59), Charles Ferguson ('66), James Ahearn ('71), Smith Hempstone Jr. ('65).

Unfortunately the tape recording of the proceedings is so flawed that the editors regret they are unable to include any of the reminiscences from those who were present.

— 1941 —

GEORGE CHAPLIN, vice president and editor of the *Honolulu Advertiser*, was one of three first-prize winners in the fifth annual Champion Media Awards for Economic Understanding, in the under 250,000 circulation class.

— 1951 —

SIMEON S. BOOKER, Washington bureau chief for the Johnson Publishing Company, has been voted to receive the National Press Club's 1982 Fourth Estate Award, to be presented in December at a Press Club dinner.

Established in 1973, the award is conferred annually on the person who, in the judgment of the club's board of governors, has achieved distinction for a lifetime of contributions to American journalism. Previous winners have been: Walter Cronkite, James Reston, Richard L. Strout, John S. Knight, Herbert L. Block, Vermont Royster, Clayton Kirkpatrick, Theodore White, and Nick B. Williams.

Booker opened the Washington bureau for Johnson, publisher of *Ebony*, *Jet*, *Ebony Jr.*, and *Black Stars*, in 1955 and

has headed it continuously since then. While serving as bureau chief, he also was a syndicated radio commentator for the Westinghouse Broadcasting Company from 1969 to 1978.

From 1952 to 1954 he was a reporter for *The Washington Post*, the first full-time black reporter to be employed by that newspaper.

Booker is the author of *Black Man's America*, a reporter's view of the civil rights movement in the early 1960's, and *Susie King Taylor: Civil War Nurse*, a biography for children.

— 1952 —

JOHN M. HARRISON, professor emeritus of journalism, Pennsylvania State University, writes: "Shirley and I really were desolated to read the story about the death of Louis Lyons in the *Times* I had picked up more or less by chance on the morning of our departure for Yugoslavia. . . . Our retirement continues to be active and enjoyable, with travel and writing occupying about equal shares of time. . . . Earlier this year, I wrote the script for this historical pageant for the centennial celebration of my home town in western Iowa. Our best to one and all." (See also page 58.)

— 1954 —

HENRY TREWHITT, diplomatic correspondent of *The Baltimore Sun*, was a joint winner with Don Oberdorfer of *The Washington Post*, of the Weintal Prize for diplomatic reporting awarded last May by Georgetown University's Institute for the Study of Diplomacy.

— 1956 —

The Washington Journalism Center reached a landmark last May when it held its 100th Conference for Journalists. JULIUS DUSCHA, director since 1968, arranges ten monthly conferences a year on "page one" topics such as energy, housing, crime, inflation, health, and mass transit. Between 15 and 20 reporters, editors, and editorial writers participate in

the four-day meetings which feature informal seminars with notable speakers and experts from the fields under discussion. A total of 1,500 journalists from 250 news organizations across the country have attended these gatherings.

RICHARD MOONEY, former executive editor of the *Hartford (Conn.) Courant*, has joined the editorial board of *The New York Times*. Mooney earlier was with *The Times* for 10 years, reporting on economic affairs and serving as assistant to the executive editor, deputy foreign editor, and deputy financial editor. He had been with the *Courant* for five years.

DONALD STERLING, Jr., formerly editor of the *Oregon Journal* in Portland, is now assistant to the publisher of the newly combined *Portland Oregonian-Journal*. After 80 years, the *Journal's* news staff was merged with its morning sister publication, *The Oregonian*, to become an all-day newspaper.

— 1957 —

HAROLD LISTON, editor of the *Bloomington (Ill.) Pantagraph* for nearly 15 years, resigned that post in September and will retire in January, marking a 40-year career in newspapering.

— 1958 —

JOHN A. ARMSTRONG, adjunct assistant professor of communications at the University of Portland, has been named a co-recipient of a George Foster Peabody Award for his work on *To Begin Again*, a television documentary focusing on the survivors of the 1981 earthquake in southern Italy.

Prior to joining the University of Portland faculty, Armstrong was Sunday editor of *The Oregonian*, and executive editor and news director of KOIN-TV and AM-FM radio.

WILLIAM McILWAIN has been named editor of the Queens edition of *Newsday*. Prior to this appointment, he was editor of

the *Arkansas Gazette* in Little Rock, to which he remains a consultant. He had been editor of the *Gazette* since leaving *The Washington Star* shortly before it ceased publication in 1981.

— 1959 —

PERRY MORGAN, publisher of the *Norfolk Virginian-Pilot* and the *Ledger-Star*, announced that Landmark Communications has merged the news and feature staffs of the morning and evening newspapers. Their sports departments merged about three years ago and they have used a combined photo staff for about 20 years. The two newspapers will continue to be printed separately on their existing publication cycles.

T. V. PARASURAM, with the *Indian Express* in New Delhi, is the author of *India's Jewish Heritage*, published in 1982 by Sagar Publications. Also, he writes that he and his wife have recently become the grandparents of a boy, Adit.

— 1960 —

TOM DEARMORE, editorial page editor, *The San Francisco Examiner*, served as one of three judges for *The Baltimore Sun's* 1982 H. L. Mencken Writing Award.

Nieman classmates REG MURPHY, publisher, *Baltimore Sunpapers*, and RALPH OTWELL, editor, *Chicago Sun-Times*, have been named to the new editorial advisory board of the Field News Service, which is being reorganized and will be renamed. The service is composed of the *Baltimore Sun*, *Boston Globe*, *Chicago Sun-Times*, and a new partner, the *Dallas Morning News*.

JOHN SAMSON writes that he has been named editor-at-large of *Field & Stream* after serving as editor-in-chief of the magazine since 1972. He joined the CBS-owned publication as managing editor in 1970. He has served as a staff writer for *The Associated Press*, and had also previously worked for United Press in Japan and Korea in 1953.

He is the author of 12 books; he and his wife live in Manhattan.

— 1961 —

JOHN D. POMFRET, executive vice president and general manager of *The*

New York Times, was named to a three-year term as director of the New York State Publishers Association at their meeting held recently in Saratoga Springs.

— 1962 —

JOHN HUGHES, most recently director of Voice of America for only one month, was chosen in August by Secretary of State George P. Shultz to replace Dean Fischer as the chief spokesman for the State Department. Shultz said that "I would not ask for Mr. Hughes were it not for his unique qualifications." (See also Nieman Notes, Summer 1982.)

— 1963 —

VICTOR K. McELHENY has been chosen to head the new Bush Fellowship Program at the Massachusetts Institute of Technology, named in honor of the late Vannevar Bush, World War II presidential science advisor and long-time chairman and honorary chairman of the MIT Corporation. The program will be supported by grants from the Andrew W. Mellon Foundation and the Alfred B. Sloan Foundation.

Approximately eight fellowships will be awarded annually, starting with the 1983-84 academic year. They will include a stipend and residency and study at MIT. The fellows will participate in a seminar to be organized for them by the Institute's 5-year old Program in Science, Technology and Society. The Bush Fellowships will be open to writers and broadcasters, including engineers and scientists, whose primary work is informing the public about recent developments in technology and science and their broader social impact.

McElheny joined the Program in Science, Technology and Society in July 1982, as a principal research associate. He most recently had served four years as the founding director of the Banbury Center of Cold Spring Harbor Laboratory on Long Island, and formerly was a science and technology reporter with the *Observer*, Charlotte, N.C., *Science* magazine, *The Boston Globe*, and *The New York Times*.

— 1968 —

JEROME AUMENTE, professor and director, Journalism Resources Institute of Rutgers University, and chairperson, Department of Journalism and Mass Media, organized an all-day workshop in

October on "Newspaper Opportunities in Electronic Publishing and Cable Television." The meeting was sponsored by the Institute in cooperation with the New Jersey Press Association.

— 1970 —

AUSTIN SCOTT, with *The Los Angeles Times*, served as a member of the faculty of the Summer Program for Minority Journalists based in Berkeley at the University of California Graduate School of Journalism.

HEDRICK SMITH, chief Washington correspondent of *The New York Times*, was one of five panelists discussing their experiences of working in Moscow at a day-long conference on the Soviet Union held at Harvard University in October.

Sponsored by the Russian Research Center of Harvard, the U.S. State Department, and the Nieman Foundation, the conference provided American and foreign journalists with a scholar's background on recent political developments in the Soviet Union, social conditions inside Russia, and today's economic and technological conditions.

— 1971 —

JOHN PEKKANEN, a contributing editor of *The Washingtonian*, was one of the recipients of the Tom Paprocki Memorial Award for excellence in reporting. The awards were presented at the Press Club of Atlantic City's annual meeting in May.

— 1972 —

H.D.S. GREENWAY, national and foreign editor of *The Boston Globe*, and Dr. Leila Fawaz, professor of history at Tufts University, presented a lecture entitled "Perspectives on the Middle East" during the Charles Francis Adams Summer Lecture Series in July at the Fletcher School of Law and Diplomacy, Tufts University.

— 1973 —

ROBERT WYRICK, reporter in the Washington, D.C., bureau of *Newsday*, won a National Headliner Award for his newspaper in the public service citation in the newspaper category for his series, *Hazards for Export*. The series tells how

American firms victimized consumers, endangered workers, and poisoned the environment overseas. The award was presented in May by the Press Club of Atlantic City.

— 1974 —

SHIRLEY CHRISTIAN, Latin America correspondent for *The Miami Herald*, received an honorable mention citation from the Inter American Press Association for her year-long reporting on Nicaragua. The awards for 1982 were announced in October at IAPA's annual general meeting in Chicago.

— 1976 —

GUNTER HAAF, science writer with *Die Zeit*, traveled from Germany in August to attend the Joint Oceanographic Assembly in Halifax, Nova Scotia. These meetings take place every six years.

JIM HENDERSON of the *Dallas Times Herald* was awarded the top prize for print reporting of black people with his five-part series on racism in the Deep South, despite civil rights gains of the 1960's. The award was given at the conference of the National Association of Black Journalists held last August in Detroit. More than 400 journalists attended from Africa, the Caribbean and the U.S.A.

— 1977 —

AL LARKIN, editor of *The Boston Globe Magazine* since 1980, in August was appointed assistant managing editor for local news.

Larkin is a Boston native and 10-year veteran of *The Globe*.

JOSÉ ANTONIO MARTINEZ-SOLER, with *El Pais* in Madrid, Spain, in October attended a United Nations Round Table Seminar on economics, meeting with editors from 12 other countries.

Martinez-Soler is the author of *Los Empresarios y la Crisis Economica*, scheduled for publication in Spain in October.

GENE PELL, formerly Voice of America director of news and current affairs in Washington, D.C., returned to Boston in October to take up his new post as chief correspondent for WCVB-TV.

Pell, former ABC and Westinghouse

network correspondent, has also served as Moscow bureau chief for NBC and as national correspondent in Washington before joining Voice of America.

PAUL SOLMAN, executive producer for business affairs at WGBH-TV in Boston, is the author with Thomas Friedman of *Life and Death on the Corporate Battlefield*. (See also page 26.)

— 1978 —

RICK NICHOLS, with the *Philadelphia Inquirer*, writes: "After four years here, they've kicked me upstairs, given me a tiny office and appointed me to the editorial board. Thought you might want to put that in Nieman Notes, 'Rick Nichols, opinion-molder.'"

DANNY SCHECHTER, known as the "News Dissector" for WBCN radio in Boston for the past 12 years, has joined ABC News. As a producer for their 20/20 program, he won a 1982 National News Emmy for his piece on drunk driving. He wrote in September: "I have left 20/20 for now to accept a senior position as a producer on ABC News forthcoming, and as yet unnamed, late night program scheduled to air weekdays following *Nightline* between midnight and 1 a.m. We think this new program will be inventive. We will be featuring live guests as well as remotes throughout the country."

FRANK SUTHERLAND, city editor of *The Tennessean* in Nashville, takes up a new post in November as managing editor of *The American* in Hattiesburg, Mississippi.

— 1979 —

BOB PORTERFIELD, as part of a *Newsday* team with Joseph Demma, Mark McIntyre, and John McDonald, was a winner in the Press Club of Long Island's competition in the field of investigative reporting.

PEGGY SIMPSON, formerly Washington correspondent for Hearst's *Boston Herald-American*, has joined the Washington bureau of the Hearst Newspapers. She will cover the capitol's economic and financial beat, as well as some labor and political news. She was formerly a reporter with The Associated Press in Washington.

LAWRENCE WALSH, formerly with *The Washington Post*, has become associate editor of *The Progressive* in Madison, Wisconsin.

— 1980 —

EVERETTE E. DENNIS, dean of the University of Oregon's School of Journalism, is the recipient of the Hillier Kreighbaum Under 40 Award from the Association for Education in Journalism. The prize is given annually to the person considered to be the most outstanding journalism educator under 40 years of age.

ACEL MOORE, associate editor and reporter for *The Philadelphia Inquirer*, served as a faculty member in the Summer Program for Minority Journalists, based

U.S. POSTAL SERVICE
Statement of Ownership,
Management and Circulation
(Required by 39 U.S.C. 3685)

1. Title of publication: *Nieman Reports* A. Publication no.: *USPS 430-650* 2. Date of filing: *9/14/82* 3. Frequency of issue: *Quarterly* A. No. of issues published annually: *4* B. Annual subscription price: *\$12.00* 4. Complete mailing address of known office of publication: *One Francis Avenue, Cambridge, MA 02138, Middlesex County* 5. Complete mailing address of the headquarters or general business offices of the publishers: *One Francis Avenue, Cambridge, MA 02138* 6. Full names and complete mailing address of publisher, editor, and managing editor; publisher: *James C. Thomson Jr., One Francis Avenue, Cambridge, MA 02138* editor: *Tenney B. K. Lehman, One Francis Avenue, Cambridge, MA 02138* 7. Owner: *Nieman Foundation for Journalism at Harvard University, One Francis Avenue, Cambridge, MA 02138* 8. Known bondholders, mortgagees, and other security holders owning or holding 1 percent or more of total amount of bonds, mortgages or other securities: *none* 9. Nonprofit organization authorized to mail at special rates; the purpose, function, and nonprofit status of this organization and the exempt status for Federal income tax purposes: *has not changed during preceding 12 months*. 10. Extent and nature of circulation [first figure is average no. copies each issue during preceding 12 months; second, actual no. copies of single issue published nearest to filing date]: A. Total no. copies: *1500*; *1500* B. Paid circulation: 1. Sales through dealers and carriers, street vendors and counter sales: *none*; *none* 2. Mail subscription: *1110*; *1084* C. Total paid circulation: *1110*; *1084* D. Free distribution by mail, carrier or other means, samples, complimentary, and other free copies: *300*; *300* E. Total distribution: *1410*; *1384* F. Copies not distributed: 1. Office use, left over, unaccounted, spoiled after printing: *90*; *116* 2. Return from news agents: *none*; *none* G. Total: *1500*; *1500* 11. I certify that the statements made by me above are correct and complete: *Tenney B. K. Lehman, Editor*

at the University of California Graduate School of Journalism in Berkeley. The program is sponsored by the Institute for Journalism Education.

In Philadelphia, Moore marked his twentieth year with *The Inquirer* by an Anniversary Roast, sponsored by Youth Communications of Philadelphia.

— 1981 —

ROSE ECONOMOU, formerly of *Sunday Morning* with Charles Kuralt at CBS, has become an independent director-producer, based in New York. She is specializing in questions of the environment and related health hazards.

DANIEL SAMPER, columnist and head of the investigative reporting unit of *El Tiempo* in Bogota, Colombia, came to the U.S. in October to receive one of the two 44th annual Maria Moors Cabot Prizes in inter-American journalism. William Long, day city editor of *The Miami Herald*, was the other winner.

Samper began working at *El Tiempo* in 1964, becoming successively education writer, entertainment editor, and assistant to the editor.

The Cabot prizes, for "distinguished journalistic contributions to the advancement of inter-American understanding," are awarded by the trustees of Columbia University.

JAMES STEWART, formerly special projects editor for *The Atlanta Constitution*, has been named assistant managing editor for the newly-combined *Journal-Constitution*.

JINGLUN ZHAO, described as "an Oriental de Tocqueville," is featured in the National Affairs Section of *Newsweek*, September 20, 1982. The article tells how he has begun work on a book, which he has tentatively titled *The Americans: Their Culture and Institutions*. Zhao believes that America is at a turning point. "Roosevelt's New Deal has lost momentum," he observes. "Keynesian economics no longer works because of inflation. Supply-side economics is not working, either. America needs a new program." That will be the theme of his book which he plans to complete after returning to China next fall — and which, he hopes, will have a large Chinese audience.

— 1982 —

PETER BROWN, former national politi-

cal writer with United Press International in Washington, D.C., has joined Scripps Howard News Service as national political correspondent. He will also be covering the White House.

— 1983 —

CALLIE CROSSLEY, reporter specializing in health and medical issues for WGBH-TV in Boston, was notified in October by the American Cancer Society's Massachusetts Division that her entry, *Testicular Cancer*, is the winner in the Local Division/News Segment category of the Society's sixth annual Sword of Hope Awards program for excellence in communications about cancer. It was the consensus of the judges that *Testicular Cancer* was a clear and valuable piece of information about a type of cancer that is highly curable yet rarely discussed.

WILLIAM MARIMOW, reporter with *The Philadelphia Inquirer*, shares honors with his colleague, Mike Leary, for the William A. Schnader Memorial Award from the Pennsylvania Bar Association for reporting in the field of law and the administration of justice in a category of daily newspapers with a circulation of more than 49,000. This top award was given in October to the two journalists for their investigative reporting about the activities of a Philadelphia police decoy squad.

The same series of stories has won the 1982 Silver Gavel Award from the American Bar Association, and the Philadelphia Bar Association's outstanding media achievement award for 1982.

RANDOM NOTES

PAUL LIEBERMAN ('80) and JAMES STEWART ('81), both of the *Atlanta Constitution*, received a Clarion Award in October at the annual conference of Women in Communications in Denver.

A card received in September, picturing Al Kadhmiya Mosque and postmarked Baghdad, brought the following message: "What a great reunion for DEAN BRELIS ('58) and PIERO BENETAZZO ('82) to hold a Nieman reunion while covering the Gulf war. Over beer and cheese we remembered old friends in Cambridge and lifted glasses in fond tribute to Louis Lyons and Prof. Renato Poggiolo, who taught Dean at Harvard, and is Piero's father-in-law. Cheers. Piero and Dean."

In a migration of sorts, Nieman alumni/ae have been stopping in at Lippmann House as they travel to and fro. Among those crossing the Nieman threshold recently:

CLAUDE VAN ENGELAND ('82), sub-editor with Belgian Radio and Television, from Brussels to cover the November elections; DOUG MARLETTE ('81), editorial and comic strip cartoonist with the Charlotte, N.C. *Observer*, taking time out from his 15-city tour to publicize his first collection of "Kudzu" comic strips; PEGGY SIMPSON ('79), here while covering the political campaigns of Margaret Heckler and Barney Frank; ANTHONY DAY ('67), editor of the editorial page, *The Los Angeles Times*, who gave a Nieman seminar in October; GUNTER HAAF ('76) from Hamburg, Germany.

In the short space of one week, the following Niemans knocked at our door: JOSÉ ANTONIO MARTINEZ-SOLER ('77) from Madrid and PETER BROWN ('82) from Washington. And, all from the Class of '81, DANIEL SAMPER and his wife Pilar; DAVID LAMB and his spouse, Sandy Northrop, from Cairo where he is bureau chief for *The Los Angeles Times*; and ROSE ECONOMOU from New York (see also class notes). Also from the same class, MUSTAFA GÜRSEL had stopped in during Orientation Week on his way back to ABC, London, after vacationing with his wife, Nuran, on the island of Nantucket.

The next week saw the gathering of Niemans who are members of the Nieman Advisory for the semiannual meeting with the Nieman Faculty Committee. Arriving were: ROBERT MAYNARD ('66) from Oakland, California; JACK NELSON ('62) from Washington, D.C.; GLORIA LUBKIN ('75) from New York, and local members ROBERT MANNING ('46), ELLEN GOODMAN ('74), and ANTHONY LEWIS ('57).



This issue is being put to bed just twenty-four hours before the national elections, and voting results continue to be a matter for speculation. Even the science of electronic polling procedures makes allowance for surprises. Sometimes, one is heartened by a little mystery.

— T.B.K.L. —

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