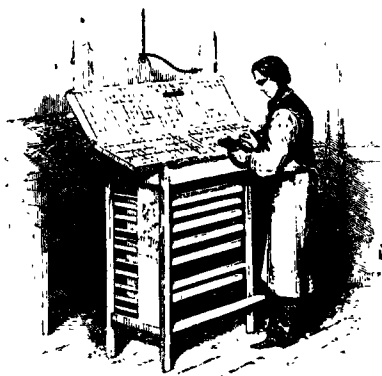


# A DEEPENING CHILL

NAT HENTOFF



## Print and broadcast journalists are decidedly and volubly apprehensive about the state of the First Amendment

A primary responsibility of dissenting journalists, I. F. Stone said a few years ago, is not to scare themselves into a state of paralysis. Terms like “repression,” if routinely used as cheap rhetoric, will have slight effect on the citizenry at large while infecting the users with gradually immobilizing paranoia. Don’t cry wolf, in short, until you see a specific set of sharp teeth.

Yet, in this fourth year of the Nixon Administration, an increasing number of print and broadcast journalists are decidedly and volubly apprehensive about the state of the First Amendment.

Many of them, moreover, represent the straight rather than the radical press. This past September, for instance, W. Bradford Wiley, chairman of the Association of American Publishers—a group more usually aroused by the rising price of newsprint—said, somewhat in shock, “It is a critical fact that we are now faced with defending the First Amendment. Nothing like this has happened since the days of Senator Joseph R. McCarthy.”

And Richard Salant, the doughty head of CBS News, is greatly concerned by the possibilities of resultant self-censorship in the ranks of his paladins of the First Amendment. “I think it’s something that’s increasing,” Salant emphasizes. “I think it’s going to get worse and worse and worse and worse. I don’t think we’ve seen the climax of it, and I don’t think it’s passing. The tendency is to say, ‘Oh, well, this isn’t the ideal one to fight, so let’s let this one go.’”

It would appear that the wolf is indeed here. A recent Twentieth Century Fund report, *Press Freedom Under Pressure*, by an independent eleven-man task force of

journalists, jurists and lawyers, concludes that “press freedom might be more fragile than is widely assumed.” In an editorial commenting on the report, the *New York Times*, not notably given to paranoia, expressed itself as being similarly troubled.

In an even more alarming American Civil Liberties Union survey, *The Engineering of Restraint: The Nixon Administration and the Press*, its author, Fred Powledge, claims that “the First Amendment is being lost, a little each day.”

Taken together, the two reports underline many of the reasons for the growing anxiety within the fourth estate that this Administration is not limiting itself to complaints about getting a “bad press” but is engaged in multi-pronged incursions intended to put and keep the press so on the defensive that it, rather than government, will be under continual, self-limiting scrutiny.

There has been, for one example, an unprecedented use of governmental subpoena power to try to get reporters and broadcast journalists to hand over raw files of information they have used to prepare a particular story. Or to appear in secret before a grand jury. In either case, the effect is “chilling” on the present or future confidential sources of these newsmen. In addition, as the Twentieth Century Fund report points out, “sometimes records of a newspaper or television network’s telephone calls, disbursements, expense accounts or other records can disclose the identity of a source as unerringly as the compelled testimony of a reporter. There have been instances in recent months in which prosecutors have attempted to subpoena such records.”

Another way of closing off reporters from news sources, particularly sources among individuals and groups in opposition to the government, is to discredit

---

NAT HENTOFF is the well-known author, journalist and critic. His most recent book is *A Political Life* (Knopf).

the press by infiltrating it with secret police pretending to be reporters. (The main purpose of this not uncommon practice is to add more "information" to the swelling number of governmental dossiers on "persons of interest" to both the government and the press. But the long-term result is that dissenting activists, unsure of who the *real* reporter is, may decide to talk to no journalists at all, thereby further insulating themselves and making it easier for the government to deal with them without the press getting in the way by asking bothersome questions about civil liberties and due process.)

Entirely overt, of course, was the Nixon Administration's attempt to censor the press by the use of prior restraint on the publication of the Pentagon papers—the first such attempt by any Administration in our history. Both the A.C.L.U. and the Twentieth Century Fund reports focus on the case, with the former especially noting how limited the *New York Times'* "victory" for the First Amendment actually was. Five of the nine justices encouraged the government to believe that it could well punish those involved in the distribution and publication of the Pentagon Papers *after* they had appeared in print. Only the late Justice Black and Justice Douglas upheld the press' absolute right to freedom of expression.

Accordingly, grand juries in Boston and Los Angeles, directed by the Department of Justice's Internal Security Division, have subpoenaed not only Neil Sheehan, the *New York Times* journalist directly involved, but diverse friends and acquaintances of Daniel Ellsberg—including free-lance writers and scholars who also function as journalists. Most of the latter, critics of American foreign policy, depend on confidential sources inside government which may be no longer available to them as soon as they testify in secret before a grand jury.

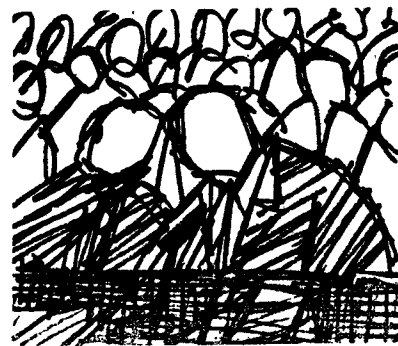
Moreover, when Beacon Press decided to exercise *its* First Amendment rights by publishing the Senator Gravel edition of the Pentagon Papers, it was first visited by two Pentagon officials as a Pentagon spokesman in Washington said he knew of no legal action planned against Beacon Press "at this time." After the four volumes came out, the Boston grand jury issued a subpoena designed to give the FBI access to the bank records of Beacon Press and its parent organization, the Unitarian-Universalist Association. The grand jury is also trying to get Harold Webber, the editor of M.I.T. Press, to testify, even though he had only *considered* publishing the Senator Gravel edition.

While established newspapers and publishing houses are speculating on the First Amendment's ability to withstand a possible four more years of the President's loose constriction of the Bill of Rights, the protean but chronically vulnerable underground press is under cruder and much more insistent siege. As the bimonthly, *Orpheus*, puts it, many of these papers "have been evicted from their offices and homes, harassed by the police, had

their benefit parties raided, been bombed, burned, beaten, gyped, framed and lost printer after printer."

Most of these assaults have not been widely publicized because the straight press, by and large, does not really believe full First Amendment freedoms apply to their scruffy juniors. *Press Freedom Under Pressure* notes: "Of the numerous instances that were brought to the attention of the task force—instances in which elements of the underground press protested that they had been abused by the police—a majority were not mentioned in either the news or editorial columns of the established press. In those incidents that have developed into court cases, the underground press has been left largely to its own fragile devices by the more affluent elements of the media."

The First Amendment is indivisible, but some of those it is meant to protect do indeed consider themselves more worthy of its safeguards than others. Until recently, for another illustration, broadcast journalists'



problems with overly inquisitive government have not greatly concerned established exemplars of freedom of information by means of print. Certain pieties have been duly expressed, but the underlying assumption seemed to be that radio and television journalists were of less fundamental importance to the health of the republic than those who could trace their form of communication back to Tom Paine and Benjamin Franklin.

By its often egregious attempts to intimidate broadcasters, however, the Nixon Administration has awakened a growing number of newspapers to a recognition of their common First Amendment interests with these post-18th-Century upstarts. When Daniel Schorr of CBS News, who had long refused to accept Administration announcements at face value, was subjected to an FBI check—ostensibly to determine his qualifications for a mythical high Administration post—editorial writers for the *New York Times* and the *Washington Post*, among others, were as indignant as if he were one of their own.

Similarly, a *frisson* of empathy was evident in a number of newspapers when the House Committee on Interstate and Foreign Commerce served a subpoena on Dr. Frank Stanton, president of CBS, directing him to submit "all film, workprints, out-takes, and sound-tape recordings, written scripts and/or transcripts utilized in whole or

in part by CBS in connection with" *The Selling of the Pentagon*.

Dr. Stanton successfully resisted, but his "victory" for broadcasters was no more overwhelming than that of the *New York Times* in the Pentagon Papers case. As John J. O'Connor has observed in the *Times*, "The refusal of the House of Representatives to cite . . . Dr. Frank Stanton for contempt of Congress was carried in a vote of 226 to 181. More than 40 percent of the Representatives, in other words, supported the contempt maneuver. (A preliminary vote left Dr. Stanton with a margin of only four votes.) And in the debate preceding the vote, the bitterness of many lawmakers—including some committed to support the CBS executive—about broadcast journalism offered ample evidence of government's ability to apply what has been called 'the chilling effect.'"

Being licensed and thereby all the more open to damage from hostile government, many television stations—as Fred Powledge discloses in the *Engineering of Restraint*—are well into self-censorship. A man responsible for deciding what goes on a local station's Six O'Clock News told Powledge: "It's a matter of deciding that a project you want to undertake, and that you would have undertaken before, just might not be worth the trouble to undertake now. It's the worst form of censorship, I think. It literally chills me when I think about it and see it, and I have been seeing it."

Public television, depending *directly* on Congress for most of its current financing—and on the Administration for any chance of longterm financing—is becoming even more reluctant to chance the displeasure of government. The Corporation for Public Broadcasting's Public Broadcasting System, which co-ordinates and distributes non-local programming for most of the country's 205 public television stations, has sharply reduced its already limited number of muckraking public affairs programs. Bill Greeley, *Variety's* knowledgeable chronicler of public television, says flatly that a program such as *The Selling of the Pentagon* would not now be shown on public TV.

A few local public television stations, in such normally contentious cities as New York and San Francisco, intermittently engage in controversial forays, but most of their viewers tend to be dissenters of one kind or another anyway. In much of the rest of the country—where exposure to divergent views is most needed, if only as an antidote to the insular local newspapers—public television stations are less and less likely to disturb anyone.

All in all, however, while a case can be made that "the First Amendment is being lost, a little each day," it is far from frozen in disuse. A considerable accomplishment of the Nixon Administration has been its forceful reminder to the press, print and broadcast, that the natural relationship between it and government is that of adversaries. Not for many years has government so manifestly and aggressively revealed its contempt for the First Amendment.

It is doubtful, for instance, whether the *Washington Post* would have broken the venerable tradition of accepting off-the-record "backgrounders" from Administration officials if the hostility between the press and the Nixon Administration had not become so marked. This past December, Benjamin Bradlee, executive editor of the *Post*, announced his intention "to get this newspaper once and for all out of the business of distributing the party line of any official of any government without identifying that official and that government."

The *Post*, in effect, has declared its independence of government on a larger scale than ever before. If there is a second Nixon term, more of the press may be intimidated into blandness but there will be further, increasingly abrasive declarations of independence by those willing to take the risk of finding out how free they are to fulfill "the people's right to know." And the risks could be formidable, as Neil Sheehan of the *New York Times* may discover if he is indicted by the Boston grand jury.

As for the present deepening chill between government and the press, it's likely that so far, apprehension is more widespread than stiffening resistance. But to be afraid, you do have to be awake. And in that sense, the Nixon Administration has been of great use to the press. It has jolted us all into an awareness that faith in the First Amendment is not nearly enough to make it work.



EDWARD PELL

### **RAUCOUS**

Division is my fancy;  
Here at the wood which I split  
With blow upon blow of steel.

Separation is my skill;  
At my home close upon the hill  
Where I swing my brilliant axe.

Altercation sends my wood apart;  
Makes two of one  
Where my blood leaps between.

Splinters are my joy;  
When the chopper does not know  
How many chips will rend from a single blow.

Tearing these of nature's things  
To my mind a fancy brings:  
If with love we split apart,  
Can division mend the heart?  
And if tearing soothes our pain,  
Will union give us health again?