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## I. GOVERNMENTAL SUPPRESSION OF THE MEDIA

BEN H. BAGDIKIAN\*

On February 28, 1973, Richard Nixon, then President of the United States, said to John Dean, then his faithful servant, "One hell of a lot of people don't give one damn about this issue of suppression of the press." In fact, it is dangerously true that one hell of a lot of people do not give a damn about the issue of suppression of the press. This scares the daylight out of me, but there's something that scares me more, and that's the way newspapers and broadcasters respond to it.

Most newspapers and broadcasters in this country, while making money hand-over-fist and at the same time ignoring the basic needs of the community, merely mouth the rhetoric of freedom of expression without recognizing that there is something seriously wrong with their performance. They do not seem to realize that when the chickens come home to roost on the serious problems of inflation, corporate behavior, maldistribution of income, racial antagonism, political insensitivity, food shortages, and all the rest in this country, one of the first targets of a public made unhappy and desperate may be a free press.

While there is no question on my part about the necessity of going to the barricades in defense of free expression, let me say that publishers and broadcasters have been asking for public criticism by continuing to poorly serve their communities.

I am talking about the average newspaper and the average broadcasting station, in the average community. Some organizations do a very good job, but they constitute a small percentage of the whole.

If one assumes that the first amendment implies an obligation on the part of all publishers and broadcasters to do more than offer entertainment designed to make money—that both in the minds of the creators of the Bill of Rights and in good professional usage a community newspaper and broadcasting station should also inform its citizenry on the most important issues facing them, provide an intelligent exploration of alternative solutions, be a forum for expression of individual and group experience across a wide spectrum of the population, and inform people systematically of corporate and civic decisions that affect their lives—then the vast majority of our papers and broadcasters have failed. Not only have they failed, most have not even tried. I know that here and there, in a certain paper, or in a particular broadcast station, there are good people doing good things. I also know that the newspapers and broadcasting studios are full of good people, but these people are dying on the vine, becoming al-

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coholics, or looking for public relations jobs because they are institutionally inhibited from doing a respectable piece of journalistic work.

Our inadequate performance has contributed substantially to our trouble in the news business. For example, here in Florida the news media just went through a legal trauma with a constitutionally happy ending. As you know, the Supreme Court of Florida upheld a state statute requiring a newspaper to give a candidate for office equal reply space when attacked by that newspaper.<sup>1</sup> Immediately following the decision, Senator John McClellan announced in Washington that if the United States Supreme Court upheld the Florida statute, he would enter a bill for a similar national law affecting all media. Legislators in a number of states said that they would do the same.

Fortunately, the United States Supreme Court unanimously invalidated the Florida statute.<sup>2</sup> In my opinion this was a profoundly important and correct decision. But, can anyone possibly defend as proper journalism the refusal to permit anyone, not just a candidate for public office, the right to reply to an attack that appears in a major newspaper in the community? I understand that the *Miami Herald* wished to challenge the statute. But whatever the particular motive in this case, the sad fact is that refusal to permit fair response is widespread with newspapers as a matter of standard practice. Although the United States Supreme Court in *Tornillo* prevented governmental intrusion for the moment, this does not eliminate the danger of future suppression if newspapers continue to ignore the need of citizens to defend themselves against attack, nor does it resolve the underlying problem of newspapers failing to serve their communities.

Richard Nixon was right about people not caring much one way or another about suppression. Some of the reasons for this indifference or hostility are irrational and unfair to the media. News organizations are blamed for bringing bad news, of which there has been a great deal in the last ten years. And we have just gone through five years with an administration that had a policy of making the news media the scapegoat for the ills of the world as well as a screen for its own crimes.

As journalists, however, we cannot blame it all on others. When push came to shove for most publishers, true freedom of journalism was not that high on their list of priorities. The administration that attempted to suppress individual journalists and that attempted the first prior censorship in our history had the editorial endorsement of 93 percent of all dailies that endorsed a presidential candidate in 1972. When most of the publishers wanted the so-called Newspaper Preservation Act, exempting them from portions of antitrust laws, the corridors of Capitol Hill were crawling with publishers, not their attor-

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1. *Miami Herald Publishing Co. v. Tornillo*, 287 So. 2d 78 (Fla.), *rev'd*, 418 U.S. 241 (1974).

2. *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974).

neys or assistants, but the real flesh-and-blood publishers themselves, visiting state delegations and leaning on every political lever they had. But there was no such rush to the Congress for personal persuasion by top executives when prior censorship was at stake, when subpoenas and FBI investigations were descending upon news people, when powerful White House functionaries were not only manipulating the news (which all White House functionaries try to do), but were doing it with the self-righteous assumption that it was un-American for news organizations not to lean back and enjoy it.

Furthermore, most of the news establishment has been unresponsive to the needs of their constituents; they do not enjoy much depth of loyalty among the general population because they have not done much for the general population. Why did it take Ralph Nader to do what newspapers and broadcasters should have been doing for the last 40 years? When it came to giving real help to the average citizen in some of his down-to-earth decisions in life, like buying a home, a car, or a bag-full of groceries, what have most news organizations traditionally done? They have sections on real estate, automobiles, food, and fashions that were often paid for by the industry and are masqueraded as news. And it was not long ago that not one daily in the United States, including the *New York Times* and the *Washington Post*, would take an ad for Consumer's Union because Consumer's Union criticized advertised brands.

If papers and broadcasters are better today, as I think they are; there is yet little cause for self-congratulation. It is no contradiction to say that news handling is better than ever but still falling behind public needs.

Among the characteristics of news organizations that make them vulnerable to the kind of war declared by Mr. Nixon is their traditional reaction to criticism and calls for accountability. For example, in 1947 a group of 13 academics headed by Robert Hutchins<sup>3</sup> concluded a study known as the report of the Commission for a Free and Responsible Press. The Hutchins Commission had no way of knowing that in the 1960's the American Newspapers Publisher's Association and individual publishers would urge Congress to exempt newspapers from anti-trust law in the name of the first amendment, in return for granting the Attorney General of the United States power over newspaper corporate affairs. But in 1947 the Commission wrote, "The primary protector of freedom of expression is government, but any power capable of protecting freedom is also capable of endangering it."<sup>4</sup> The Commission called for a national group that would report annually on the performance of the press and would listen to serious

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3. Mr. Hutchins holds the position of board editor of the Encyclopedia Britannica.

4. REPORT OF THE COMMISSION FOR A FREE AND RESPONSIBLE PRESS (HUTCHINS COMMISSION) (1947).

complaints against news practices. They called for extension of the first amendment to broadcasting. But they also warned that if the press continued to resist self-criticism and self-correction, eventually people would support governmental action to control it.

The reaction of the news establishment to these mild and obvious statements would make Pavlov's dogs look like uncontrollable mavericks. The *Chicago Tribune* said it was the outpouring of a gang of crackpots. *Editor and Publisher* said it was totally a bad job. The American Society of Newspaper Editors appointed a committee to respond to it and the committee announced that it had decided not to dignify the report with a reply. In general, the daily press either attacked the report or ignored it.

Another example of the media's traditional response to criticism occurred in 1952 when Adlai Stevenson, then a Democratic candidate for President, said that the American press was overwhelmingly Republican in its editorial pages and that when it came to endorsements in editorials, we had what amounted to a one-party press. Two hours after Stevenson made that statement, all the wire services had a reply, which was printed by most papers. The President of the American Newspaper Publishers Association denounced Stevenson, calling his comments untrue. That year the Democrats had newspaper endorsements of 11 percent, by circulation, of all dailies. The election before that they had 10 percent. In the election before that, they had 18 percent. My point is not that there is a proper percentage of endorsements for any party, because there is not. But the response of the press to this statement was contrary to the obvious facts.

In the mid-1960's the Mellett Fund for a Free and Responsible Press, about which I, as its president, am prejudiced, funded a number of academicians in journalism or political science to form local press councils in a one-year experiment. We had only two rules: first, the academic member, not the publisher, was to select community representatives who would sit down once a month over dinner and drinks and discuss the local paper with its editor and publisher; second, the council members would understand from the start that they had no power to change anything in the paper. These were, in effect, subsidized bull sessions in which everyone involved agreed ahead of time to participate. As soon as the cooperating papers were announced, each editor and publisher involved received a letter from a top executive of one of our most prominent newspapers chastising him for taking part in such a dangerous exercise.

We are all familiar with the stampede of enthusiasm with which newspapers and broadcasters greeted the National News Council. With the exception of the news organizations of Minnesota, major news groups had consistently refused to form their own mechanisms for receiving and investigating serious complaints. When the foundation started one for them, it was treated with hostility and contempt.

I find this attitude of the media toward criticism difficult to understand. The existence of public exasperation with the press is quite clear. Nixon, Agnew, Buchanan and company made some errors here and there along the way, but they hit paydirt with their attacks on the press. Working newspaper people stopped admitting their occupation to strangers. You could say that you were an international heroin smuggler or that you operated the largest string of houses of ill-repute in the Western Hemisphere and you might have an interesting conversation. But, if you said you were a reporter, you were likely to get an hour of abuse.

The White House and the Department of Justice began encroaching on traditional press freedom, and the public, for the most part, did not object. People from the White House or the FCC could demand transcripts ahead of time or engage in other improper actions, and there was no popular outrage. When Representative Harley Staggers decided to become an editor of CBS documentaries, the vote on demanding the out-takes of CBS films was 226 to 181—hardly a ringing rejection of the idea of official editing. A preliminary vote on holding CBS in contempt for refusing to turn over its unused tape lost by only four votes.

The Supreme Court vote on the *Pentagon Papers* case<sup>5</sup> was not a heartening one except for its obvious six-to-three rejection of prior-censorship. Six of the justices in their individual opinions indicated that if Congress ever voted censorship powers for the President, they might accept it. That happened before Justice Powell joined the Bench. Two months before his appointment, Mr. Powell in a confidential memorandum to the United States Chamber of Commerce wrote, "The national television network should be monitored in the same way that textbooks should be kept under constant surveillance." This monitoring was to apply not merely to "so-called educational programs, such as 'The Selling of the Pentagon,' but to the daily news analysis which so often includes the most insidious type of criticism of the free enterprise system."

The 20th Century Fund, which founded the National News Council, said in its task force report that "press freedom might be more fragile than is widely assumed." The American Civil Liberties Union reported in 1972 that the first amendment is being lost a little each day. The public attitudes of apathy and even hostility indicated in these reports still remain, and they continue to tempt officials to restrict freedom of printed news and to increase control of broadcast information. Times are going to be difficult for the world, including the United States, during the years ahead. And it is in such periods that there is a temptation to turn to authoritarian forms of government that foster restrictions on freedom of the press.

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5. *New York Times Co. v. United States*, 403 U.S. 713 (1971).

The answer to present and future threats against journalism is not simple. The most responsive press in the world would still be in danger because freedom itself is always in danger. But there are some things within the control of the printed and broadcast press that can change the present vulnerability to attack. These changes ought to be made for their inherent value, as well as for their value in defending against repressive legislation.

For example, the printed press has not responded appropriately to the pluralistic set of voices in every community. In part this has resulted from the fairly rapid change in the economic structure of the press. Sixty years ago there were 689 cities with competing dailies; today there are fewer than 45. We have over 1,500 cities with daily newspapers and in over 97 percent of them there is only one newspaper. Some chains are growing so fast that they have stopped swallowing individual papers and have begun swallowing themselves. If the rate at which individual papers have been acquired by groups over the last five years continues, then, by my calculations, the last individually owned daily in the United States will disappear approximately in the year 1984. Already, fewer than two dozen managements control over half of the United States' daily circulation.

When this happens the responsibility of a newspaper is very different from that of one of six dailies in a city of 50,000. Today, the paper must speak for the whole community, give access to every segment of the community, and protect the welfare of the powerless and those it dislikes, as well as the welfare of the powerful, because individual groups no longer have their own paper.

This does not mean that there is no place for the editor's own opinions and the judgment of professional news people on what is important and what is not. But in addition to that, there must be these other elements. The response of most papers is a policy of printing nothing that will irritate anyone. It is essential that space for diversity be made available, with many groups having access. There also should be outside news collecting channels for grievances to be heard and examined. Apparently, 10 to 15 percent of papers commit varying degrees of space in this manner, but for an institution with vast responsibilities under intense pressures, this is a terribly inadequate response.

Broadcasting has its own substantive problems that are even more profound and difficult because of the basic nature of the medium and the way it has evolved. At least in printed journalism there is a long tradition of certain disciplines protecting the newsroom. With its monopoly on audience, newspaper circulation is almost guaranteed and can be counted precisely. Because a newspaper can present simultaneously hundreds of different items at every cultural and intellectual level, there is a convenient mystery about why customers buy newspapers, which permits the management to count its monopoly as proof

of good performance. Commercial broadcasting, however, is caught in a trap of its own invention, trying to collect the number one audience in town. The audience has to be counted by less than meticulous methods in any given locality. Revenues are visited upon the winner of a ramshackle ratings race where an insignificant fraction may mean life or death to a program.

Local broadcasting on the whole is simply headline news which, if one applies the standards of serving the whole community, is shamefully bad. Furthermore, broadcasting bears some of the responsibility for producing a society with nervous ticks. Society becomes conditioned to violence with frantic and gross assaults on its senses as broadcasters hold their audience's attention. People do listen and watch in great numbers. But, as we know from the Nixon-Agnew acts, their loyalties are not deep. These are not easy characteristics to change, but I think they are part of the malaise and danger surrounding our mass media.

Whatever the sins of the printed and broadcast press, there is an additional problem. We don't teach the Bill of Rights very well. We treat it in school and elsewhere as a sacred catechism—memorized, but not understood. Therefore, it can be diverted to almost any perversion of its intent. The public must be taught why we have a first amendment, why freedom of expression is a historical lesson, and what place a free expression has in the health of society and in the individual psyche.

Thus, the source of our problem is both in our mores and in the heart of media structures. These are not easy to change. A change must come if we are to survive our social and political storm. Nevertheless there are some very simple things that the printed and broadcast press could do to alleviate the immediate pressures against them. They could, for example, stop their reflex hysteria at every suggestion of systematic criticism and self-examination. The history of this hysteria is appalling and idiotic. The rationale of most organizations objecting to things like news councils is either the lack of need because editors already perform this function or that such councils constitute the first step toward governmental control.

Now, as to the first point, that editors already do this job, let me say that no matter what you hear, editors are human, and inevitably they are capable of making mistakes. If they are insensitive, as many are, they do not care or believe that they make mistakes. If they are diligent, they have little time to do a good job and at the same time listen to complaints and do a lot of retrospective examination. Even if an editor listens to complaints, examines them with care, and comes up with a response, he loses some credibility because he has investigated and passed judgment on himself. Some editors do this and do it honestly. But most do not, or else they do it unconvincingly.

As to the argument that voluntary councils are the first step



toward mandatory order by government, I believe this to be fallacious. Such councils are the best guarantee against government action. The few news people who responded to the Hutchins Commission report in 1947 made a great deal about this being an invitation to government to take control of the press. They cited a passage in the report that said, "Eventually governmental power will be used to regulate private power if private power is at once great, and irresponsible." It was clear from the context that this was issued as a warning, not a recommendation.

In Sweden, news publishers and societies of journalists have agreed among themselves to support a press council and ombudsman, to print the council's judgment as it relates to their own publication, and to pay a small fine for serious infractions of journalistic efforts. Compliance is voluntary and if the paper wishes to ignore the agreement, it can tell the council to throw itself into the Baltic Sea, and nobody, including the government, can do anything about it.

A stranger to the United States, looking at the contusions and abrasions suffered by free journalism in recent years might assume that if American news organizations were given such an opportunity to fend off government, to restore public faith and confidence, and to prevent the sins of a few from appearing to be the sins of all, they would weep with gratitude at such an opportunity. A reasonable person might expect that the American Newspaper Publishers Association, the National Association of Broadcasters, the American Society of Newspaper Editors, the American Federation of Television and Radio Artists, NBC, CBS, and ABC, The Associated Press, United Press International, the *New York Times* and the *Washington Post*, and all the other victims of official and public sticks and stones, would rush to a conference where they would clap their hands with joy and say to the National News Council, "God bless you. Nothing better could have appeared on the scene. Here are a couple of million dollars, representing less than one-sixtieth of one percent of our revenues and here is a joint commitment by us all to support you. We will request our members to print your judgments affecting them, and we thank you from the bottom of our hearts for providing a believable place for professional judgment of complaints, free from government."

Instead, major news organizations have treated the new council with hostility and contempt.

If broadcasters and newspapers think that they can long remain unaccountable to important segments of their public, they are mistaken. If they think that resisting all serious voluntary councils will allay public malaise toward them, they are under an illusion. If they think that self-righteous dismissal of such councils will prevent governmental infringement on the first amendment, then they are tragically wrong. I believe the news councils are a mechanism that permits both accountability and freedom, prevents government exploitation of

public dissatisfaction and creates, instead of diminishes, public confidence that the press is capable of self-correction.

The public has to believe that the press is not only honest, but that it has the public's best interest at heart. Readers, listeners and viewers clearly want someone they can trust to examine the complexities of specific journalistic problems that affect the public. If the public does not have this belief and trust, then the warnings of the Hutchins Commission in 1947 can come true. Government, using public opinion, can circumvent the first amendment. The news establishment did not believe this in 1947; if they do not believe it now even after the attacks and the attempted suppression of the last five years, then we are all, journalists and laymen alike, in trouble. It might be good for all of us to remember Judge Learned Hand when he said, "Liberty lives in the hearts of men; if it dies there, no law, no courts, no constitution can keep it alive."