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ON PAGE 22

HUMAN EVENTS
29 January 1977

Conservative Forum

"The U.S. and USSR After Detente" is the subject of a two-day conference to be held January 27 and 28 in Washington, D.C.'s Statler Hilton Hotel. Among those who will participate in the conference will be Dr. Ray Cline of the Center for Strategic and International Studies of Georgetown University, Dr. Brian Crozier, director of the Institute for the Study of Conflict, London, as well as Dr. Stefan Possony of the Hoover Institution on War, Revolution and Peace and Dr. Lev Dobriansky, professor of economics at Georgetown University.

POSSONY

Participating organizations include the AFL-CIO Executive Council, American Conservative Union, the American Legion, American Security Council, Veterans of Foreign Wars of the U.S., and the Young Americans for Freedom, among others.

Registration will cost $25 at the door, $20 in advance, and can be obtained by writing 1735 De Sales St., N.W., Suite 500, Washington, D.C. 20036, or phoning 202-783-9447.

THE DAILY (UNIV. OF WASH:SEATTLE)
20 JANUARY 1977

UW participated in CIA minority recruitment

By JOHN SNELL

The University has been actively involved in a program to recruit minority students for the Central Intelligence Agency, The Daily has learned.

Although the CIA has said the program is intended to fulfill affirmative action requirements, some CIA critics believe the recruitment program is designed to find intelligence agents to spy on students and third world countries.

In August, 1975, UW President John Hogness was asked to send representatives to a conference at CIA headquarters in Langley, Virginia. The CIA said its conference was called to discuss affirmative action and ethnic recruiting for the intelligence organization.

Two University administrators—William L. Baker, assistant vice president for Minority Affairs, and Herman McKinney, assistant dean of the graduate school—were selected to attend. Hogness said he has no recollection of either the letter from the CIA or his decision to send two representatives to the conference.

According to McKinney, CIA officials were interested in "placing minority students in all phases of their program."

Vice president Baker said the agency was interested in students from all fields, particularly those with a background in economics, political science and business administration.

Baker said he relayed the information about CIA employment opportunities to counselors in each division of the Office of Minority Affairs.

As a result of that action, Baker said he has received a number of job inquiries from students.

Both men emphasized that the meeting was called to help the CIA fulfill affirmative action guidelines for employment. But some have accused the CIA program of being a plan to find minority students to take part in clandestine operations in Africa, South America and the Middle East.

The CIA has been criticized in the past for its college recruiting activities. In the mid-sixties, the agency placed five agents at Michigan State University. Under their cover as professors at Michigan State, the agents were assigned to train the South Vietnamese Police. Partially as a result of that activity, then-President Lyndon Johnson ordered the CIA off the nation's campuses.

More recently, the Select Committee to Study Governmental Operations with Respect to Intelligence Activities (the "Church Committee") criticized the CIA's use of professors and "graduate students engaged in teaching" as CIA operatives.

The Church Committee said the CIA is presently employing these academics for "providing leads and, on occasion, making introductions for intelligence purposes . . . ." In other words, to recruit spies.

The agency, according to the Church Committee Report, has shown a particular interest in "academics" and students who are about to travel abroad.

And Morton Halperin, director of the Project on National Security and Civil Liberties, has accused the agency of using its campus agents to recruit foreign students to spy on their own governments and other foreign students.

University Assistant Vice President Baker said the CIA promised a recruiter would come to campus shortly after the October, 1975 meeting. But Baker said that to his knowledge, no recruiter has yet arrived.

C-3

sufficient imported home heating oil at a price below the average wholesale price of U.S. heating oil and thereby stabilize or slightly reduce the cost to homeowners. Given the severity and immediacy of the problem we face, I strongly recommend that a full entitlement be granted to all New England importers of home heating oil—even at the cost of temporarily increasing our reliance on foreign oil imports.

In assessing this present "crisis", if we cannot designate a villain perhaps it is because the fault lies too close to home. A Federal Energy Administration check of New England distributors has not found any instances of price gouging nor any increase in normal profit margins. The proponents of home heating oil decontrol cannot be faulted, as it is likely that high prices and short supplies would have been experienced this winter under continued controls. Our federal regulatory agencies were exonerated from blame when Congress voted to decontrol and approved of the Post Exemption Monitoring System. The blame for New England's most recent "energy crisis", if it is to be assumed at all, must be shouldered by our failure to coordinate both a national and regional energy policy. The present exorbitant costs and the danger of insufficient supplies are further examples of the price we pay in the absence of a definitive energy program. We cannot continue to operate under this patchwork approach to New England's energy demands.

We must insure that the federal government becomes responsive to our unique regional energy needs and that such awareness results in affirmative actions which address those specified needs. We, as representatives of the New England region, must become increasingly cognizant of our particular energy problems and develop a regional program to meet them. The relatively lower home heating oil costs in the rest of our FEA price monitoring region is just one example of the significant differences that exist in the energy requirements of New England as opposed to the broader Northeast region.

First and foremost, a program of resource priority usage for the nation and our region must be devised and strictly enforced. If imported petroleum products are to be our primary fuel source for the next 20 years, followed by coal, nuclear and solar power, then let's plan for that. Let us establish a time table which our producers, importers and distributors can rely on. These priorities, in turn, would require us to structure our environmental regulations to compliment that time table so that utilities can avoid costly interruptions and conversions and will be willing to make capital investments based on those assurances. Within that framework, we can explore the obvious benefits of constructing refining facilities in New England and thereby eliminate future manifestations of the current price disadvantage we suffer in relation to those with ready access to refineries.

As a group, organized under the New England Caucus, we have both the voice and forum to present our ideas to the rest of the Congress and push for the development of a national energy plan.

Ladies and Gentlemen, a regional energy plan is not a viable consideration unless operated in conjunction with a larger federal program. But as a Caucus, we have both the capability and responsibility to present our ideas to our colleagues and push for the development of an energy plan on a national scale. I hope that we can learn from this most recent crisis and get on with that vital task.

CONFERENCE AGAINST INTELLIGENCE-GATHERING: PART I

HON. LARRY McDONALD

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Monday, January 31, 1977

Mr. McDONALD. Mr. Speaker, the leaders of the campaign to blind our Nation's Federal and local intelligence-gathering agencies so that criminal and totalitarian groups may be free to plot against our constitutionally guaranteed rights unhindered, and that terrorists and foreign spies may operate undisturbed met last week in Chicago to exchange information and coordinate their activities.

A National Conference on Government Spying—NCGS—was held at the Northwestern University School of Law in Chicago, on January 20–23, 1977. The conference was organized by the National Lawyers Guild—NLG—which first proposed the conference at its August 1976 national executive board—NEB—meeting in Brunswick, N.J.

The National Lawyers Guild has explicitly stated its support for revolutionary "armed struggle" and terrorism as in the armed occupation of Wounded Knee and in violent prison riots. The NLG International Committee maintains open liaison with terrorist Marxist "liberation movements" such as the Palestine Liberation Organization. The NLG is a member of the Soviet-controlled International Association of Democratic Lawyers—IADL: the NLG was formed with the assistance of the Comintern in 1936 and was cited as the "foremost legal bulwark of the Communist Party, its fronts and controlled unions." The NLG now operates as a working coalition of Communist Party, U.S.A.—CPUSA—members and supporters, Castroite Communists, Maoist Communists, and various New Left activists.

Coconvenors of the National Conference on Government Spying were:

American Civil Liberties Union (ACLU), which stated in its 1970–71 Annual Report, "The ACLU has made the dissolution of the Nation's vast surveillance network a top priority;" and whose leadership includes NLG members and totalitarian Marxist-Leninists.

American Friends Service Committee (AFSC), which has expressed approval of the Vietcong, Red Chinese, Palestine Liberation Organization, Khmer Rouge and Cuban communists efforts to create "socialism;" and which excuses revolutionary terrorism on the grounds that the oppression caused by capitalism is greater and came first. AFSC distributed a manual, Intelligence Abuse and your Local Police, which contains an April, 1976, resolution of the AFSC Board calling for outright abolition of the CIA and internal security function of the FBI and calling for the outlawing of all "clandestine U.S. activities abroad" and of all domestic intelligence-gathering activities.

Center for National Security Studies (CNSS), a project of the Fund for Peace financed principally by the Field Foundation and staffed from the Institute for Policy Studies (IPS), a far-left think-tank which has never excluded violence from its

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members of the
NLG both send representatives to the meetings of the Soviet-controlled IADL.

National Emergency Civil Liberties Committee (NECLC), a cited Communist Party, U.S.A. front composed of NLG members and nonlawyers.

Political Rights Defense Fund (PRDF), a front of the Trotskyist communist Socialist Workers Party (SWP), the U.S. section of the Fourth International which is actively engaged in terrorism in many countries. The PRDF raises money for the SWP lawsuit against the FBI and other law enforcement agencies, and disseminates propaganda. The Fourth International has close connections with the Cuban communists and it is of interest that the SWP's lawyers also represent the Cuban government.

The NCGS organizers stated the conference was called "in order to mobilize opposition to secret police activity" and to "take serious stock of what is to be done to develop a powerful and uncompromising campaign to * * * bring it to an end."

Broadly painting all intelligence-gathering methods—"secret surveillance, wiretapping, maintenance of illegal dossiers and photo files, 'black bag jobs,' and 'counterintelligence' tactics" as "illegal" and "shocking," the NCGS organizers claimed there has been "systematic violation of the privacy and fundamental rights of large numbers of citizens" whose "only 'crime' has been independent opposition to—sometimes merely mild criticism of—the established order."

The conference-goers did not mention that law enforcement intelligence-gathering programs were instituted in response to the violent and totalitarian threat unified and directed by the Soviet Union; or that the expansion of domestic intelligence gathering in the 1960's was in response to increased activities in this country on behalf of Soviet, Cuban, and Vietnamese Communists which was accompanied by street disorders, destruction of private and public property, and finally by terrorism perpetrated by Cuban-trained revolutionaries.

The NCGS steering committee consisted of:

Bob Borosage, Washington, D.C.; NLG activist; codirector of the Center for National Security Studies—CNSS; and trustee of and attorney for the Institute for Policy Studies—IPS.

Len Cavise, Chicago; NLG.

Paul Chevigny, New York; NLG speaker and staff attorney for the New York Civil Liberties Union; author of "Cops and Rebels" and "Police Power."

Terry Gilbert, Cleveland.

Bill Goodman, Detroit; president of the NLG.

Leonard Grossman, Detroit.

Lance Haddix, Chicago; NLG.

Morton Halperin, Washington, D.C.; director of the joint CNSS/ACLU Project

CHICAGO TRIBUNE
27 December 1975

Guidelines are needed

The CIA, FBI: How long a leash?

By William Bowe

BEHIND THE revelations of CIA assassination plots and FBI "black bag" burglaries rages a debate over the future missions of this country's intelligence agencies. A recent Washington Conference on Controlling the Intelligence Agencies vented most of the arguments affecting present congressional thinking on the subject.

The outcome of this debate may well be legislation that drastically changes the rules by which the United States seeks to protect its most vital interests in a future world of raw material and energy shortages, international terrorism, and village tyrants running nations possessing nuclear weapons.

The issue of restricting our major intelligence agencies has been touched off by a series of revelations concerning CIA activities in Chile and illegal spying on American citizens by the CIA and FBI.

THE CIA'S MISDEEDS are known to those inside "The Company" as "the family jewels." In violation of its charter, the CIA conducted secret domestic intelligence activities targeted against those who thought Viet Nam was wrong and said so.

In Operation Chaos, over 150 agent sources compiled more than 13,000 subject files and developed an index of over 300,000 American citizens unconnected with espionage. In addition, the CIA illegally opened an average of 13,000 pieces of mail a year for 20 years.

The FBI, in its Cointelpro operation during the late 1960s, actively engaged in secret attempts to disrupt and neutralize domestic political groups. The FBI also has reported to the Senate Select Committee on Intelligence that it conducted 238 burglaries, or "black bag jobs," in connection with its investigation of various political organizations. The Senate Subcommittee on Constitutional Rights of the Judiciary Committee estimated that as of March 1, 1973, the FBI had almost 6.5 million "intelligence" and "evaluation investigation" files.

Participants at the Conference on Controlling the Intelligence Agencies included

Students protest CIA recruitment at University of Wisconsin in 1967.

William Bowe, a Chicago attorney, was a counterintelligence analyst from 1968-71 in the Office of the Assistant Chief of Staff for Intelligence in the Pentagon.

ed intelligence professionals as well as their supporters and critics in and out of Congress. There was a consensus on three major areas of likely reform.

● **Limiting the authority of the CIA and FBI to conduct surveillance of American citizens.**

Both the Rockefeller Commission on CIA Activities within the United States and the CIA's former General Counsel Lawrence Houston have argued that the legislation which established the CIA in 1947 should be amended to make clear that the CIA is not in the "intelligence" business, but rather in the "foreign intelligence" business. These changes would prohibit the CIA from conducting mail intercepts or functions such as Operation Chaos.

Atty. Gen. Edward Levi has been active in attempting to develop guidelines and legislation to spell out the FBI's role in domestic surveillance. His final proposals are expected to establish a sliding scale of increasing governmental surveillance of political activities of American citizens based on the internal security threat involved. Critics fear this will not significantly alter present FBI practices.

Former Atty. Gen. Ramsey Clark has been more specific. He has proposed that no domestic intelligence operations be conducted unless they are grounded on a criminal investigative basis.

Clark also maintains that we can no longer afford an FBI answerable only to itself. Thus, he recommends that attorneys general be consulted by the FBI before sensitive domestic intelligence operations are undertaken. He also suggests an independent Domestic Intelligence Advisory Board be set up as a further outside check against bureaucratic self-justification.

● **Creating a Meaningful Watchdog Role for the Congress.**

While past congressional oversight of the intelligence agencies has been slipshod at best, there is a consensus that Congress should establish a Joint Committee on Intelligence. The Rockefeller Commission has recommended this and it is expected that a similar proposal will emanate from the House and Senate Select Committees on Intelligence as they complete their work in early 1976.

Congress does not seem to be of a mind to tie the hands of the President by abolishing the authority of the CIA to mount secret political activities abroad. In a world long on nuclear weapons, but short of energy and food, the likelihood is that such covert action will be restricted, but not eliminated, by sharper outside review procedures.

● **Opening the courts to citizens whose rights have been violated.**

There is a strong argument that no matter how specific new statutes, directives, and regulations are in defining the proper role of our intelligence agencies, there is still a need for opening up the judicial branch of government to claims of those who are improperly caught in Big Brother's dragnet.

THE CONCERN is well-founded since the fact that many past activities were illegal did not bar intelligence bureaucrats from bowing to improper Presidential whims or doing what they wanted to do regardless of the law. One essential requirement is to have legislation restricting the intelligence agencies contain criminal or civil penalties for violations.

The need for stricter regulation of the CIA and FBI has been clearly established. The question now is how the President and Congress will respond.

PUBLIC APPEARANCE

Event: The Conference Board

Place: New York City
Members' dinner at the Waldorf Astoria

Date: January 18, 1977

Time: Reception -- 6:00 p.m. followed by dinner

Speaking from Text Yes____ No____

Need Press Office Help to Prepare Text Yes____ No____

Hand Out Text _____

Limited Release _____

Embargoed Release _____

Want Press Office to Attend Yes____ No____

Press Conference Yes____ No____

Need Press Office Help to Set Up Press Conference Yes____ No____

Special Press Assistance Required _____

Comments Group would like Mr. Bush to speak on his experiences since leaving the U.N. SESSION IS OFF-THE-RECORD

Travel Arrangements

Mr. Bush should arrive at the Basildon Room -- 3rd floor Waldorf (Lexington Ave side)
Either Mr. Worsham or Mr. Randall will meet you
Event will be over by 9:00 p.m.

Contact: Mr. Randall (212) 759-0900

Hans is working up some current economic paragraphs for you

All these gents were seeing Watergate

number of your branch

ARTICLE APPEARED
ON PAGE 20

TIME
12 February 1979

Up in Arms

Protests over a weapons show

The annual meeting of the Hyatt Corp. is generally an accommodating affair. Last week, however, the company's gathering in Chicago became the target of protesters who are up in arms over a conference scheduled later this month in the O'Hare International Trade and Exhibition Center and the Hyatt Hotel near Chicago's O'Hare International Airport.

"Defense Technology '79," the conference calls itself. An "arms bazaar," its foes charge. Whichever, it will bring together on Feb. 18-21 arms manufacturers, potential buyers and military strategy experts from the U.S. and foreign countries, including the Soviet Union, Egypt and South Korea. Nearly 60 exhibitors, among them such U.S. defense manufacturers as Beech Aircraft and Boeing Aerospace, have signed up. Simultaneously, in the Hyatt Hotel, former intelligence officials of the U.S. and Britain and military strategy specialists from business and academia will stage a "Conference on Strategic Directions." The conference, says Chief Sponsor Gregory Copley, editor of Britain's Defense and Foreign Affairs Publications, will offer strategy experts the opportunity to discuss the latest global and military developments "in a frank and private exchange of ideas. No one is going to drive up in a tank."

Opponents of the conference wonder. Complained Chicago Socialite and Democratic Party Activist Marjorie Benton, a U.S. delegate to last year's U.N. special session on disarmament: "This is not a dog show, not a boat show. It's a military hardware show where they'll be selling everything from thumbscrews to missiles." At the Hyatt stockholders' meeting last week, Benton delivered an impassioned eight-minute lecture on corporate morality. Senator Charles Percy and Representative Abner J. Mikva have asked the sponsors to cancel the exhibition.

Letter writers have protested to Hyatt and Illinois' Rosemont Village, which owns the Exposition Center. The group, "Mobilization for Survival," composed of antinuclear, environmentalist and peace activists, has threatened a demonstration if the exhibition takes place. One of the prospective protesters is Actor and Disarmament Delegate Paul Newman.

Such protests have given Hyatt second thoughts about allowing the conference, but cancellation could bring a six-figure damage suit by the sponsors.

Copley, meanwhile, is standing firm, perhaps remembering the annoyance he suffered when a similar gathering he had planned in Miami last year was canceled. Said he: "This is a conference for professionals, and we don't intend to see it disrupted by emotional amateurs." ■

CHICAGO TRIBUNE
25 May 1978

Column 1

They rose to duty and lost their jobs

By Eleanor Randolph
Chicago Tribune Press Service

WASHINGTON—John Bradley figured he'd get a pat on the back at the Defense Department when he warned his superiors that their computers weren't working properly.

Maybe they'd promote him for suggesting that in the age of instant, push-button war, our President might push the button and nothing would happen.

Likewise, Richard Floyd hoped at least for a little bureaucratic thanks when he told his boss at the National Security Agency that taking competitive bids on some items would save money.

SIMILARLY, DR. J. Anthony Morris assumed he would be credited with saving lives when he suggested that his research on swine flu showed that the vaccination could be a lot more dangerous than an epidemic that might not sweep the nation as predicted.

But Bradley, Floyd, Morris and about 250 others, now recognized as government "whistleblowers," were wrong.

Floyd was eased out of the NSA. Bradley moved from senior project engineer of the Defense Communication Agency to a kind of staff clerk. He has since left, cannot find another job, and has lost about 50 pounds.

Six days after Morris warned about swine flu, he was fired.

"LIFE FOR the whistleblower is hell," said Ralph Stavins, who runs the Government Accountability Project that helps whistleblowers. "The problem with most of these people is that they really act out of conscience, and they don't realize that there is punishment.

"There is no easy road to truth and justice, but we would like to see if we can ease that punishment."

As part of that effort to ease whatever suffering occurs when somebody tattles on the bureaucracy and loses his or her job, Stavins ran a "whistleblower's conference" last weekend at the International Inn in Washington.

IT WAS THE second such conference and part of a growing effort by the Government Accountability Project, a Ralph Nader operation, to find money, legal assistance, and sometimes even psychiatric help for people who have spoken out against the bureaucracy.

"Whistleblowers was originally organized two years ago to provide help for government employes in security jobs," Stavins said during a break in the conference. "There were the people who were ostracized and blacklisted because any conflict with a boss can be deemed a threat to national security."

The services of Stavins' organization were expanded last year to include regulatory agencies. Now Stavins says that most whistleblowers come from the Department of Health, Education, and Welfare; the Department of Housing and Urban Development; the Department of Transportation; the Department of Energy; and the Energy Research and Development Agency.

"NOW WE TAKE about three new people a week," Stavins said. "We get many more inquiries than that, but I'd say about half of them have what we call 'private grievances' or what you call whining.

"They may be legitimate, some of the private matters, but we only take people whose whistleblowing somehow embodies the public interest—something which concerns health, safety or freedom."

Most of the 50 or so whistleblowers who came to last weekend's conference were indeed concerned with health, safety, and freedom, but it was still an odd mix. There were idealistic young people and older workers who finally had had enough. There were people who blew the whistle because the government was immoral and those who spoke out because it was inefficient.

THERE WERE the representatives of the 1960s, like Daniel Ellsberg. Ellsberg blew the whistle on Viet Nam with the Pentagon Papers, and last weekend continued to pipe away so long on his now familiar theme that Stavins had to demand heatedly that Ellsberg relinquish the microphone.

But there were also those who would appear to be conservative in the classic sense. Frank Snepp, the CIA analyst who is being sued by the Justice Department for writing a book about the fall of Saigon, believed that the military and diplomatic officials muffed their job there.

Snepp's argument is that the CIA was forced to leave to the mercy of the North Vietnamese numerous Vietnamese who worked under cover for the CIA.

"I AM PRO-CIA," Snepp told the conference. "I like to think there is a difference between whistleblowing and demolition work. Helping agents out of the country is a matter of honor and pragmatism."

Others, like former CIA agent John Stockwell, acted out of their own sense of conscience. Stockwell, an agent for 12 years, began to worry that secret CIA operations in Angola, where he ran the agency's task force, were immoral and would not be tolerated by the majority of the American people.

So, he resigned and wrote a book.

"IF THIS BOOK is wildly successful for three years, it won't make as much as I would have made in that period working for the CIA," Stockwell told one questioner who figured he was tattling on the agency for fame and money.

"Moreover, I have been told to save what I do make because I may need it for legal fees against the government."

So far, Stockwell has not been sued. Justice Department officials said they are not going to move on Stockwell until they see what happens to their case against Snepp. Snepp has been sued for breach of contract for writing a book after agreeing as a CIA agent not to do so.]

While some of the whistleblowers make money and names for themselves by fighting the bureaucracy, most don't, according to Stavins.

CONTINUED

LONDON SUNDAY TIMES
21 May 1978

Threat to the leaky spooks

By Peter Pringle
Washington

AMERICAN whistleblowers — the growing band of people in government offices who expose abuses of power and bureaucratic wrongdoing — see themselves as seriously threatened for the first time by the equivalent of the British Official Secrets Act.

Hitherto, employees who have exposed the doings of anything from the CIA to the Food and Drugs and Administration have either resigned or, at worst, been sacked. The whistleblowers say the new threat is embodied in the spying convictions passed on Friday on a former US Information Agency employee, Ronald Humphrey, and a Vietnamese expatriate, David Truong.

They were found guilty of theft of government documents and "conspiracy to injure the national defence of the United States." Humphrey admitted that he took classified documents and gave them to Truong, who passed them to a courier for the communist Vietnamese government. They did so in the hope of "improving relations" between the two countries.

But the courier was a double agent paid by the CIA. The two face life sentences for committing what Humphrey at least considered was only a State Department security violation.

The whistleblowers now fear that by "passing on" even the most innocuous official documents to a journalist, they might risk facing tough sentences—as they would in Britain.

The spy convictions came in the middle of a whistleblowers' conference on national security. It was attended by such well-known whistleblowers as Daniel Ellsberg (whose Pentagon Papers exposed the origins of the Vietnam war), Frank Snepp, one-time CIA station chief in Saigon, and John Stockwell, who last week blew the lid off the CIA's covert action in Angola.

But the conference spotlight was on Snepp, Stockwell and another ex-CIA officer, Donald Jordan, who was recently fired by Admiral Stansfield Turner, director of the CIA, for suggesting in public that the CIA rid itself of its "soft files." Those are the ones kept on American citizens of peripheral interest to intelligence, and not listed in the CIA computer.

"The agency may have a bundle of documents on you but you can never see them, even under the freedom of information Act," says Jordan, "because, according to the computer, they don't exist."

The problem with the whole intelligence gathering operation, he added, is that agents get so used to lying and cheating to get

Snepp: rule-breaker

information that they often lie and cheat in making up their reports—perhaps for personal advancement—and the result is bad intelligence.

Snepp, who was one of the agency's 4,500 covert officers, is already facing a civil suit brought by the government for breaching the CIA's "contract of secrecy" and for failing to submit his recent book on the final days of the American presence in Saigon for approval before publication.

It is widely assumed that, if the government wins the case, it will pursue a case against Stockwell. Not only did he not have the CIA's permission to publish; he has also admitted — unlike Snepp — that his book on the covert operation during the Angolan civil war contained classified information.

One aim of the conference, sponsored by the Institute of Policy Studies, a radical Washington group, was to inform goverment employees about the best ways of policing bright-handed bureaucrats. "There is a direct link between the pursuit of freedom and blowing the whistle on government injustice," said Ralph Stavins of the institute's "government accountability project."

All three former CIA officers said they basically still support the CIA in its legitimate activities. They consider the Russians to be a greater threat than the wrongdoings of the CIA. But America was no good at "little covert wars", said Stockwell, as Angola had shown.

As to his possible punishment, Stockwell said: "It is a horrible thing to punish someone who exposes a crime against humanity. It is beyond the bounds of Sanity. It is certainly unamerican".

ARTICLE APPEARED
ON PAGE A-3

THE WASHINGTON POST
21 May 1978

Government Whistleblowers Perceive a Dismaying Trend

By Ward Sinclair
Washington Post Staff Writer

Whistleblowing, that often lonely, conscience-driven act of calling the boss to book, has become enough of an institution that conferences now are held on the subject.

Just such a conference has been going on here this weekend, involving some of the biggest names in recent whistleblowing—Ellsberg, Stockwell, Snepp, Conrad, Mancuso and others of lesser renown.

This second annual session was staged by the Institute for Policy Studies, which attracted several hundred government and congressional workers to hear case histories and be encouraged to blow their whistles.

It takes some hours of listening to these vignettes and hearing the stories of punishment and retaliation to catch a common strain that runs through them all.

Your average whitleblower turns out not to be the ranting kook of popular perception. More often, he is a frustrated agency employe who goes public because he believes his superiors are suppressing the truth.

And, just as often, he suffers persecution, relegation to the bureaucratic deep-freeze or outright firing for having gone outside the agency channels that did not respond to him in the first place.

If there were any central tone running through this conference, it was underlined by Morton Halperin, the former national security aide whose telephone was illegally tapped by a Nixon administration that thought he was a "leak."

Halperin warne dthe whistleblowers that their peril is likely to be greater under the Carter administration, which he said "has succeeded where Richard Nixon failed."

Halperin and others said the Carter White House is moving directly against whistleblowers and dissenters by a series of actions, including support of a criminal code revision, designed to make disclosure of government information a crime or at least a breach of nebulous contract.

"Any last remaining hope that anybody had that this administration would be different is gone," he said. "If the enemy is not us, he at least is always the man in the White House."

Sen. James Abourezk (D-S.D.), sponsor of a strong bill to protect the due-process rights of whistleblowers, used even tougher language.

"This administration has cynically ignored its campaign promises in this area," Abourezk said. "It ignores the evils of the past. It refuses to prevent a repetition of such evils.

"I can only conclude that this administration, without a doubt, is deliberately pursuing a Nixonesque policy of retaliation, intimidation and suppression of whistleblowers, their revelations and their complaints," he said.

Moreover, he added, "In agency after agency the same thugs who terrorized government workers and betrayed the public trust under Nixon and Ford are doing business as usual."

He said the Civil Service Commission "has run a whistleblowers' graveyard over there. No honest civil servant worthy of the name would either trust or seek out the commission in the interests of fair play and justice."

Abourezk said that more than fair play is involved, citing the troubles of Frank Snepp and John Stockwell, the former CIA men who wrote books critical of agency operations in Vietnam and Angola.

"Snepp and Stockwell did not sign away their First Amendment rights," he said. "The agency is not the master, nor the employe its slave."

The two, among the more celebrated whistleblowers of the year, were on hand together Friday evening as panel members to discuss their problems.

Snepp said he agrees generally that "the government is tightening the screws on the intelligence community," but that potential whistleblowers at the CIA have a responsibility to "stand up and face the legal consequences of their actions as well."

Like Snepp, Stockwell professed strong belief in the intelligence-gathering function of the CIA. But he said that bungled covert operations abroad, such as the one in Angola that he wrote about, do the United States more harm than good.

"Whistleblowers should be given support and help," said Stockwell, who resigned from the CIA in April 1977 after heading the agency's Angola task force.

Daniel Ellsberg, the man who leaked the Pentagon Papers to the press, talked along the same lines, urging whistleblowers not to let personal risk outweigh the need to have all sides of public issues aired publicly.

He was explaining his latest civil disobedience activity, outside a nuclear arms facility near Denver, and talking about the arms race when, oddly enough, the whistle was blown on him.

Conference coordinator Ralph Stavins warned Ellsberg his time was running out, then finally stopped him.

"But we're talking about the way the world may end," Ellsberg protested as he walked off, his story left hanging in the balance.

CIA 1.04 Snepp, Frank
← Stockwell, John
Abourezk, James

ARTICLE APPEARED ON PAGE A-3

WASHINGTON STAR
21 MAY 1978

'WHISTLEBLOWERS' REASSURED

By John F. Barton
United Press International

Sen. James Abourezk said yesterday he has introduced legislation to protect "whistleblowing" federal employees from reprisal if they reveal wasteful, illegal or improper government activities.

"No one has lifted a finger to protect whistleblowers" despite President Carter's campaign promises to do so, Abourezk, D-S.D., told several hundred present and former federal employees at a "Whistleblower's Conference on National Security."

He said those who try to expose wrongdoing or ineptitude within the intelligence and national security agencies are particularly vulnerable.

"Dissenters who appear in national security agencies are subject to an end to their careers," said Abourezk. "Either you are completely loyal to the agency, right or wrong, or you are out.

"CONTRARY TO WHAT this administration says, whistleblowers are fired. They can be certain only of one thing: monumental legal bills."

The senator argued that the government has no right to use terr employment as "a prior restra against free speech.

His legislation would establi special counsel empowered to action against federal officials or ployees who retaliate against whistleblowers, including those within the intelligence agencies.

Abourezk was loudly applauded by the audience, many of whom said their careers had been hurt because they tried to publicize large cost overruns or government activities harmful to the public health.

Citing cases of whistleblowers subjected to retaliatory pressure, Abourezk said Ernest Fitzgerald, a Defense Department official who once publicized huge cost overruns in weapons projects, "now rots away his professional career in the attic of the Pentagon."

"FRANK SNEPP and John Stockwell did not sign away their First Amendment rights," he said in reference to two former CIA employees who are in trouble for writing books critical of CIA operations in Vietnam and Angola.

BALTIMORE SUN
ARTICLE APPEARED ON PAGE B-9

Whistle-blowers to discuss the perils of leaking data

Washington Bureau of The Sun

Washington—Whistle-blowers from the Central Intelligence Agency, the Atomic Energy Commission, the military and other organizations are gathering here this weekend for a conference on the hazards of leaking secret information to the public.

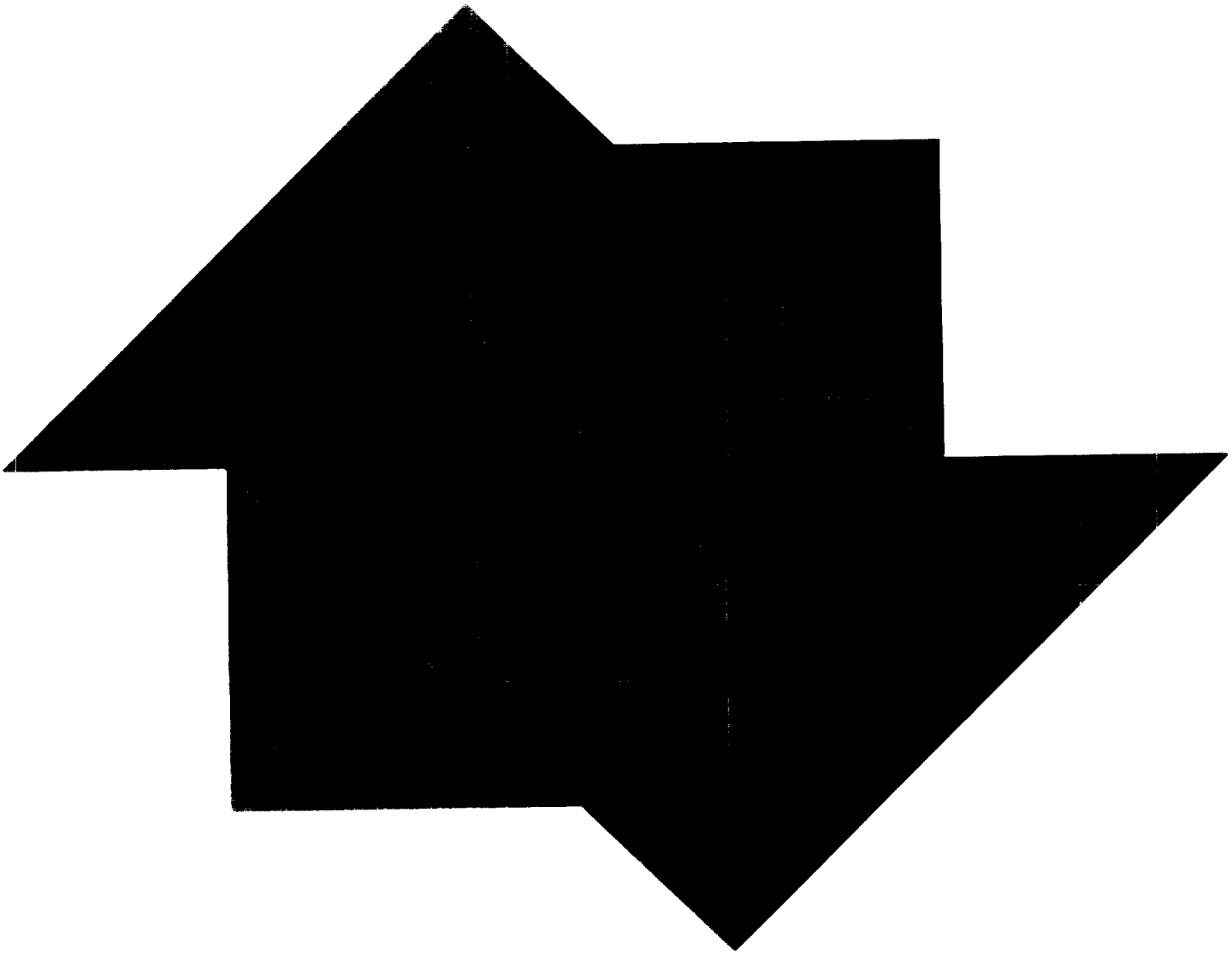
Daniel Ellsberg, who leaked the Pentagon papers to the press in 1971, has promised to open the conference by blowing the whistle on some government activity during his keynote address tonight. In addition to Mr Ellsberg the 7 P M session in room B338 of the Rayburn House Office Building, will include John Stockwell and Frank Snepp, former CIA agents who will discuss secret CIA activities in Angola and Vietnam.

The conference will continue tomorrow at the International Inn with a panel of whistle-blowers from the Chicago Police Department, the military and a variety of government agencies. The conference is sponsored by the Government Accountability Project of the Institute for Policy Studies. Admission is $25.

CIA 1.04 Stockwell, John
& Snepp, Frank

Edited by:
Jonathan Moore
James C. Thomson, Jr.
Martin Linsky
Michael Jozef Israels

Report of the New England Conference on Conflicts Between the Media and the Law September, 1974-September, 1976



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New England Conference on Conflicts Between the Media and the Law

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In addition to our gratitude to the members of the Steering Committee and the leaders of the case discussions, our appreciation is extended to the following individuals for their fine contributions in coordinating meetings and preparing report materials: Sarah Fitzgerald, Betsy Gilligan, Elizabeth Goddard, Suzanne Hilton, Frances Huze, and Deborah Katz.

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Introduction

Why two years of New England meetings about media-law conflicts?

To some, such conflicts would seem inevitable and healthy, one symptom of a free, dynamic society. The press, they would argue, must adopt an adversary posture in order to play its proper role as watchdog of the nation. The danger, they would stress, is not conflict or collision, but *collusion*—especially with government itself.

Such views have infused and sustained generations of American journalists. And much good has resulted from the media's independence: the tradition of open criticism, the exposure of corruption, the reform of institutions. Yet the First Amendment's guarantee of a free press is only one of the rights rooted in the Constitution and nurtured through years of judicial interpretation and Congressional legislation. The rights to a fair trial and to personal privacy are also protected by the Constitution, and in recent years these rights have come into considerable conflict with the rights of a free press. Consider the record:

—Despite the Supreme Court's strong decision against gag rules in the 1976 Nebraska case, courts are still very much in the business of trying to control the release and publication of courtroom information, even, in some cases, of information revealed in open court.

—Tensions between the interest in personal privacy and the interest in reporting what people want to know are on the increase: libel law is in a constant state of reassessment, gossip journalism is in vogue, computerized data banks have provided a whole new world of concentrated personal information about individuals' private lives, and several states are agonizing over questions of sealing or destroying arrest and other records previously lodged in the public domain.

—Journalists often are expected to reveal confidential sources, and they are still threatened with jail if they protect them.

—The Congress has been struggling for some time with proposals, on the one hand, for an American version of Britain's Official Secrets Act to control the flow of information to the people from their government, and on the other, for "shield laws" to prohibit the jailing of journalists who refuse to disclose their sources.

—Finally, all this is going on during, and partly in reaction to, a period of unprecedented activism by the press in the aggressive pursuit of information.

It has become clear, therefore, that the First Amendment's guarantees, and the survival of a free press, are more contingent upon a national climate of understanding and acceptance than upon any absolute and ir-

revocable Constitutional ordinance. One central factor in the perpetuation of such a climate is the behavior of the bar and bench in America.

Lawyers, journalists, and most judges are not required to stand for elections, to submit themselves to plebiscites on their promises or performance. Yet they wield great power in determining the shape and direction of American society. Inevitably, without recourse to any public referee, they encounter each other in situations of acute antagonism. The press can attempt to sway public opinion in its favor. But the courts retain ultimate power and authority, and their decisions can silence and imprison journalists, and—as a result of the soaring costs of litigation—constrain media organizations by the threat of financial ruin.

It is the socially costly potential of such media-law conflicts that has persuaded many observers that some alternatives should be sought to all-out combat, alternatives worked out through efforts at mutual education, conciliation, and self-restraint within and between the two groups. In the absence of such efforts, it is predicted by some that freedom of the press, as we know it in America, will gradually disappear.

In early 1974, Fred W. Friendly of the Ford Foundation proposed a pilot project in media-law dialogue. In June of that year, a group of New England reporters, editors, publishers, lawyers, prosecutors and judges gathered in Chatham, Massachusetts, under the auspices of the Ford Foundation, *The Boston Globe*, and the Nieman Foundation, to consider ways of resolving, or at least better understanding, the conflicts between the media and the legal system other than in the contentious atmosphere of the courtroom. The principal recommendation of that conference was to continue the dialogue throughout New England, in order to involve more people at the local level, and perhaps even begin to build a consensus around approaches to some of the issues.

Since then, under the leadership of Jonathan Moore, Director of the Institute of Politics at Harvard, and James C. Thomson, Jr., Curator of the Nieman Foundation, and with funding from both the Ford Foundation and local sources, the New England Conference on Conflicts Between the Media and the Law has sought to fulfill the Chatham mandate. There have been five sub-regional conferences: in April, 1975 at Manchester, New Hampshire; May, 1975 at Boston; June, 1975 at Lakeville, Connecticut; and September, 1975 at Amherst, Massachusetts and Newport, Rhode Island. In June, 1976, the project's Steering Committee, together with those who had organized the conferences as well as some knowledgeable persons who had not previously participated in the sub-regional conferences, met at Osgood Hill in North Andover, Massachusetts, to assess what had taken place and to consider what proposals should be made.

The recommendations which follow are specific, concrete and deserve broad attention, but standing alone they do not tell the whole story of the New England Conference experience—of the efforts over the past two years of scores of men and women, working lawyers, judges and journalists who have come together in the spirit of open inquiry to deal with areas of mutual concern.

On the positive side, the New England Conference achieved its greatest success in the pursuit of its most limited goal. People who came to the sub-regional meetings expressed overwhelming support for their value in dramatically increasing awareness and understanding of the issues. Meeting with members of their own professions, participants found both that they shared problems and differed in suggested solutions. Judges, lawyers, and journalists who had never spoken in a non-litigious situation were stimulated to appreciate each other's roles and responsibilities, exchange ideas, and sort out differences in an informal atmosphere.

No participant could have come away from one of these meetings without a better understanding of the other side's point of view. And no participant should have come away without making an honest reassessment of his or her own professional instincts. We asked ourselves questions which are not often raised, and we realized, under scrutiny from other points of view, that the answers were not as simple as we had thought them to be.

Some individual quotes taken from the sub-regional conferences suggest both the nature of the problem and the vitality of the dialogue:

A television journalist: "These are areas where we are right and the courts are wrong and there is no compromise."

A judge: "Freedom of the press is not an absolute freedom, not an unlimited freedom."

Another judge: "Make all the rules you want affecting the press but they'll go get the story and print it anyway; and that's the game, there's nothing moral or amoral about it."

A lawyer: "Along with the press's obligation to protect us against the misbehavior of a trial judge are the obligations to protect the right to a free trial and to preserve the liberty of its citizens."

Another lawyer: "I don't think any public figure has a right to privacy."

A publisher: "We are the final judge."

A judge to a publisher: "Nobody elected you."

An editor: "There are some things in life which are anti-social even if they don't violate the law."

A lawyer for a newspaper: "To hell with verification, print the story and we'll go for a law suit."

A reporter: "Whether or not a reporter has committed a crime to get a story should be of no concern to his editor or publisher."

We also learned from the unique grass roots focus of our project that media-law conflicts are not perceived to be as great a concern at the local level as they seem to be nationally and in the larger metropolitan centers. This is attributed to a greater incentive and opportunity to work out problems in a cooperative spirit, as well as to an unduly cozy relationship between the press, lawyers and judges, within a smaller region or state. The greater familiarity among contending participants in the areas where a sense of community is shared does not eliminate the conflicts, but it may make them less intense.

On the negative side, the two-year experience fell short of some of our most optimistic goals. First, there was little follow-up. For most participants, the dialogue begun by the New England Conference came and went; there was no organized local response to the sub-regional conferences. Second, there seems to be little or no evidence of any change in the day-to-day world as a result of what we have done. Although the experience had an impact on the participants as individuals and even on the way they perform professionally, relations between the media and the law generally do not seem to be improving. In some respects, the atmosphere between judges and journalists seems more contentious than when we started. But this goal may have been unduly naive, especially in light of the testimony by many of our participants that such conflict, provided it does not become destructive, is dynamic evidence that the process is in healthy equilibrium.

From the conferences themselves we realized that there are two overriding problems which permeate the relations between the media and the law. First, most judges and lawyers do not take the media's First Amendment concerns seriously enough. Therefore, they are more than willing to whittle them away and to try to balance and compromise them with other interests in society, even though those interests might not rise to the level of either a Constitutional amendment or a moral principle. What judges and lawyers ought to understand is that most journalists believe in an unfettered press as an article of personal faith, as well as a part of the Constitution, and as an assessment of their own self-interests. Most journalists would be willing to go to jail to protect First Amendment considerations, and a realization of that fact ought to convince skeptics of the seriousness with which those beliefs are held.

Second, however, it is all too clear to us that many journalists have no standards at all. There are none for the profession as a whole and few on an institution-by-institution basis. The media is more vulnerable to images of arrogance and self-righteousness, given the extraordinary rights conferred by the First Amendment, without their consistent acknowledgment that Constitutional safeguards are provided for others. A purely situational ethic, where each individual journalist decides what his or her personal standards of conduct are going to be on a case-by-case consideration, is, by definition, not ethical at all. To have ethics, a person, an institution, or a profession, must have standards that exist over time, outside of the peculiarities of any particular situation. We can argue about what the standards ought to be, or whose they ought to be, or how they ought to be enforced, if at all; but it is hard to argue with the proposition that there ought to be some if journalists want to take themselves seriously, ask others to do so, and enjoy Constitutional protection for what they do.

As we moved toward forging specific recommendations, it was clear that there were several approaches to take. We could have focused just on future joint media-law efforts; we could have isolated specific areas of conflict which seemed capable of being resolved; we could have turned our attention to the media alone or to the bench and bar alone; or we could have taken a longer view and talked about educating journalists and lawyers so that these problems might disappear or be ameliorated in the years ahead.

Our recommendations combine elements of each of these choices. We hope they will encourage others to join in more ambitious ongoing efforts to increase knowledge, understanding and respect for the various apparently conflicting but ideally complementing rights and responsibilities of media and legal institutions.

Recommendations

1 Educational Programs for Lawyers, Judges and Journalists

Recommendation

Through undergraduate, graduate and continuing education, the media and the legal profession must learn more about each other's practices. Journalists should be exposed to both substantive areas of the law, and the structure and operation of law enforcement and court systems. Lawyers and judges should learn more about journalism, how journalists and their organizations make decisions, and the responsibilities of a free press in the American system.

Action

Deans and faculty members of New England colleges and universities should integrate these issues into their existing curricula, both by expanding present courses and by adding new ones.

In addition, evening and two to four week continuing education programs should be developed. Regular faculty should be supplemented by practicing lawyers, judges and journalists.

Media institutions and bar organizations should participate in the funding of these programs.

2 Internal Procedures for the Media

Recommendation

Each news organization should develop internal procedures for identifying and dealing with sensitive legal and ethical issues. This should include assembling information and fostering internal discussion of such issues as news-gathering methods, conflicts of interest, libel, and the substance of law-related stories. In addition, each media organization should develop a decision-making apparatus which insures that important legal and ethical decisions are made on the best available information, after consultation among reporters and editors—and with legal counsel and publishers when appropriate.

Action

Each news organization should appoint an internal committee to develop and/or review procedures for handling legal and ethical questions which arise in news-gathering and publication.

Each new employee of any news organization should receive instruction in that organization's standards of professional conduct.

News organizations in New England should share with each other the internal procedures they have already developed and may be developing over the next few years, in order to highlight problems and suggest alternative solutions rather than to prescribe general rules.

3 Media Critics

Recommendation

Media organizations should examine each other's performance as well as their own. They should debate their own practices in print and on the air, and assess the general quality of the practice of journalism locally, regionally, and nationally. Reader and listener input should be part of this process.

A few larger news outlets have established in-house ombudsmen or critics, and some feature guest critiques of the media in their pages or programs. These activities should be expanded. Each media outlet should act as a journalism review, just as the media review concerts, plays, and films.

High quality media criticism can increase the public's capacity to understand and appreciate good journalism. This would foster competition and improve the quality of journalism in the best free-market tradition. Above all, it would enhance public confidence in journalists as people who can discuss openly their own humanity and failings.

The traditions of the First Amendment are best upheld by a public which understands how and why journalists make news and editorial judgments, and a press which is willing to have its judgments withstand public scrutiny. A vigorous press should take strength from such dialogue in an open society.

Action

Editors and program directors should establish internal ombudsmen and external media critics, including better opportunities for reader and listener participation.

4 Procedures for the Legal Profession in Dealing with the Media

Recommendation

Without compromising their responsibilities to their clients and to the legal process, lawyers and judges should be more open in dealing with the press and public. There should be a maturing of the legal understanding of the significance of an open legal process, and of the press's responsibility for informing the public about the conduct of it.

The legal profession already has some guidelines for dealing with the media in the *Code of Professional Responsibility.* Some of these guidelines are useful, others are less appropriate to the present climate of public interest in legal affairs, and some have come under constitutional attack.

Action

Leaders of state bar associations should review pertinent portions of the *Code of Professional Responsibility* (in connection with media representatives) and should consider offering new guidance to lawyers and judges for on and off the record comment, both on pending legal proceedings and on legal questions in general. Further, they should play a leadership role in stimulating increased attention to these issues in the legal profession as a whole.

	Recommendation	Action
5 Media and Law Enforcement Cooperation	New England media representatives and law enforcement officials should consult locally to establish procedures for voluntary cooperation where journalistic self-restraint is essential to the health and safety of witnesses, victims, law enforcement officials, or others involved in a criminal investigation. In such situations, the voluntary cooperation of journalists should not be enlisted to conceal official incompetence or wrongdoing, or to make them agents in law enforcement. However, the journalist can and should aid in protecting the law enforcement process by his concern for the safety of individuals involved in that process. Law enforcement authorities should be cognizant of the necessity for the public to know and understand why restrictive measures are taken. Top policy-making officials in both the media and law enforcement should be informed about and involved in any arrangements for voluntary cooperation in specific cases.	Editors, news-directors, police chiefs, and prosecutors in each community should consult periodically on mutually satisfactory procedures for the implementation of this recommendation.

6 Free Press and Fair Trial: Directions for Future Study

Recommendation

To safeguard the important constitutional rights of fair trial and free press, the bench, bar and media of New England should develop procedural guidelines for resolving conflicts between the important constitutional rights of free press and fair trial.

The recent U.S. Supreme Court decision on restraint orders leaves unresolved many such areas of conflict. Under this decision, there remain some limited circumstances in which a restraint order against media reporting of a criminal trial could withstand constitutional attack. Some conflict between the rights of a free press and fair trial is, of course, inevitable, unresolvable, and even healthy. Nonetheless, unduly escalated conflict can cause harm to both rights. For the present, some restraint orders will continue to be issued and litigated. The best means of avoiding restraint orders remains voluntary self-restraint on the part of the bench, the bar, and the media.

Guidelines might include suggested voluntary measures which could serve as alternatives to the issuance of a restraint order, guidance on the kind and timing of publicity which is most likely to prejudice a fair trial irreparably, procedures for affording the press a hearing prior to the issuance of any proposed restraint order, suggestions for limiting the scope and duration of any such order, and a recommended procedure for expediting appellate review so that publication does not become moot before the legal questions are decided. In addition, the results of ongoing research into juror attitudes and the effect of pretrial publicity on jurors may have an important influence on future policy in this area.

Action

Existing guidelines for resolving conflicts between the rights of free press and fair trial should undergo continuous review and updating as they are affected by experience and court decisions.

New guidelines should be developed under bench/bar auspices where such guidelines do not presently exist.

If the initiatives described above do not occur, a continuing cooperative organization, such as the one recommended by this Report, should develop model guidelines.

	Recommendation	Action
7 New England News Council	The media, the bench and the bar, as well as members of the public, should form a New England regional "News Council." Such a council would be modeled on existing local, state, and national news councils: groups of journalists, lawyers, and laymen who review media performance and who hear specific disputes in areas such as fairness and accuracy, access to the press, and media-law conflicts, but whose decisions are in the form of recommendations or admonitions only. A New England News Council could take up complaints arising in local media, which the National News Council now hears only where they are deemed of "national significance."	Regional journalistic and bar/bench organizations should cooperate in the creation of a New England News Council. Alternatively, statewide and metropolitan organizations should consider implementing the same idea on a smaller scale.
8 Continuing Activities	We propose formation of a New England bench, bar and media organization that will: —Follow-up recommendations of the New England Conference, and consider other recommendations; —Broaden "consciousness-raising" efforts among lawyers, judges, and journalists including local meetings among the bench, bar, and the media in the format of the Socratic method of problem presentation; —Attempt to increase public understanding of these issues, perhaps by an annual public forum addressing a major contemporary issue of conflict between the media and the law; —Stimulate bar and journalistic associations to take actions with respect to these problems.	The New England Conference on Conflicts Between the Media and the Law will explore with individuals, organizations, and potential funding sources, the formation of a continuing organization of bench, bar and media representatives in New England.

Summary Report of the New England Conference

The New England Conference on the Conflicts Between the Media and the Law in 1974-76 sponsored meetings throughout the New England region of judges, lawyers and journalists for the purpose of discussing issues of conflict among them.

The Conference had three aims:

1
To raise the sensitivity level of all participants about their own profession and their problems;

2
To educate each profession to the other's needs and priorities; and

3
To stimulate the desire for continuing the dialogue.

A total of almost 200 participants in these sessions were selected through a broad survey of knowledgeable persons. Invitations were offered to those identified as thoughtful and respected members of their professions and their communities, and were also based in part on the interest in having geographical and professional distribution. Judges ranged from local trial-court judges to State and Federal appellate court judges. Lawyers were local and state practitioners including prosecutors, defense lawyers, and attorneys for media organizations. Journalists represented for the most part town and small city press and broadcast stations—publishers, station managers, and editors as well as reporters and commentators.

The New England Conference used a common basic format: law professors, selected because of their ability to use the Socratic method and their expertise in the areas of law involved, led discussions on cases exposing situations in which different rights and interests came into conflict. This method was chosen because it proved to be a uniquely successful way to break down communication barriers and place hidden assumptions on the table, engaging participants to examine their own roles in light of others'. The cases focused on a number of specific problems, including whether to disclose a "secret" report obtained by questionable newsgathering methods, grand jury secrecy, fair trial-free press, and individual privacy. The cases used in the Socratic sessions are included beginning on page 51 of this Report.

It was believed that discussions at these encounters could lead the participants toward a recognition of the legitimacy of the rights and purposes of their "adversaries," as representatives of an opposing profession were often regarded. It was hoped that some consensus among the three professions could be reached as to the best means of avoiding destructive confrontations ultimately threatening to the freedom of the press.

The New England Conference on the Conflicts Between the Media and the Law came into being as a result of an initial meeting held at the Chatham Bars Inn, Chatham, Massachusetts, on June 7, 8 and 9, 1974. Sponsored by the Ford Foundation, *The Boston Globe*, and the Nieman Foundation, "Chatham I" brought together thirty representatives of the bench, the bar and the media from throughout New England to address, outside of the adversary atmosphere of a courtroom, some current issues of conflict. The participants were joined by nineteen observers from outside of New England with a special interest in this area of concern.

The overriding motivation for the Chatham meeting was outlined by Fred W. Friendly of the Ford Foundation in his presentation to the initial session: If the journalists, the lawyers, and the judges do not begin to understand each other and try to accommodate each other's problems, then there can be no other outcome from the continuing series of confrontations in the courtroom than a diminution of the degree of freedom which the press now enjoys in this country. The major part of this conference consisted of case presentations and general discussion in the manner described above. Martin Linsky, an attorney, former state legislator, and editor of *The Real Paper* served as a consultant in planning the conference and preparing a summary report.

At the close of the Chatham conference, the New England Conference on Conflicts Between the Media and the Law was formed under the joint direction of James C. Thomson, Jr., Curator of the Nieman Foundation, and Jonathan Moore, Director of the Institute of Politics at Harvard. A Steering Committee, comprised of representatives of the bench, bar and media from all the New England states, the membership of which is included at the beginning of this report, was named to help plan and guide the project. The aim of a series of planned sub-regional meetings was to continue the effort begun at the Chatham conference bringing news media representatives, from both the press and broadcast companies, together with judges and lawyers for a consciousness-raising discussion of the problems besetting the three communities in their relations with each other. By means of such a continuing dialogue, the effort to assist the two professions in understanding each other would increasingly succeed, and the nature of various conflicts of legitimate rights and honest misunderstandings on both sides, would be better grasped and dealt with. The unique character of this series of meetings, unlike some others held elsewhere in the United States, was to be its emphasis on grass roots, local community, and sub-regional involvement, as distinct from a more "national" emphasis using representatives from larger metropolitan and media centers.

The Steering Committee met in September of 1974 to develop program and funding plans, in August of 1975 to review what had been achieved and to plan the completion of the project, and in June of 1976 to draft final recommendations. The project was financed by a Ford Foundation grant in the amount of $18,000, to be matched on a one-to-one basis by contributions from New England sources. The Institute of Politics provided the administrative support. A series of four sub-regional conferences was projected, to be held in various parts of the region: Northern New England, comprising New Hampshire, Maine and Vermont; Southern New England, comprising Connecticut and Rhode Island; the Greater Boston area; and Western Massachusetts. A fifth conference was eventually held for Rhode Island.

Funding from New England sources included media organizations, foundations, public and private interest groups, and contributions by the Institute of Politics and the Nieman Foundation. The major local funding came from registration fees for each sub-regional conference, designed to cover, as nearly as possible, the costs of hospitality at each meeting. The fees paid to the experts who presented the cases and mediated the discussions, as well as the central costs of clerical assistance, organization, correspondence, the issuing of invitations, postage, telephone, etc., were covered by the New England Conference office in Cambridge. There, Mrs. Sarah Fitzgerald was in general charge of coordinating details and providing logistical support and staff back-up for the sub-regional efforts.

The sub-regional conferences themselves were autonomous, planned by local sponsors and held at a site chosen by them. The participants were to be invited from lists compiled by the local sponsors in each area, and the central office suggested names from its own lists to those proposed by the local co-sponsors from within the intended sub-regional area. Once these decisions had been made and the lists compiled, the central staff sent out the invitations, and prepared the cases and schedules for distribution at the conference, leaving the sponsors free to concern themselves with actually running the conference.

Martin Linsky continued as the principal consultant to the project and, on two occasions, made case presentations. Professors Charles Nesson and Arthur Miller of the Harvard Law School were each engaged to present cases at the meetings; Mr. Nesson performed at four of the sub-regional meetings and Mr. Miller at two. At the Rhode Island meeting Professors Abram Chayes and Philip Heymann, also of the Harvard Law School, presented the cases. Mr. Friendly was a featured speaker at two of the meetings. Michael Israels began his staff support on the project, preparing background and draft materials and keeping records, in the summer of 1975.

At every sub-regional meeting, the participants expressed great appreciation for the conference format as a vehicle for increasing understanding of the problems and of the differing viewpoints of the other professions. The great majority of those who attended were open to improvement in their understanding, and found that the kind of dialogue provided by the Socratic method of presentation resulted in valuable clarification. Interest was shown in continuing the conversations locally and informally in the towns and cities of the various states.

The final meeting of the New England Conference took place at Osgood Hill, North Andover, Massachusetts, on June 18-19, 1976. It involved members of the Steering Committee, selected sponsors and participants from the sub-regional meetings, and a few specially invited guests with unusual expertise who had not previously been involved in the project: Adam Yarmolinsky, Jack Howard, Kenneth Pierce, and Lewis Wolfson. The principal purpose of the meeting was to consider draft recommendations prepared by Messrs. Thomson, Moore and Israels. The results of a questionnaire which had been distributed to all participants in the sub-regional conferences, evaluating the project and soliciting suggestions on future action, were also available to those invited to Osgood Hill. A report on this evaluation is contained in the next section of this report.

Martin Linsky keynoted the final meeting, and summarized his findings as follows: The sub-regional conferences had achieved useful goals, and should continue to be made available to wider groups, even though they are not, in themselves, an appropriate vehicle for problem-solving or issue-resolution. Three central problems dominated the conferences: a relative lack of sensitivity on the part of the legal profession to the media's concern for the First Amendment; lack of consistent individual ethical standards among journalists; and the overwhelming cost of potential litigation as a factor in news decisions. The participants at the Osgood Hill meeting reviewed and commented at length on the draft recommendations for a final report of the New England Conference. During the summer, revised recommendations were distributed to them in the mail for further comment.

The resulting recommendations may be found in the preceding section of this report. It is to be stressed, however, that although there was strong consensus, many of those who reviewed the recommendations had one or more specific points of disagreement. Consequently, the members of the Steering Committee and others at the Osgood Hill meeting should not be held individually accountable for the specific recommendations. There was strong agreement that continuing dialogue between the bench, bar and media should take place, and on the desirability of a continuing organization to motivate and organize such dialogue. This has been embodied in our recommendations.

The following summaries of each sub-regional conference are based on the reports presented by the sponsors of each meeting:

Northern New England Sub-Regional Conference
April 4 - 6, 1975
Sheraton-Wayfarer Inn
Bedford, New Hampshire

Co-Sponsors:
Warren B. Rudman
Attorney General of New Hampshire

Thomas Gerber
Editor and Assistant Publisher
The Concord Monitor
Concord, New Hampshire

The participants in this conference were invited from New Hampshire, Vermont and Maine. Despite a severe snowstorm, only a few of the invited participants (all of them from Vermont, where the storm was most severe), failed to arrive. Twenty-five editors, TV and press reporters, lawyers (both prosecutors and defense attorneys) and five Superior Court judges gathered in the early evening for dinner and introductory remarks by Attorney General Rudman and Mr. Gerber, who described the purposes of the conference and how it would be conducted. Martin Linsky, one of the lawyers who was to present a case on the following day, added a few words.

The next morning, at 10 o'clock, the first case, on free press-fair trial, was presented by Professor Charles Nesson. After lunch, Martin Linsky presented a second case on privacy. There was lively interest and participation in both sessions.

After dinner that evening, the group was addressed by Fred W. Friendly, Advisor on Communications to the Ford Foundation and the Edward R. Murrow Professor of Journalism at Columbia University. Informal discussions went on into the evening.

At a breakfast meeting on Sunday morning, April 6, a brief assessment of the occasion was undertaken by Attorney General Rudman, Mr. Gerber, and the participants. It was agreed that it had been an absorbing and worthwhile event; some made suggestions as to other problems that might usefully be explored on other occasions; all expressed a desire to continue meetings and discussions, locally and personally as well as at gatherings of professional organizations such as this one. The breakfast ran on for two hours past the official closing time.

The small size of this conference was a positive factor. Co-sponsor Gerber wrote, "The interchange of ideas increases markedly with smaller conferences . . . I believe the effectiveness factor rises sharply."

Greater Boston Sub-Regional Conference
May 16 - 17, 1975
Headquarters of the American Academy of Arts and Sciences
Brookline, Massachusetts

Co-Sponsors:
Timothy Leland
Sunday Editor
The Boston Globe

Edward J. Barshak
President
Boston Bar Association

The Greater Boston sub-regional conference opened with a dinner meeting at which James C. Goodale, executive vice president and general counsel of *The New York Times*, spoke on the subject of the Pentagon Papers and the events leading up to and following the decision to publish them. As a classic modern example of "the media versus the law," this was a subject of great interest to all participants and provided an ideal basis for discussion in anticipation of the case presentations that took place the following day. These presentations, again involving cases on free press-fair trial and privacy, were led by Professors Charles Nesson and Arthur Miller, respectively.

There was a strong representation of judges at this Boston meeting, as there had been in northern New England, and their contributions to the dialogue were notable. Here, as on other occasions, the reception of the program by all the guests was enthusiastic, and their absorbed participation in the discussion was sustained. A total of approximately 50 people participated.

It was generally agreed at the Greater Boston conference that the dialogue should be continued in one form or another, although continuing meetings might be less likely to come about in cities like Boston than in smaller locales, where community involvement by both professions is greater. Some felt that follow-up sessions might be unnecessary after sub-regional conferences have raised the issues and initiated the dialogue among key representatives of the media and the law, and that the determination of general guidelines might be the most profitable follow-up action in large urban situations.

Southern New England Sub-Regional Conference
June 13 - 15, 1975
Interlaken Inn
Lakeville, Connecticut

Co-Sponsors:
Don O. Noel, Jr.
Senior Correspondent
WFSB-TV, Hartford, Connecticut

Jon O. Newman
Judge
Hartford, Connecticut

The serious business of the Connecticut conference began with the fair trial and privacy case presentations by Messrs. Nesson and Linsky. It was clear that an element was lacking that had been present at both the previous meetings: a good percentage of interested judges. Judge Needham, of Providence, provided the only representation from the bench, as well as from Rhode Island. There was a proportionately large number of lawyers—prosecutors and defenders, and counsel for several leading newspapers in the state of Connecticut. Several women professionals were present, from both the media and the law. A total of about 35 people participated in this sub-regional conference.

After a full day's session on Saturday, followed by informal discussion among the participants, a dinner was held, and the guests were addressed by Gregory Craig, of the Public Defender's office in New Haven, by James C. Thomson, Jr., of the Nieman Foundation, and finally by Robert Yoakum, formerly of the Paris *Herald-Tribune.*

On Sunday morning the participants again convened for discussion of possible means of keeping the dialogue alive in their state. The Connecticut Bar Association, which provided financial support for this meeting, indicated its strong interest in future projects. A number of members of both the legal and the media communities volunteered to assist Mr. Noel in making future plans.

Western Massachusetts Sub-Regional Conference
September 5 - 6, 1975
Conference Center
University of Massachusetts
Amherst, Massachusetts

Co-Sponsors:
Howard K. Ziff
Professor of Journalistic Studies
University of Massachusetts
Amherst, Massachusetts

Charles Cohen
President
Hampden County Bar Association
Springfield, Massachusetts

The conference for Western Massachusetts was attended by representatives of perhaps the smallest, most grass-roots newspapers and broadcast companies of any of the sub-regional meetings—three representatives from WFSB-TV in Hartford provided the exception. As in Connecticut, there was a shortage of judges. There were fewer lawyers, as well, than there had been at the previous meetings. However, the press and media representation was very good. There was a total of about 30 attendees.

The conference opened with a dinner on Friday evening, presided over by Professor Ziff. Fred W. Friendly was the principal speaker of the evening, and discussed the Schwartz Key Company documentary film on bookmaking and possible legislative collusion in Boston a few years ago, and the ethical and legal questions it raised for the broadcasting producers.

On the following day, Professors Miller and Nesson presented the cases on privacy and free press-fair trial to the absorption of both communities. (Mr. Lewis Cuyler, of the *North Adams Transcript*, subsequently wrote an account of the discussion and the program of conferences in general for *Editor and Publisher* magazine.)

Plans for future action were discussed informally after the meeting had adjourned. The WFSB-TV participants declared their intention of producing a televised panel meeting, or even a televised meeting with a case presentation on the order of the dialogue they had taken part in that day; and it was thought that student journalists should take part, as individuals who would soon enough be facing the issues in their own practice of the profession.

Rhode Island Sub-Regional Conference
September 21 - 23, 1975
Sheraton-Islander Inn
Newport, Rhode Island

Co-Sponsors:
Rhode Island Commission to Study Criminal Procedures
Joseph W. Walsh, Chairman

Superior Court of Rhode Island
Joseph R. Weisberger
Presiding Justice

Although the press and media representatives were outnumbered by judges and members of the bar, their participation was frank, candid and apparently unhibited by their minority in numbers at this sub-regional conference. Approximately 60 people attended. Prior to this meeting, a committee of the press, bar and judiciary had been formed by the Presiding Justice of the Superior Court. Many members of this committee were present and reported on their activities in examining areas of conflict between the media and the law. As Rhode Island is a small state and most of the media representatives are well acquainted with the members of the judiciary and with the leading members of the bar, there seemed to be a minimum of suspicion and distrust.

After a welcoming address by Senator Joseph W. Walsh and brief remarks by Dean Ernst John Watts of the National College of the State Judiciary, the principal speaker of the first evening was Anthony Lewis of *The New York Times.* Mr. Lewis, in his address, set the intellectual keynote which prevailed throughout the conference—that of mutual understanding and responsibility.

On Monday, case presentations were made by Professors Abram Chayes and Philip Heymann of the Harvard Law School. Mr. Chayes presented the case involving free press-fair trial considerations; Mr. Heymann presented a new case, which was divided into two parts. The first considered questions including lawyer-client privilege, a reporter's ethics in obtaining information, and editor-reporter relations. The second addressed the issue of publication of information revealed in a hearing in a criminal trial from which the jury was excluded, when bench-bar-press guidelines are in practice.

On Monday evening the attendees were addressed by Jonathan Moore, Director of the Institute of Politics. Mr. Moore spoke of the first New England meeting held at Chatham Bars, Cape Cod, outlined the goals

and objectives of the New England Conference, and requested that the Rhode Island group provide advice the next day on the value of the project and proposals for the future.

On Tuesday morning the participants held an evaluation and general discussion. The consensus expressed indicated that, although the perceptions of the media as to the relative importance of the First and Sixth Amendments were different from those of the bench and bar, each group recognized the importance and significance of the views held by the other. Media representatives indicated that they expected to continue to exercise voluntary self-restraint to prevent mistrials in important cases.

Questionnaire Evaluation

Questionnaires were sent to the participants of the five New England sub-regional conferences. Over 50% (89 out of 175) completed copies were returned. They are revealing and inconclusive, showing a diversity of opinion on most questions and within each participant category, with the exception of a powerful consensus that the sub-regional sessions were valuable to the participants in their professional work. A summary of the comments received as well as selected quotes follow for each of the questions asked.

Question 1

Do you think that media-law conflicts represent a serious problem? Is it worth worrying about at all?

Fifty-seven participants believed that media-law conflicts represent a serious problem. There was some feeling that the problem: (a) is moderately serious only; and, (b) is worse at the national level and not as significant locally.

"Decidedly. They are potentially very serious, the more so when either party to them assumes a self-righteousness or exclusionary attitude. Precisely because the constitution builds in a conflict of rights, it is important for the law and the media to try in good faith to evolve informal rules whereby these rights can best be resolved in particular situations."

"I would define them more as government-public conflicts, with the judicial branch of government (taking its cue from the executive) trying more and more to operate as a private (though all powerful) instrument, without the public scrutiny that is essential to the good health of democratic government."

"The problem is as serious as judges, lawyers and the press choose to make it. Reasonableness seems to prevail in Massachusetts and most of New England, with some isolated exceptions."

"Not in our Amherst community. Such conflicts are worth worrying about but I suggest the press or media coverage of justice and the crucial failures of the judicial and penal systems have much higher priority."

"There are no serious problems in the trial courts of Connecticut. An isolated case may arise every so often and cause a confrontation. So far these problems have been resolved quickly and fairly. In short, there is no systematic attack in this state on the media."

"We have more of a problem with news reporters from radio and television stations than we do with newspaper reporters, because in Rhode Island, the newspaper men are better trained in the specialty of Court reporting. News gatherers and reporters for radio and television have general assignments and do not seem to be aware of the sensitivity of the fair trial problems."

"They are seldom a problem in Rhode Island. Such conflicts as have arisen have been resolved without a showdown."

Question 2

What do you think are the most fundamental, or the most intractable, aspects of the overall issue?

Failure of each side to understand or trust the other and to recognize the existence of legitimate competing rights was generally believed to be the most fundamental aspect of media-law conflicts. Free press-fair trial issues were cited slightly more frequently than privacy issues. Also: "The minority of clowns who screw it up for everybody else."

"The media, unfortunately, is just as intractable as the courts. Many in the media would ascribe to themselves the function of judge and jury, legislative and executive. Personally, I was utterly shocked at the Manchester seminar by some of the attitudes I heard colleagues junior to me express in the matter of cooperation with the law. More and more the courts are employing gag rules, and the media is less and less responsible in safeguarding the rights of the individuals concerned."

"The efforts of certain judges to assert direct control over what the media may report or the public may say. The second greatest problem is the blind push from purported defenders of civil liberties for excessive privacy. At bottom, this protects criminals and weakens the prospects for fairness and integrity in government."

"Usually an intractable judge, or an intractable editor, or a stupid lawyer or a brainless reporter. Sometimes a combination of the above. Most people in media and law are pretty reasonable and will behave themselves if they understand the facts. But there's a minority of clowns in both lines of work and they screw it up for everybody else."

"The most fundamental clash between the media and the law is the belief of the press that the First Amendment takes precedent over the Fifth, Sixth and Fourteenth Amendments when individual liberty is at stake. The media today is big business by analogy. The First Amendment has become an institutional shield rather than an individual one. The days of Tom Paine and his ilk are gone. On a given case where two or more equal constitutional rights are in conflict, I believe that which protects the individual should be paramount over that right which protects the institution."

"I worry about some judge I've offended in print getting back at me by demanding disclosure of my confidential sources, either as a part of a case about which I have information, or as part of a discovery in a libel suit. I also worry about gag orders and the contempt citations that might come—on either a personal or principled basis—from violating one. To carry this just a bit further, I don't worry much about actually going to jail. This is probably foolishness on my part, but I envision a short-term martyrdom with many of the benefits and few of the usual costs (such as death or long-term incarceration). I even figure I'd make some pretty good contacts behind bars. But even considering this fanciful expectation, I worry a lot about the expense to which the paper or magazine for which I work can be put. I worry that my type of work will simply become too expensive for anyone to pursue."

"I return to communication and understanding of one side for the other. Newspapers, for instance, lack the knowledge and resolve for the adequate training of young reporters in coverage of courts and various legal agencies. On the other hand, the legal profession does not have an understanding of newspaper responsibility. Some misunderstanding arises from media outlets who act irresponsibly. Unless there are better and more frequent efforts to bring media and law persons together, the collision or conflict will get more serious."

"Fundamental and intractable is the concept that prospective jurors are irretrievably prejudiced by what they read, hear or see in the media. I believe this mistaken assumption is based on the premise that all prospective jurors are idiots and cannot possibly judge impartially either the news in the media or the facts in the courtroom."

"Reliance on press leaks and confidential sources tends to raise some ethical questions, too. The source of potentially damaging information, while ensuring the public right to know, is concealed. All of a sudden, newspapers are doing the work of police and law enforcement bodies."

Question 3

In your view, what is the trend in this area—that is, are relationships deteriorating or are they improving? Is more understanding and cooperation between the bench, bar and media developing, or do you believe rigidity and confrontation are increasing?

Respondents perceived greater rigidity or deterioration over improving media-law relationships by a proportion of 7-4. Some felt there was greater understanding, but no solution and little cooperation, and that the adversary relationship should remain. Again, several participants said the problem existed principally at the national level.

"The situation remains stable in my view if one realizes that there will always be conflict but it need not be destructive."

"Relationships are reasonably good, but the poison that is infecting other parts of the country could spread here. Here, as elsewhere, judges typically rise to 'power' through the political process. Watergate has shown us what can happen in the executive branch, when power is asserted and exercised unchecked and unobserved. That could happen in New England in the judicial process over the years. We do, however, still have some tradition of judges with a commitment to freedom and civil liberties. We have a couple of the great law schools of the country, and that is, on balance, a distinct plus."

"There is a cosy, chummy relationship. This is *the problem, more common, I suspect than problems dealt with in the conference."*

"I see no strong trends at the moment except, perhaps, a tendency in the direction of improper use of gag orders. As far as the reporter's privilege is concerned, the situation cannot get worse in Massachusetts since the Supreme Judicial Court has held that no such privilege exists. In Massachusetts, on the other hand, I believe that more cooperation is developing in the free press-fair trial area. I believe that this results from a more responsible view towards the problem on the part of the press plus increased appreciation by the courts on First Amendment values."

"It depends upon what level you are dealing with. I do think that efforts are being made on the national level. The problem is discussed in general terms. But based upon my own research, I doubt very much whether state and local authorities are giving the matter the proper attention. Advertising and community pressures more often tend to establish the boundaries of reporting, rather than an understanding between the local authorities and the home-town newspaper."

"I do think that it is basically the extremists on both sides that cause the trouble, and that discourse is beneficial. Some judges are accustomed to being a law unto themselves. Conversely, the media is the only profession or occupation I can think of that claims absolute rights, and, some may forget that the Constitution is directed to the public good, which is not necessarily that of the individual actor. I suspect the best discourse is that which includes peer pressure, although there are some on both sides who, as we have observed, may resist that, too."

"I detect that on the national front the confrontations are increasing. In Vermont, the situation is not one of rigidity, at least at the present time. There are some local problems, but they exist because of situations (i.e., a newspaper's coverage of a story, a disgruntled lawyer or judge) which appear from time to time. We find in our area there is general cooperation with the bench and individual members of the bar."

"There are no major conflicts in the courts of Fairfield County, or for that matter, most of Connecticut. Bench-bar-media relations have improved in the post-Watergate era. Also, passage last year of a Sunshine Law by the General Assembly has contributed favorably to the general atmosphere, though this law was not aimed at the courts. There have been some conflicts between defense attorneys and newspapers, mainly on civil rights cases. Again, these have not been particularly serious."

Question 4

Do you believe that encroachment by the government on traditional First Amendment rights is a real possibility we face?

Thirty-six answered "yes" and 22 answered "no" to the question whether the media faces government encroachment on First Amendment rights. Several claimed the Federal level represents the greatest danger. There was considerable feeling that the danger is not critical, but will continue, perhaps fluctuating, and that the confrontation is part of an on-going relationship involving constant pressure on First Amendment rights.

"Local—no;
state—no;
federal—yes."

"Manifestly. Except that I would say the First Amendment rights are not 'theirs' but the citizen's. There are numerous examples of attempts to suppress information. Prior restraint was imposed for 15 days in the Pentagon Papers case and for longer than that in the Nebraska case . . . The trends are ominous, not for the media particularly, but for the freedom of the people."

"Yes, the encroachment appears to be increasing on par with the media's ability to reach people. As communications become more sophisticated, courts try harder to protect the rights of innocent persons. On the local level, we've had tremendous problems with police and government. Local politicians often use holes in right-to-know laws to deny information. Police, burned by premature disclosures, say someone else has to give information, and reporters are passed along for hours—sometimes days."

"Clearly, at least on the federal and state level. To some extent, the 'local' levels seem less concerned."

"My inclination is to feel that the press is more militant in its interpretation of open records and meetings, and as a result, government appears to conflict with the press more often and more openly. But I think government is being no more secretive, the press is just insisting on higher standards of openness—and rightfully so. The critical problems are at the national level, where government has a more centralized view of the public interest."

"On the state and federal level particularly, there is a sort of sliding scale of importance, power and encroachment. A local district court judge, for example, is unlikely to enjoin a local newspaper as readily as a U.S. District Court judge might be tempted to."

"Yes on the federal level, and yes, too in New Hampshire . . . No in Vermont, and no on our local level."

Question 5

What have we learned from the sub-regional conferences, engaging local representatives of the bench, bar and media in Socratically-conducted "conflict" cases? Anything valuable?

There was a consensus among the participants that the sub-regional conferences were beneficial: "There is hope as long as both sides talk and understand other viewpoints." Several comments pointed out the inadequacy and parochialism of the approach of professional associations. Three additional comments were that the Socratic method produces guilt and shame but no solutions, that perhaps "creating 'conflicts' leads to alienation," and that there was "an excess of righteousness on both sides."

"We have learned (1) there is a conflict, (2) it is inevitable, (3) neither one of us can successfully dominate or dictate to the other, and (4) the exercise allows for the therapy of exploration and muscle flexing!"

"I think the Airwick aspect of the conference was useful. It's easy to gripe in chambers, or stomp around the city room, but when your views are challenged, it leads to a bit more patience in their formulation. The bitching and moaning at bar associations about the goddamned press, and the wailing and gnashing of teeth at editorial conferences, are not colloquial, and the confrontation of the two groups is useful in the extreme."

" 'What would you do?' questions put to participants seemed to me extraordinarily illuminating and helpful, It, in effect, confronted participants with real rather than theoretical decisions, and it helped create understanding of the other fellow's problems and responsibilities."

"The Media-Law Conflict Conferences have provided me with a clearer insight into the problems of the judges, prosecutors and defense attorneys. At the same time, though I embrace the First Amendment, I have become more convinced that journalists must develop professional codes. At Chatham and again at Lakeville, there was a wide difference of opinion among journalists on these questions: To what extent should a journalist go to obtain a story? And when to publish and when not to publish?"

"The conferences are particularly helpful in making editors and reporters deal with ethics. We don't always demand the same stringent code for ourselves as we set for others. For example, we'd be furious if a politician withheld information the public needed to make an intelligent decision, but we withhold sources and sometimes plan coverage to our benefit. Editors don't challenge their friends as sharply as good lawyers. The Socratic method generates dialogue and leaves a lasting impression."

"I learned from Newport just how thoroughly the bench and the press have worked out a conflict-free relationship—quite surprising."

"At other professional meetings only one side to an argument is heard, reinforcing rigidity. The Socratic method explodes the rigidity and exposes inherent doctrine fluff. This makes the Harvard Conferences more enlightening."

"The Socratic method puts the individual participant on the spot—in a 'real' case, and calls for a decision. By exploring the conflicts through this method, the immediacy of the situation is much more apparent than through the lecture method."

Question 6

Do such consciousness-raising sessions actually tend to produce a better basis for dealing with the difficulties involved; do they help bring about broader sensitivity to the various rights and interests, or greater resistance and parochialism?

Thirty-six participants felt that "consciousness-raising" sessions tend to provide a better basis for dealing with the difficulties involved: "They are helpful in increasing a mutual sense of fallibility." Most felt that broader sensitivity was achieved and stereotypes were not reinforced. But some respondents demurred: doesn't raise consciousness for long; consciousness-raising has nothing to do with basic conflicts; division and resistance are reinforced; no sense of conciliation results; ideas are exchanged but no substantive changes occur.

"I believe more the latter. I grow weary of lawyers prating of ethics when ethical misbehavior abounds within a profession bound by canons—and revised canons at that."

"My fear is that both sides are proving intransigent. Judges become obsessed with the idea that they've been ordained, not by man, but by God, to play around with the lives of people. They are allowed to rule their courts, and probably necessarily so, with a certain amount of despotism. How you resolve it is beyond my ken."

"Based on my experience at one conference (Newport), I didn't sense any general feeling of conciliation although some of the news people there gave me the impression that they'd just as soon not go out of their way to antagonize judges and prosecutors they had to deal with every day."

"Yes to the first two questions, for my part. At the same time, it did seem to me that in some instances simplistic positions were reinforced. It's particularly easy for some press people to lock the door of their 'right to publish' bunker."

"Something of each. The method often does not permit in-depth positions of the reasons for positions and attitudes. Also, some participants can convey a doctrinaire attitude. The press or media people often don't perceive the nature of the real world--they seem to believe in the immutability and self-explicating character of the First Amendment."

"Yes to all three questions, depending on the personalities involved. I'd suggest that whatever inadvertent gains might be made in the area of question two—developing or reinforcing broader sensitivity to various rights and interests—more than make up for anybody suffering (this word is purposely chosen to show my bias toward close-minded people) from reinforced stereotypic vision."

"One must ask the question if everyone has a conscience and what are their personal beliefs which must effect their professional beliefs. We, who are engaged in the various professions that are constantly under the scrutiny of the public, tend to indulge ourselves in the theory that whatever we do is the right thing and is therefore good for everyone else in society."

Question 7

What is happening in your own area concerning efforts to deal with media-law conflicts, either as a result of the sub-regional conferences, or unrelated to them?

Not very much is happening locally to address the problem of media-law conflicts, according to 31 of the participants. Follow-up comments ranged widely: lack of understanding persists; there is some relaxation and lessening of tensions and slightly increased dialogue; conflicts really don't exist locally anyway.

"Private discussions, mostly. I'm more aware, certainly, talk more to lawyers about what I'm doing, think more about it. I've promulgated my own set of guidelines, which are pretty much formalized, although applied only by myself to myself. They came directly out of discussions with several judges at Chatham I."

"So far lawyers and judges are talking among themselves; they're convinced they're the only ones who perceive the problem and can achieve solutions."

"The Massachusetts Bar-Press Committee continues to function, as it has for nearly 20 years. It sponsors an annual seminar in this matter. Journalism groups conduct discussions and meetings on the subject topic."

"Locally the media-law relationship remains much the way it has always been—poor. The judiciary and law-enforcement apparatus in Springfield, largely political institutions, continue to play favorites when it comes to dealing with the press, and appear to be concerned not so much with protecting the rights of individuals as with rewarding cooperative reporters."

"Not much locally, but on the State level, a continuous effort is being made to evolve a more satisfactory procedure for appealing gag orders and obtaining a decision before the issue becomes moot. This is being done with the cooperation of the Chief Court Administrator."

"Sadly, nothing. There has been some talk of conducting a conference on conflicts, but so far nothing has come of it. Locally, I try to keep up a constant dialogue with judges and members of law firms."

"A combination of nothing and not enough in New Hampshire. Without area conferences, the arena becomes national, which means input and output by national groups on certain cases. The problem gets quantified."

Question 8

What do you think should be done within New England to follow-up the efforts already started to get the various parties at interest working to resolve rather than aggravate conflicts?

Thirty-eight participants felt there should be continuing efforts in New England along the lines of the type already undertaken (conferences, meetings, panels) toward diminution of conflicts, especially those jointly arranged or sponsored by the media and the bench/bar. The following suggestions were among those added: familiarizing personnel of media outlets with both sides of the story; issues brought to the attention of the public more by better media publicity concerning the problem; more research about juries; a Channel 2 "Advocates" type program.

"You've done it. Do it some more, to more people. The same way: no speeches, let 'em fight. It's good for them. In addition to which, the food's good and there's adequate refreshment, and that kind of company is pretty uniformly intelligent and outspoken, which makes the sessions stimulating. But for the luvva Mike, don't call it 'consciousness-raising.' "

"The appointment of a Public Information Officer for Massachusetts courts is a start. The press, like any other layman, generally does not have much understanding of the law (lawyers, not that their understanding is always superior, are at least accustomed to both sides of the various arguments). The conflict can't and probably shouldn't end. But communication which yields understanding benefits the public."

"1. Regularly scheduled conferences; 2. Assistance for media outlets who wish to familiarize their personnel with both sides of this story; 3. Creation of a standard of conduct to aid ethically-minded decision makers."

"I would like to see another sub-regional conference where the bench-bar-media would present written proposed guidelines so that a proper process would be developed to protect the defendant, the defense and the victim against any type of yellow journalism and enhance the criminal justice system."

"I think the New England Press and the New England Bar Association should sponsor a joint conference or series of workshops, pondering local cases that have emerged within recent years. The respective editors should then initiate consciousness-raising sessions between local authorities and the members of their editorial staffs."

"Conferences should be continued to keep up the communication among these conflicting interests. It is particularly important that representatives of the media learn the reasons why certain information given to the general public at the wrong time will create a mistrial."

"I. Joint efforts by professional associations; 2. Special seminars sponsored by third parties; 3. Educational efforts, starting at the high school level."

"Maybe set up a joint bench/bar committee to formulate resolutions for any actual conflict—and present its testimony in the case as an expert witness."

Question 9

What kind of approach to the problem generally do you think holds the greatest promise?

—Nothing, not much is effective; and the situation is more liable to sort itself out in time.
—Pursue consciousness-raising efforts, keep the debate going.
—Professional codes or standards for the media.
—Encourage individual media outlets to develop and apply their own practices of self-restraint.
—Statutes or judicial orders laying down procedures.
—Cross-disciplinary educational or training programs for bench, bar and media personnel.
—Promulgation of guidelines for the various parties in specific areas such as free press-fair trial, privacy, national security, etc.
—Press councils to play a monitoring role, using official or unofficial sanctions.
—Other.

Future approaches to the problem listed on the questionnaire were checked by the participants as follows:

- 5 Nothing, conflict unresolvable.
- 2 Nothing, situation will sort itself out.
- 69 Consciousness-raising efforts.
- 35 Creation of professional codes or standards for media.
- 24 Self-restraint by media outlets.
- 3 Statutes or judicial orders laying down procedures for media.
- 54 Training programs for bench, bar and media.
- 19 Guidelines in various areas such as free press-fair trial.
- 19 State, regional or national press councils with monitoring roles (favoring no sanctions).
- 8 Other: see quotes.

"Shouldn't we be emphasizing that the problem is an essential and desirable dynamic element of the multiple safeguards our form of government provides; that without some such conflicts we don't have a dynamic process where various rights (including the continuation and survival of a participating democracy) constantly and eternally confront each other."

"Do these sessions before law school and journalism classes."

"Scrutinize the logical assumptions of prejudicial pre-trial publicity. Determine whether a man/some men/all men will resist facts, especially exculpatory facts, if he/they have previously absorbed data to the contrary."

"Court restrictions on the press should be imposed only as a last resort, and only after full hearings on them are held and appealed; the bar must discipline itself first."

"Speed up the court process so that news follows instead of leads the type of information emanating from the courts."

Question 10

Do you have any further comment on the subject of media-law conflicts?

Further comments offered by individual participants included: involve more publishers; opposition to media guidelines; statutory regulation and "rule-making"; support for professional standards for bench and bar as well as the press; recognize the intimidation of small-town press by the courts and the bar; since it's a national problem, New England should work with other regions; independent publications should monitor media behavior.

*"I'm a big believer in an independent publication monitoring media behavior—*MORE, Columbia Journalism in Review, *etc. I'd rather have the self-interest and skepticism of journalists and critics represented in these publications keeping watch of our shortcomings."*

"The law must protect individual rights; the press must go after stories; no resolving occasional conflicts. But it makes sense that the press, like other professions, should develop an ethical code on methods of getting stories, limits, etc. I'm amazed that there is no consistent position on 'secret' recordings of interviews, for example. But, on the other hand, the legal profession is at times so rarified that it seems to have no understanding of who and how the news is gotten."

"Criticism may be helpful in addition to consciousness-raising seminars. The airing of such criticism should be in the news, no matter which side receives the criticism. This may raise consciousness even more so."

"I not only abhor notions of 'rule making' as to these questions, but I think that they are inherently unworkable. Therefore, I support the idea that as we must live with these media-law tensions, conferences, such as the ones you have conducted, are the best way to deal with a problem I hope we shall always have."

"Too little emphasis was placed on intimidation of small-town press by courts and bar. Often, the smaller papers and radio stations are totally controlled in their relationship with the courts or the bar."

"The media and conferences neglected the role of the media in keeping the courts 'honest.' The courts are a branch of government; they exercise power; this power can be and is abused. Also, the purpose of an open trial is to ensure a fair trial—no star chamber."

"A conflict which might be considered worthy of discussion . . . is the secret reviews by the Connecticut Bar Association (and I presume bar groups in other states) of candidates for the bench. In Connecticut, the Governor has handed the bar a VETO stamp, and will not appoint to the bench any man or woman who does not receive a favorable rating by the bar. The bar review meets privately at a private club. Until a controversy developed last year, the bar would not make public the names of members of the committee. Some are politicians and lobbyists and I doubt every member can weigh impartially the merits of a judicial candidate. Though we have a Sunshine Law, secrecy prevails in this instance. In a word, how can members of the press condone secrecy in the selection of judges?"

"The debate, rather than any adversary or pseudo and binding set of guidelines, is to be encouraged and is possibly the only clearly useful goal to be pursued. I fear the interests too often shared by bench-bar-media to temper or ever tamper with the wide open and robust and disturbing debate our society should have, though the public may not care for it or want its right to know shoved down its throat. All around the three-cornered conflict, it is a problem of waiving rights which are, historically, rather wavering anyway."

Background Inventory Paper

The following Background Inventory Paper was prepared by Michael Israels for general use by the sponsors and the Steering Committee. The paper lists the principal issues involved in media-law conflicts and outlines various activities undertaken to deal with such conflicts.

The Issues

This introductory section of the Background Inventory Paper attempts to identify and briefly summarize the major problems of the media-law conflict which were discussed at conference sessions, as well as some issues that received less attention but remain important concerns.

Journalistic Conduct—Ethics and the Law

News-gathering methods
To what extent should journalists go in getting a story? What if a story is obtained by unethical conduct, by conduct which violates established professional standards (e.g., lawyer-client privilege), or by conduct which is in fact illegal? How should an editor treat an offending reporter? Should the story be used, and in what form? What are the legal responsibilities of journalists? The issue of organizational responsibility and the responsibility of editors for the acts of reporters which they do not know about (or perhaps do not wish to know about), has uncomfortable parallels to Watergate. The problem for journalists is certainly complicated by the position of law enforcement officials who at present are barred from using certain illegally-obtained evidence at a trial. Many who favor such a bar against law enforcement officials would not want to apply the same rule to journalists. And many who propose civil and criminal penalties for law enforcement officials are reluctant to apply the same penalties to journalists who commit a crime in the course of pursuing a story.

Conflicts of interest
Should journalists disclose conflicts of interest when they have a financial interest in subjects they write about? For example, should a columnist who accepts a fee as a consultant to a political candidate disclose that fact, or even refrain from writing about the candidate and his opponents? What about a journalist with a part-ownership in a business or real estate, who writes about related topics?

The impact of competition
What are the effects on journalism of the increasing concentration of ownership of media outlets? Is present governmental regulation to prevent such concentration adequate? Should government intervene at all? Conversely, what are the effects—good and bad—of competition on editorial decisions?

Paying for news
When a newspaper or station pays for a story or an interview, should that fact be disclosed? "Checkbook journalism" may be neither a boon nor a great evil, but the identification of a story for which a fee has been paid may assist the public in weighing its value.

Individual Rights and the Media

Privacy
Should there be some protection accorded to the private individual, and the private life of the public individual? Should there be a definition of what constitutes "private" information? Does the Freedom of Information Act raise new problems in this area as it makes more information available?

Health and safety
How should journalists conduct themselves in situations where how and whether the news is reported affects the health or the physical safety of individuals? Those affected might include parties, victims and witnesses, in legal proceedings. Further, does media coverage of certain crimes or criminals encourage others to imitate them? Such effects are not always predictable, and any approach to this problem must take this fact into account.

Publicity and the right to a fair trial
A criminal defendant's right to an impartial jury trial traditionally has been interpreted as a right to a jury which has not been subjected to excessive publicity about his case. While legal authorities have not considered pre-trial publicity a problem in civil cases, it may be prejudicial there as well. Certainly, there is conflict between the freedom (and the obligation) of the media to report the news, and the right of the defendant to an impartial jury. The problems are more severe when the defendant is a "newsmaker," and when media scrutiny may be important to insure that the legal system works properly. Numerous press and bar groups have considered this issue, and it was a major topic at our conference sessions.

The Media and Law Enforcement

Protection of the law enforcement process
What are the dangers to effective law enforcement from the reporting of some of its activities? Certain law enforcement interests—such as the protection of key witnesses and informants, and of innocent persons cooperating with authorities—are threatened when overexposed by media coverage. Yet these interests must be balanced against a public interest in learning more about law enforcement and the operation of the court system, and against the public's need for media scrutiny of the conduct of law enforcement officials.

Protection of journalists and sources
Further, while the public's right to know may be advanced by the absolute confidentiality of a journalist's sources, and by the provision to him of certain information on an off-the-record basis, this interest may con-

flict at times with the interest of law enforcement authorities in securing information about crime. This conflict has in the past led to the imposition of contempt penalties against journalists for refusal to reveal confidential sources and information. What should the standards be? Should there be legislation? Should the standard be different when the information could possibly be used to prevent a future crime?

Exploitation of journalists
Other problems between the law enforcement process and the media involve the exploitation of the media by some law enforcement officials and by defendants and their lawyers. The defendant who provides information to the media on a "no-attribution" basis and then complains that the resulting publicity denies him a fair trial, is just one example of this problem.

National Security

The argument that disclosure of certain information would adversely affect the national interest has been a frequent approach used by government to restrain or discourage the media from obtaining and publishing such information. Attempts to restrain the media *judicially* are dealt with separately below. Whether *voluntary* restraint on the part of the media is ever feasible or desirable is an important issue. Certainly, the "national security" concept has been abused as a vehicle for concealing governmental misconduct, and for news manipulation by government officials. Yet is media self-restraint in sensitive areas of national security ever justified, despite the exploitation?

Legal Attempts to Restrain the Media

Court orders
In addition to attempts to obtain voluntary media restraint in matters affecting the right to a fair trial, and in national security areas, government sometimes applies pressure to the media through judicial action. Few attempts to restrain publication through judicial orders have been successful. An outstanding unsuccessful attempt is the Pentagon Papers case. However, there are successes; for example, the court-upheld deletion of portions of a recently published book on the Central Intelligence Agency.

In the fair trial area, recent months have seen a number of well-publicized attempts to impose court-ordered restraints on the media. The recent Nebraska gag order decision by the U.S. Supreme Court strictly limits the circumstances in which a restraint order may be imposed on the press. This decision, however, stops short of ruling that a court can never restrain the press.

Yet even when the attempt to restrain the press is unsuccessful, there are problems. A contempt-of-court penalty will frequently be imposed for disobedience of a lower court order, despite the ultimate appellate court finding that the order was unconstitutional. The delay in publication may sometimes do irreparable harm to the public's right to be well-informed. In addition, some would argue that a long and expensive legal proceeding is, in itself, an abridgement of freedom of the press.

Right of reply
Whether an individual who is the subject of a news report or an editorial comment should be able to reply is a sensitive issue. A statutory requirement has been declared an unconstitutional restraint on the media, but the issue persists. Members of the legal community, and, indeed, members of the public, may be inclined to take the position that fairness on the part of the media may require a retraction or the opportunity to reply, at least in some cases. Many in the media contend that their discretion is not to be limited, and a few argue that it is not even to be questioned.

Accuracy and Fairness

Should anyone monitor the performance of the media? Certainly, the public views the media as often less than wholly accurate and fair. What should be the legal responsibilities of the press for accuracy and fairness? And beyond legal responsibility, what are the ethical and public-spirited responsibilities of the press? Should the press monitor itself through criticism and comment? Should each news outlet have one or more internal critics (ombudsmen) who monitor and criticize its own performance? What about watching and criticizing the performance of competitors? Another possibility is a more formal association of journalists who would monitor and criticize journalistic conduct. Finally, there is the option of public monitoring of the press—the so-called "press council" approach where a body, which includes journalists and laymen, observes and comments on press performance.

Summary

The news media enjoy a special and unique privilege in our society. Freed by the constitution, the legislatures and the courts from virtually all government coercion, and from much of the economic restraint which government imposes on other industries, the media industry has been described as the only truly free enterprise in America. The media have been a powerful force for all of our nation's history, with a major impact upon wars, elections, legislation, and law enforcement. A free press has been, and will continue to be, important both to protect our liberties, and to provide us with a good look at the way our institutions function. Yet the freedom of the press may, at times, come into real or apparent conflict

with the ethical or legal responsibilities of journalists as citizens, and with important individual rights such as privacy, a fair trial, and health and safety. Further, press activity may impair the effective functioning of the law enforcement system or even the nation's security.

What responsibilities does the press have for these other interests? Should government seek to impose legal restraints on the press? Should the press seek to restrain itself, individually, collectively or both? How to balance these conflicting interests, how to have a press that is free but is also fair to the individual, that is an unrestrained observer and critic of any and all institutions, but not a destroyer of institutions that ought not to be destroyed—these are matters of continuing concern to journalists, the legal community and the public.

Past Actions

The problems we have delineated have been the subject of a great deal more talk than action. The incomplete list which follows attempts to indicate something about the nature of proposed and attempted programs in this area.

Guidelines on Free Press-Fair Trial (Prior Restraint)

Various bar groups, and joint bar/press committees have attempted to formulate general guidelines to aid judges, lawyers and the media in trial situations where voluntary or court-imposed restraints may be appropriate. The American Bar Association's most recent proposal is "Proposed Court Procedure for Fair Trial-Free Press Judicial Restrictive Orders." These guidelines are the outgrowth of the report of a committee chaired by Justice Paul Reardon of the Supreme Judicial Court of Massachusetts, who was a participant at one of our conference sessions.

Other guidelines have been proposed by bench/bar media groups in the states of New York, Rhode Island and Washington. These guidelines attempt to indicate the kinds of publicity that may cause a mistrial, to recommend specific efforts at voluntary restraint in publication, and to indicate ways in which a restraint order—should one seem unavoidable—may be made as limited as possible.

The Twentieth Century Fund sponsored an independent Task Force on Justice, Publicity and the First Amendment. The group included lawyers, judges, law professors, and both reporters and editors. The Task Force report, which has been published (*Rights in Conflict*, McGraw Hill, 1976), is generally critical of restraint orders, and favors guidelines so long as they remain voluntary. Particularly interesting is its query whether restraints on comment by lawyers and litigants during the pendency of a court case violate their First Amendment rights.

Proposed "Shield" Legislation

Legislation defining the nature and extent of a journalist's privilege not to reveal the identity of sources and information given to him in confidence has been proposed in Congress and several states. Rhode Island is among the states which have enacted such legislation.

Reviewing the Media

A number of newspapers have formed Citizen's Advisory Councils in the past, and some of these are still in existence. As early as 1950, the Santa Rosa (California) *Press Democrat* had such a group, which reviewed its performance and communicated its views to the publisher. Other advisory groups are documented in *Backtalk: Press Councils in America*, by B. Blankenburg and W. Rivers.

Several newspapers have designated members of their staff to play the role of internal critic or ombudsman. Ombudsmen not only have an impact on their own newspaper, but often, as was the case with former *Washington Post* Ombudsman Ben Bagdikian, their views can influence the media at large.

Press Councils

In general
A press council is an independent body, usually made up of journalists and members of the public, which reviews media performance and sometimes hears disputes between members of the media and members of the public. The concept is not a new one. According to a recent article in the *Duke Law Journal* (vol. 1974, p. 845):

Numerous groups have proposed press councils in the United States. The first formal recommendation came in 1947 from the Commission on Freedom of the Press, chaired by Robert Hutchins, chancellor of the University of Chicago and former dean of Yale Law School. Stressing that the only way for the press to remain free was to be responsible, the Commission called for creation of an independent agency to appraise and report annually on press performance. In 1951, Senator William Benton of Connecticut proposed that a similar body for the electronic media be established by Congress with its members appointed by the President. John Lofton of Stanford's Institute for Communication Research in 1961 called for the development of a body "to monitor and report on press performance." In 1973, University of Minnesota Journalism Professor J. Edward Gerald asked that a national press council be formed and supported by the established professional and educational associations. In 1967, it was suggested by journalist and media

critic Ben H. Bagdikian that universities serve as centers in creating press councils for their respective areas. The National Institute of Public Affairs in Washington in its 1968 meeting outlined a proposal for a national press council made up of distinguished laymen. In 1970, a Task Force of the National Commission on the Causes and Prevention of Violence called for a "national media center with . . ., 'clearly delineated powers of monitorship, evaluation, and publication, but without sanction.' "

[footnotes omitted]

The British Press Council

The British Press Council has been in existence since 1953, and it reviews some 400 matters each year. Its objectives are, paraphrasing its Constitution, to preserve freedom of the press, to maintain high professional standards of journalism, to deal with complaints about the conduct of the press, and to review developments which might tend to restrict the supply of information. The only force given its decisions is that they are generally well publicized. According to legal commentators, its decisions have established a useful body of commentary on appropriate professional standards for journalists, which has been referred to as a "common law" of journalism.

The Minnesota Press Council

The Minnesota Press Council was established in 1971, by the Minnesota Newspaper Association. It has 18 members, half journalists and half laymen. Its first action upon creation was to declare its independence from the Minnesota Newspaper Association. From 1971 to 1974, it had decided 11 cases, resolving a number of others by encouraging the parties to attempt a conciliatory meeting, and dismissing other complaints as insignificant. Its decisions have been in such areas as libel, access to the press, newsmen's privilege not to disclose sources, media and the law enforcement process, individual safety, and biased news reporting. While not all Minnesota newspapers have fully supported the Council, its decisions have received wide publicity, even in newspapers against whom decisions were rendered.

The National News Council

The National News Council was formally established in August 1973, upon recommendations of a Task Force of nine journalists and five members of the public whose work was sponsored by the Twentieth Century Fund. The two-year report of the National News Council (*In the Public Interest: A Report by the National News Council, 1973-1975,* released October 27, 1975) indicates that the Council has considered 61 complaints. Of these, as of July 31, 1975, five had been upheld, 33 found unwarranted, 21 dismissed and two were pending. Over 300 complaints were received during this period, but many were local

in nature (thus outside the Council's jurisdiction), lacked specifics, or were not followed up by the complaining party. Others were disposed of through settlement or staff action.

Not all newspapers have supported the Council (nor have all broadcasters), although most of those involved in complaint proceedings have cooperated in them. A notable exception is *The New York Times*, which has opposed the Council and refused to provide it information in investigating complaints against the *Times*. *Times* publisher Arthur Ochs Sulzberger has stated that Council procedures "lack due process." In its first two years, the Council received eight complaints against the *Times* (more than against any other newspaper, but not surprising in light of the *Times'* size and visibility). One complaint was upheld.

Media in general, including the *Times,* have publicized Council decisions, which is the only sanction within the Council's power. Other members of the media have expressed sharply divergent opinions on the Council and on its decisions, but one noteworthy judgment is that of the American Society of Newspaper Editors, which in its 1975 Report on Ethics stated:

The National News Council's integrity to date is without question. Although the Council after 18 months has not finally established a record on which it can stand or fall, it has nevertheless established a record that deserves much more attention than either editors or the public have so far given it.

The Twentieth Century Fund, whose report initially proposed creation of the Council, commissioned an independent study of the Council by a committee chaired by Judge George Edwards of the U.S. Court of Appeals for the Sixth Circuit. The evaluating committee report was generally favorable, and recommended expansion of the Council's jurisdiction and increased efforts to publicize its work. The future of the National News Council will depend on securing adequate funding.

Conference on the First Amendment and the Media

A conference of lawyers, law school professors, judges and journalists met under the sponsorship of the Roscoe Pound American Trial Lawyers Foundation in June 1973. Commissioned background papers were discussed, and the conference made specific recommendations in the areas of journalists' privilege, governmental regulation of broadcast journalism, and access to governmental information. A published report contains the background papers, recommendations, and highlights of the discussion.

The Future

This section will attempt to set forth a list of possible future activities in the area of the media and the law. Rather than presenting an evaluated list of proposals, we have attempted to suggest as many possibilities as we could. Some of these possibilities may arouse little interest. Others may arouse considerable opposition. We hope at least a few will prove useful and provocative.

The proposals are divided into a number of categories: (1) Voluntary actions by the media; (2) Providing consultation to the media; (3) Educational programs; (4) Legal protections for the media; (5) Guidance to lawyers and judges; (6) Prior guidance for the media (codes of conduct for journalists); and (7) Post-hoc guidance—monitoring the media.

1
Voluntary Actions by the Media

The media, acting voluntarily and individually, might at times reduce coverage when, in its judgment, coverage is harmful. The areas of free press-fair trial, of individual privacy, of stories which might encourage violent disruption or endanger human health and safety are replete with examples of individual self-restraint by members of the media which have had the effect of preserving important individual rights and interests.

The exercise of individual self-restraint by the media is often hampered by competitive pressures. Such pressures exist within each publication or broadcast news department, and also exist in rivalries among media outlets. Journalism is a competitive business, but there are times when the interests of competition should not supersede the interests of individuals. Nor should the existence of competitive pressures encourage the dissemination of suspect or potentially harmful material simply on the fatalistic theory that "someone else will do it if we don't." Consultation between media outlets over possible areas where collective self-restraint might be exercised to protect individual rights and individual health and safety, is encouraged where feasible.

While individual interests may demand restraint in reporting some specific events involving the law and the courts (e.g., names of juvenile offenders or victims), the public has a right to know, and the media have a duty to describe, how the justice system functions, and whether it is functioning effectively. To this end, more reporting, more depth, and more accuracy in media coverage of the courts and their activities ought to be encouraged.

2
Providing Consultation to the Media

However, in conflict with the goal of more coverage of the law and the courts is the fact that lawyers and judges are frequently inclined (and in some cases are ethically bound) not to discuss the details of court cases, even those in which they are not directly involved. Efforts ought to be made to encourage voluntary discussions between members of the media and lawyers and judges, on a "background" basis. Such discussions should contribute to informing the media—and through them, the public—of the meaning and significance of legal procedures and decisions as they take place. The voluntary adherence of the media to the "background" rule in conducting such discussions might well encourage the participation of the judges or lawyers who might otherwise feel ethically bound not to talk. Participation would still be up to the individual lawyer or judge.

In addition, media and bar representatives are encouraged to set up informal briefing sessions, still on a background basis, where current judicial actions or issues involving the conduct of the court system may be informatively presented and discussed.

Members of the media and law enforcement officials should also consult from time to time to encourage voluntary actions which might avoid conflicts, when protection of secret aspects of an investigation seems essential to human health and safety.

Another area in which consultation might prove extremely helpful to members of the media is when they face a particular editorial decision about what to publish, when to publish, or even whether to publish a story in one of the sensitive areas we have identified. The editor must, and will, make the decision on his or her own. However, he might welcome the opportunity to consult with some lawyers, judges, or members of the media not directly involved in the particular case, who have dealt with some of the issues before, and who have practical as well as theoretical experience with the type of problem the editor faces.

3
Educational Programs

A frequent theme in discussions at conference meetings over the past two years was that the professions involved collectively knew very little of each other. This lack of familiarity extended not only to a lack of understanding of how each profession does its work, but also to what sometimes appeared to be a lack of perception of the issues which each profession considers central to its work, and, indeed, sometimes a lack of the personal contact and familiarity between the two professions which makes conflict less likely.

Some of this lack of familiarity is beneficial. Too much familiarity between a journalist and his subject may discourage the objective and informative reporting of a press which is free to take an adversary role. A balance must be struck between lack of familiarity and over-familiarity.

Educational programs should be developed to expose journalists and lawyers to the issues involved in the media-law conflict. Materials designed to play a teaching role, both for formal undergraduate programs for lawyers and journalists, and for continuing educational programs for both professions, should be encouraged.

A number of educational programs are suggested:

—Curricular materials could be developed to acquaint lawyers and law enforcement officials with the role, rights and responsibilities of the press in this and other countries.

—Curricular materials could be developed to acquaint journalists with important legal concepts which play a role in the law's view of the press.

—Law schools and lawyers might examine and discuss legal behavior toward the press as it is preached in the codes of ethics, and practiced by the bench and bar.

—Curricular materials for judges, lawyers and journalists could put together information on new developments in the law of communications on areas of media-law conflicts, such as free press-fair trial.

—Curricular materials on such issues as evaluating evidence in investigative reporting, use and evaluation of information from confidential sources, should be provided to journalists and lawyers.

—Materials should be developed to explain to journalists the procedures and functioning of the law enforcement and judicial systems.

—A guide should be written to the legal and practical definitions of specific criminal acts, written in laymen's language, aimed at preventing inadvertent crime by a journalist in pursuit of a story.

—A list of resources—reading materials should be compiled on the various issues involving the media and the law.

—A series of descriptions of actual cases could be compiled as they arise, with commentaries on the decisions made by participants and others.

4
Legal Protection for the Media

Recent court action in two areas has led some to propose specific legislation to protect journalists against contempt of court penalties for refusal to reveal sources of information obtained in confidence, and for disobedience of court orders restraining publication (even where the restraint orders were later found invalid).

A legislative definition of "newsman's privilege," analogous to doctor-patient privilege, lawyer-client privilege, or to the privilege of clergymen, could be proposed. Imposing such a legislative definition, sometimes referred to as a "shield law" for newsmen, would be a symbolic statement of the importance attached to the communication of information to newsmen, and thus to the public. Based on experience, such legislation might be necessary to prevent newsmen from being jailed for contempt, upon refusal to testify to the identity of sources or to confidential information they have obtained. Whether it served this function or not, the legislative definition of a "newsman's privilege" would be a legislative endorsement of the public's right to know.

However, some who favor the confidentiality of sources nonetheless oppose specific shield laws for a number of reasons. They argue that defining privileged areas would leave little room for media discretion in matters not specifically covered which might be equally important to effective journalistic activity. Further, they argue that supporting shield legislation would be an admission that the First Amendment does not adequately protect journalists from contempt punishment, thus conceding defeat in a legal battle which is still going on.

The imposition of contempt punishment for disobedience of a judicial restraint order is a major issue in the media-law conflict. Some recent cases have involved imposition of a restraint order, followed by a decision on the part of a publication or broadcaster to publish or broadcast anyway. In due course, the original restraint order has been found invalid by an appellate court, but in many cases a contempt punishment for disobedience of the restraint order has been imposed, despite the appellate finding that the order was invalid. The legal theory is that the journalist's proper approach is to appeal the order and to obey it until the appellate court decides.

However, journalists argue that the appellate procedure is prolonged and expensive, causing the value of almost any story which might be printed to be lost and constituting an excessive burden, which amounts to an abridgment of press freedom. The courts have not resolved the issue. However a number of people, including Fred W. Friendly, Advisor on

Communications to the Ford Foundation, have proposed that expedited procedures should be instituted by court rules or by legislation, to provide a fast and simplified review of restraint orders against broadcast or publication. This would allow a speedy determination of the case, and if the court ruled in the media's favor, as is likely, would allow publication while the story still has news value.

5
Guidance to Lawyers and Judges

Providing guidance to judges and lawyers might assist them in their dealings with the media. Specifically, voluntary guidelines for when a restraint order might be appropriate and permissible, procedures for avoiding such orders by voluntary action, for imposing them when unavoidable, and for limiting their effect to necessary periods, could be developed. Such guidelines should take into consideration the proposals of the American Bar Association and various state groups, although the results of a new effort might well be different. For all the controversy about publicity and the right to a fair trial, little is really known about the effects of publicity on juror attitudes, or how jurors are affected by sequestration during a long trial. Though there are problems concerning the secrecy of jury room proceedings, some research should be undertaken on juror attitudes, without seriously compromising that confidentiality regarding publicity, and on the effects of sequestration of jurors on their attitudes and their function.

The provisions of the codes of ethics of lawyers and judges which deal with public statements about legal proceedings should be examined, and possible changes should be considered.

6
Prior Guidance for the Media—Codes of Conduct for Journalists

Whether, and to what extent standards for journalistic conduct should be specifically set forth is no new issue. Further, there remains the question of whether any attempt to legislate standards is desirable or constitutional, or whether in extreme situations involving important interests (such as national security, the rights of a criminal defendant, or the protection of the physical well-being or privacy of an individual) some form of legislative restraint is justified. If standards are not to be legislated, they might be developed cooperatively by representatives of the bench, bar and media (and this work might involve other citizens as well). Another alternative would be for the media to develop collective standards [the Sigma Delta Chi standards are an example, but these might be supplemented and updated]. Finally, each newspaper, radio or television station might develop its own set of procedures governing the conduct of its reporters and editors.

The argument in favor of standards includes several points. Journalism as a profession ought to encourage responsibility among its members. A common set of standards for conduct would encourage journalists to examine decisions about what news to seek and publish (and when to publish it), and more responsible journalism would result. The existence of standards would give the public a set of criteria for evaluating media performance. Public confidence in the media would be increased due to the fact that the media had attempted to define standards for their own conduct and to live up to them. Further, the existence of common standards might serve to restrain publication of material about which editors have misgivings due to competitive pressures. Other professions have ethical standards which voluntarily reduce competition in the interests of greater responsibility. Journalistic standards, like those in the legal and medical professions, could also serve the function of providing support to individuals in withstanding pressure within their own organizations not to make waves, or to produce a big story at the expense of accuracy and fairness. If the media do not adopt voluntary standards, standards may well be imposed from outside.

Opponents of standards might argue, however, that legislated standards are an unconstitutional, or at least an inadvisable restraint on a free press. Even voluntary standards, they might add, would result in a "chilling" of press freedom, making it necessary for journalists to spend their time consulting a code rather than seeking and publishing news. Also, there is the problem of what gets left out of the standards. Is anything not specifically covered fair game? Is it a good idea to express specific standards of conduct, or is the profession and the public better protected by unwritten standards, understood and adhered to by a profession that claims to be one of honor and integrity? Has the experience of other professions which have ethical standards been that such standards do in fact improve conduct, or merely restrain competition?

Perhaps an overall code of conduct for journalists would be either too specific to be acceptable, or too general to be useful. An alternative might be a series of specific issue-oriented codes. Free press-fair trial guidelines have already been covered. Other topics might include:

Use of confidential sources
What level of reliability should be required? Should tests of accuracy and the basis for using and reporting information obtained from confidential sources be specifically delineated? Should there be a different standard when the source seeks out the reporter; when the source is committing a crime in revealing the information; when the source is exploiting his anonymity to subvert the legal process; when the source himself is relying on another person (not revealed to the reporter) for his information? Would such standards help reporters and editors in dealing with sources, and/or help the public evaluate unattributed news stories?

National security
The concept of national security information could be defined and standardized. A specific, limited definition might help the media decide what to publish. Such standards might also clarify the distinction between genuine national security information and the use of the designation to conceal governmental action.

Individual privacy
Standards would delineate the types of information which would ordinarily not be published without a particular reason. Such information might include personnel or credit records, health records, or specified private areas of personal and family life. Standards as to when, how, and under what circumstances, such information should be sought, accepted, or published by the media should be set forth.

Libel/slander
It is not clear that there is any constitutional room for a new defamation standard, but what about some voluntary guidelines? Specific standards for the accuracy and relevance required before certain types of damaging material could be published, would assist the protection of the individuals involved, and, at the same time, provide a standard of what the public ought to be told.

Right of reply
While a legislative requirement of a right of reply in specifically defined situations is of doubtful constitutionality, again some voluntary standards might be possible. Some definition of the circumstances in which a reply should be sought or permitted, how a request or demand for one should be treated, whether reference to some third party should be made for a decision or for advice to the media, could be specifically set forth.

Careful consideration should be given to how any such standards might be developed, and by whom. Alternatives include: legislation; voluntary cooperation between bench, bar, media and others; collective voluntary action by the media; and individual outlets voluntarily developing their own standards. It is to be stressed that the existence of standards does not imply that they would be mandatory, or that any sanctions need be imposed for failure to meet them.

7
Post-Hoc Guidance—Monitoring the Media

With or without a specific code of conduct, the issue of whether and how the media is to be monitored is a controversial one. There are a whole range of possibilities:

—One possibility is to have no monitoring at all, simply to have no written code, or else a voluntary code for reference by journalists and by the public, and let the free market be the ultimate judge of journalistic conduct. This is possible if there are no standards or if standards are developed by each individual media outlet, by media groups collectively, by members of the media, the legal profession and other citizens cooperatively, or even by legislatures.

—Another possibility is for each media outlet to designate a "reviewer," an individual or group which would pass on its performance. There might be sanctions which need not be severe. For example, the reviewer might require a retraction, apology or reply to be printed, or only a requirement that the reviewer's decision be printed, or no mandatory sanctions at all. The reviewer's decision might be non-binding only (e.g., recommendations of a correction, or a pre-publication recommendation as to how or whether a story should be handled). The reviewer might be a journalist, or might be drawn from the legal profession or the general public.

—A third possibility is for the media collectively to form an association (on the model of the local or state press associations now in existence), which would review their activities and/or their compliance with any standards that might exist. Again, the review could be binding or advisory. Participation by individual outlets could, in any event, be voluntary, on a blanket or on a case-by-case basis.

—The fourth possibility is the creation of regional or local "news councils," reviewing groups drawn from members of the media, legal profession and the public, to whom specific charges and disputes are referred. Again, their decisions can be either binding or merely advisory, and participation can be voluntary.

—Finally, legislative standards for journalistic conduct could be reviewed by the courts, and whatever civil and/or criminal liabilities the legislature could constitutionally attach or are applicable under present law, could be imposed.

Case Studies

The following are the cases which were presented at the sub-regional conferences of the New England Conference on Conflicts Between the Media and the Law. Case Study I was presented at all the sub-regional conferences. Case Study 2 was presented at the Machester, Boston, Lakeville and Amherst sub-regional conferences. Case Study 3 was presented only at the Newport sub-regional conference.

Case Study 1
Free Press-Fair Trial
Mr. Nesson, Mr. Chayes

For the past month the Gulfport *Daily Sentinel* has published a series of articles on "Oil Rights for Sale," written by prize-winning investigative reporter Ted Harris and calling for the appointment of a special grand jury to investigate allegations of corruption in the award of federal oil leases on land and offshore, unsavory links between government officials and oil company representatives, and fraudulent appraisals and bids.

In one of his stories, Harris described dramatic incidents in which a plant, at the request of Harris, had successfully taken on two roles. First, he had passed himself off as having great influence with government officials who had power to grant oil leases and had asked for and received cash payments from oil company officials in exchange for giving them a promise of favorable treatment on their bids. Then, he successfully deceived a government official by passing himself off as a "representative" of the oil companies. He offered this official the cash previously obtained in exchange for promises of favorable treatment, and the official took the money. Harris' story of the plant's exploits was one of the high points of his series of articles, but the articles were by no means limited to these two incidents or to this one government official. These deeds were arranged by Harris without his editor's knowledge, but once he hit "paydirt," the *Sentinel* carried the story.

On April 15, a grand jury was convened in Gulfport by Federal Judge Bolton, to hear evidence gathered by United States Attorney Jackson as a result of the articles. At the first meeting of the grand jury, Judge Bolton advised them in general of their duties and their relations to the United States Attorney. In addition, he said, "I want to emphasize once again that you are bound by rules of secrecy. Rule 10 of this court makes plain that you may not disclose anything which transpires here unless you are given explicit permission by the court. The same obligation of secrecy is imposed by rule of other persons present at the grand jury proceedings, such as stenographers. In this case, it is even more important than usual that secrecy be maintained because of the substantial public interest in this matter. Any publicity may jeopardize the investigation and prejudice the rights of innocent people. I warn you, therefore, that any violation of your obligation will be severely dealt with. I intend to take comparable measures with witnesses before the grand jury, their counsel and the news media. Though they are not directly covered by Rule 10, I am exercising my inherent power to protect the Court's processes. I shall communicate to them, as I have to you, that they must not make public, without leave of court, anything which transpires in the grand jury room except, of course, that witnesses may keep their counsel informed. The failure of any of the individuals or entities described to comply with my order will be dealt with firmly by this court, to the full extent of the law."

The judge then sent letters reflecting the above to news media in the area. Reporter Harris was troubled by the court's order because rumors were abroad that the grand jury had been convened only as a sop to public opinion and that the U.S. Attorney would not press matters vigorously. He concluded that he should keep close watch on the grand jury. He found, however, that the judge's order was surprisingly effective, and that he could learn little or nothing about what was happening.

Harris sought out one of the grand jurors, Harold Ripley, Professor of Ethics at State College, reminded him of the grand jury's historic role as a "people's tribunale" which was captive of neither prosecuting attorney nor judge, and persuaded him to cooperate. Harris supplied Ripley with information, and leads, which had not yet been presented by the U.S. Attorney. These were intended to be a test of the U.S. Attorney's good faith which would be measured by the degree to which he pursued these materials as they were raised through questions asked by Ripley at grand jury sessions. There ensued regular meetings between Harris and Ripley in which they discussed in detail what had transpired, what might be presented, and what had been omitted by the U.S. Attorney.

Harris concluded that his earliest fears were well founded, that U.S. Attorney Jackson had deliberately decided to frustrate the investigation because it would lead directly to Senator Squire, who had been largely responsible for the appointments of both Jackson and Judge Bolton. After consulting with his editors, Harris decided to go to the public on the matter. Reviving his earlier series, he drew on his conversations with Ripley and published a series of articles whose context is reflected in some of the headlines: "Why the Delay in Returning the Indictment?"; "Coverup in Oil Deals?"; "Jackson: U.S. Attorney or Oil Company Lawyer?"; "Judge Bolton's Gag Order and the Coverup"; "Senator Squire—Why Not Answer the Charges?"

Material began to flow to Harris not only from Ripley but from other sources: e.g., (1) A handwritten unsigned communication by someone purporting to be a member of the Senator's staff, implicating the Senator in receipt of bribes, followed by a phone call offering to identify the caller and to supply evidence on receipt of $2,500. "I've been offered that much to appear on a TV program in a mask, but would like to give the story to you."; (2) Telephone calls by friends and family of grand jurors reflecting what had, or had not, been presented to the grand jury.

At a cocktail party, Harris ran into Judge Carter who was an old friend of his, and who sat in the same district as Judge Bolton. Carter took Harris to one side and said, "Don't ever tell anyone I told you this, but watch yourself. Bolton is mad as hell. He told me that you were unfairly threatening powerful government officials who have helped him, and if you don't cut it out, he'll have your hide."

As Harris' stories increased in number and tempo and in their reliance on material presented to the grand jury, Judge Bolton took several steps. He questioned all the grand jurors, asking if any outsiders had talked to them about the inquiry. All said no. He called Harris into court, at the request of the U.S. Attorney, and warned him that he risked serious penalties if he persisted in violating the secrecy order. He also directed Harris to turn over to the court the names of any grand jurors, witnesses, or others who were providing him with information as to what was transpiring before the grand jury. Harris refused to supply the names and, the following day, published a story called, "Gagging the Press—What Next in the Coverup?" He referred to a "reliable source" as a basis for reporting Bolton's private threat against Harris.

The next day, Harris and the plant were called before the grand jury and asked to testify about the plant's personal dealings with both the oil company officials and the one government official, and Harris' involvement. They testified only to the extent of giving what had previously been published in the newspaper.

Three days later, the grand jury returned indictments charging a congressman, a Regional Administrator, and others, with several offenses, among them: bribery, conspiracy to make false statements, the violation of procedural requirements in the award of oil leases, and income tax evasion. Senator Squire was not mentioned in any of the indictments.

Judge Bolton also issued an order to show cause why Harris and the newspaper company which employed him should not be held in contempt of court for violating the gag order and refusing to reveal their sources. He also asked the U.S. Attorney to convene a grand jury to consider whether Harris, his plant friend, and any other identifiable sources had violated any criminal statute, calling attention especially to the statutes making it a crime to obstruct justice.

A prosecutor in Jackson's office resigned from office and confidentially told Harris of occurrences within the grand jury—occurrences that Ripley corroborated. The prosecutor reported that the members of the grand jury had reported informally to Jackson that they had taken a vote among themselves on whether Senator Squire was mixed up in the "mess," and had voted 13 to 9 that he was; that Jackson had urged the grand jurors to exercise "great care and restraint in dealing with the U.S. Senator" and not to take action by so close a vote; and that the grand jury had taken no further action as to the Senator.

Case Study 2
Privacy
Mr. Miller, Mr. Linsky

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

Burnwood currently is covering a Senate election campaign. Because of a schism in the state's dominant political party, there are three major candidates. The first is Alex Aphid, young, aggressive third-term congressman from one of the Metropolis districts. The second is Bob Bumptious, the incumbent senator, a more senior, conservative politician with three terms in the Senate behind him and the current chairman of an influential committee. The third is Carla Cassandra, a former prosecutor who is now a popular, syndicated TV news commentator, the first woman to run for the Senate in the state. She is one of the nation's leading right-to-life advocates, a position that is extremely popular in Idyllia because of its ethnic and religious composition.

The election is five days away. As a windup of Burnwood's month-long coverage, he plans an in-depth profile of each of the three candidates, publishing one a day. There is reason to assume that the other major daily in the state is about to publish its own major series on the election and has assigned its up-and-coming reporter, Ned Nosey, to the story.

Last night, an unmarked envelope was delivered to Burnwood. There was no indication as to its source. In it were xerox copies of numerous documents that appeared to be from FBI files. The material pertained to Aphid, Cassandra, and the two candidates for the governorship. There was nothing about Bumptious. Burnwood, who has some familiarity with material of this type from his days of covering the Justice Department, has reason to believe that it is genuine; he also knows that, if genuine, its release to him either is an intentional leak by the FBI or the result of illicit conduct. Several telephone calls to friends and information sources have revealed nothing conclusive about the documents.

The material on Aphid included a full financial report, which showed Aphid's net worth, outstanding debts, and contained several unexplained "slow-pay" and "no-pay" entries. In addition, there was a three-year-old investigative report on Aphid, containing notes of an interview with one of Aphid's neighbors. These suggest that Aphid conducts frequent, loud parties attended by numerous bearded "hippie" types and that a distinctive, sweet aroma frequently emanates from his apartment. Perhaps the most interesting item pertaining to Aphid was a transcription of notes allegedly made by Dr. Eric Enuresis, a prominent psychiatrist, in the

course of treating Aphid. These suggest the possibility of a potentially disabling mental illness. A phone call to Dr. Enuresis yielded nothing other than an invocation of the doctor-patient privilege and an off-hand remark: "This is very strange, I have never had any dealings with the press during my thirty years as a psychiatrist, but you are the second reporter to call today."

Burnwood's column on Aphid contained comments suggesting that the candidate lacked financial responsibility, emotional stability, and led the kind of dissolute life that might not be appropriate for a member of the Senate.

In preparing the profile of Senator Bumptious, Burnwood had another of his contacts, Sheriff Brutus Lascivious Clodde, who is up for re-election next year and has been supported by the *Chronicle* in the past, search the Metropolis police records and, using a local computer terminal, make an inquiry of the FBI's National Crime Information Center. This produced rap sheet entries showing that, as a teenager, Bumptious had been arrested for a hit-and-run vehicular homicide, but was never prosecuted. This disclosure by the Sheriff to Burnwood violated both state law and Department of Justice regulations.

Late the night before the Bumptious story was due—very late, in fact—Burnwood stopped at an out-of-the-way watering hole for a nightcap. When he went to the rear of the bar to make a telephone call, he noticed Bumptious in a hidden booth with a strikingly attractive woman thirty years his junior. Bumptious appeared intoxicated, but not sufficiently so as to prevent the pair from engaging in amorous activity. Searching his memory, Burnwood recalled that the woman, Wanda Werewolf, had been arrested but not prosecuted for soliciting a year earlier. The scene also was consistent with other reports Burnwood had received about Bumptious' excessive drinking. The following day, Burnwood reported these items to his readers under the headline, "Senator Bumptious Involved in Car Death and Linked with Prostitute."

Senator Bumptious immediately brought suit against the City, the State, the FBI, the *Chronicle*, and Burnwood for violating his civil rights by improperly releasing this police data, and for defamatory innuendos in the story. Damages against the newspaper and Burnwood in the amount of $250,000 each have been requested, and defense of the action will be protracted and costly. Finally, Judge Pettifogger, who was appointed to the bench following years of loyal service to the party, has been asked to direct Burnwood to testify as to his sources for the article. Werewolf also has brought suit for damages.

Burnwood's investigations of Carla Cassandra revealed nothing of an unsavory character. However, the documents purporting to be from the FBI files contained three interesting items. First, a field agent's report,

in connection with a security clearance, of an interview with one of her law professors, Dagby Dolt, indicated that Cassandra had gotten through school by the "skin of her teeth," and either had "little aptitude for law and hard work," or "had spent too much time with men." Second, a twenty-five year old medical record indicated that, at age fifteen, Carla had had an abortion. And, third, a report documented that Cassandra's husband had been convicted of manslaughter for slaying his first wife in a fit of passion, and had served five years in prison; that upon his release, 14 years ago, he had changed his name and moved more than 1,000 miles from his former home to Metropolis to escape his past; that since his arrival in Metropolis he not only has lived a blameless life, but has become a pillar of Metropolis society and a patron of numerous charitable endeavors. Burnwood reported these items in his column on Cassandra without editorial comment.

Case Study 3
Bench/Bar/Press Guidelines
Mr. Heymann

Part 1

Joe Tiger had been a prosecutor specializing in organized crime before he became a private defense attorney. His life had been threatened and his house had once been bombed by the mob which Tony Bester headed, but Joe had never wavered in his determination to rid Ames of the mob he hated. Thus, he was elated to hear on March 13, 1975, that the District Attorney had at last got the goods on Tony—an eyewitness had seen Tony and Albert Rough, a small-time associate, break the legs of a loan shark victim. The victim would testify as to what had happened and so would the eyewitness, thus rebutting Tony's claim that he was obviously being framed for an event that allegedly happened in Ames while Tony and Albert were in fact hiking in Maine.

When Albert, much to Joe's surprise, approached Joe to represent him, Joe asked who had recommended him. Albert responded, "An aide of the Governor's who also promised a pardon if I decide to back up Tony's story." Joe heard Albert's admission of what had happened and his account of a message he had received from Tony through Tony's counsel, Sam Slick. The message had said simply: "Watch what happens to the eyewitness and consider whether you want to testify against me." Joe agreed to represent Albert, but only for the purpose of attempting to negotiate a plea. Two days later, the only other eyewitness was cut almost in half by a submachine gun as he left his home for work.

Albert thereupon told Joe that he had changed his mind and had decided to stand trial with Tony, swearing to the hiking story. Joe said he could not represent him in presenting perjurious testimony. Albert thereupon retained another counsel, John Thomson, a close friend and former partner of the presiding judge, James Moore. His counsel assured him that the State's case looked very weak with only a single witness against two consistent alibi stories. As the trial unfolded, Judge Moore's demeanor seemed to reflect scepticism of the victim's story. Acquittal seemed certain to Bill Crimebeat, a *Bugle* reporter.

During a recess of the trial, the District Attorney told Joe Tiger of his fears for the outcome, and of his irritation at Judge Moore's behavior. Joe responded that he had some unspecified but "bombshell" evidence that might or might not be privileged by the attorney-client privilege. The District Attorney thereupon immediately asked Judge Moore to hold a hearing outside the presence of the jury on the question of privilege. Moore agreed but added quickly that he had an exceptionally strict view of the privilege.

Judge Moore began the hearing, with the jury absent, by saying that he was holding the hearing in open court on the understanding that nothing in the hearing would be carried in the press or on television unless it was later admitted into evidence before the jury. If there was any question

about this, he added, he would hold the hearing in his chambers. He asked any reporter present who felt he could not comply with this to leave the courtroom. Then Joe Tiger was called to the stand to testify to the circumstances surrounding, but *not* the content of, Albert's statements to him. Joe did describe to the startled courtroom the alleged role of the Governor's aide. Judge Moore heard arguments from the prosecutor but, before the defense had even argued, announced that he felt the attorney-client privilege almost certainly barred use of even the evidence as to the promised pardon. He stated that he would rule formally on the question the next day.

After the hearing, Bill Crimebeat cornered Joe Tiger, whom he had known from the latter's days as a prosecutor. He made a not-so-wild guess. "Albert has told me about the threat," Crimebeat said. "Why the hell didn't you do something about it?" Exhausted and reflecting the feelings of guilt he'd felt for some time, Tiger instantly tried to justify his failure to act, and, under the pressure of further questioning, fully revealed what Albert had told him about his involvement in the crime and Tony's threat to kill anyone who might testify against him. As soon as Crimebeat got back to the *Bugle*, he called Albert and told him all that Joe revealed. Albert gasped audibly, didn't deny the story but refused to discuss it further without his lawyer there.

Part 2

Assume that two years previously another reporter for the Ames *Bugle* had published the contents of a confession revealed in a hearing from which the jury was excluded at a major criminal trial. The judge had then decided that the confession was coerced but the jurors, who had not been sequestered, read of the confession. The judge thereupon declared a mistrial, and the resulting public furor was immense.

The Ames District Attorney had proposed legislation defining the crime of obstruction of justice to include anyone who knowingly published, during a trial, materials that were obtained at a hearing from which the jury was excluded. The legislation won the nearly unanimous assent of the legislature until a newly formed organization of the local press and television stations proposed their own alternative.

Each newspaper and station was to develop its own in-house standards for covering trials and was to set up a system of review by an appropriate editor both prior to publication and, if the editor was not informed of the source of the story, in subsequent disciplinary proceedings against the reporter. The Ames *Bugle* adopted the standards set forth for the State of Washington (see Appendix which follows). The new organization, the Ames Press and Television Society (APTS), agreed to general standards which among other provisions:

1.
Required compliance in obtaining information with "accepted legal rules" (e.g., theft) binding on all citizens; and

2
Precluded the publication of any information revealed in a hearing from which the jury was excluded. There was a narrow exception to the guidelines "when the public interest manifestly requires prompt revelation." To determine the propriety of the actions of any of its members, APTS set up a review board of three editors with the power to censure or fine the newspaper or station which violated one of the generally accepted standards.

In this context, the Ames legislature tabled the proposed bill; and the trial judge, who had threatened to exclude any representatives of the Ames *Bugle* from hearings he held outside the presence of the jury in all future cases, withdrew his action. He did, however, issue an informal opinion denouncing the behavior of the *Bugle* reporter.

Appendix

Statement of Principles of the Bench-Bar-Press of the State of Washington

Preamble

The Bench, Bar and Press (comprising all media of mass communications) of Washington:

(a) Recognize that freedom of news media is one of the fundamental liberties guaranteed by the First Amendment of the Constitution of the United States and that this basic freedom must be zealously preserved and responsibly exercised.
(b) Are obliged to preserve the principle of the presumption of innocence for those accused of a crime until there has been a finding of guilt in an appropriate court of justice.
(c) Believe members of an organized society have the right to acquire and impart information about their mutual interests. The right to disseminate information should be exercised with discretion when public disclosures might jeopardize the ends of justice.
(d) Have the responsibility to support the free flow of information, consistent with the principles of the Constitution and this Preamble.

To promote a better understanding between the Bench and Bar of Washington and the Washington News Media, particularly in their efforts to reconcile the constitutional guarantee of freedom of the press and the right to a fair, impartial trial, the following statement of principles, mutually drawn and submitted for voluntary compliance, is recommended to all members of these professions in Washington.

Principles

1
The News Media have the right and responsibility to print the truth. A free and responsible news media enhances the administration of justice. Members of the bench and bar should, within their respective canons of legal ethics, cooperate with the news media in the reporting of the administration of justice.

2
Parties to litigation have the right to have their causes tried fairly by an impartial tribunal. Defendants in criminal cases are guaranteed this right by the Constitutions of the United States and the various states.

3
No trial should be influenced by the pressure of publicity from news media nor from public clamor, and lawyers and journalists share the responsibility to prevent the creation of such pressures.

4
All news media should strive for objectivity and accuracy. The public has a right to be informed. The accused has a right to be judged in an atmosphere free from undue prejudice.

5
The news media recognizes the responsibility of the judge to preserve order in the court and to seek the ends of justice by all those means available to him.

6
Decisions about handling the news rest with editors, but in the exercise of news judgments the editor should remember that;

(a) An accused person is presumed innocent until proven guilty.
(b) Readers and listeners and viewers are potential jurors.
(c) No person's reputation should be injured needlessly.

7
The public is entitled to know how justice is being administered. However, no lawyer should exploit any medium of public information to enhance his side of a pending case. It follows that the public prosecutor should avoid taking unfair advantage of his position as an important source of news; this shall not be construed to limit his obligation to make available information to which the public is entitled.

8
Proper journalistic and legal training should include instruction in the meaning of constitutional rights to a fair trial, freedom of press, and the role of both journalist and lawyer in guarding these rights.

ADOPTED March 26, 1966, in general session, by a joint committee representing the following groups:

Washington State Supreme Court
Superior Court Judges' Association
Washington State Magistrates' Association
Washington State Bar Association
Washington Association of Sheriffs & Chiefs of Police
Washington State Prosecuting Attorneys' Association
Allied Daily Newspapers of Washington
Washington Newspaper Publishers Association
Washington State Association of Broadcasters
The Associated Press
United Press-International
School of Communications University of Washington

Guidelines for the Reporting of Criminal Proceedings

The proper administration of justice is the responsibility of the judiciary, bar, the prosecution, law enforcement personnel, news media and the public. None should relinquish its share in that responsibility or attempt to override or regulate the judgment of the other. None should condone injustices on the ground that they are infrequent.

The greatest news interest is usually engendered during the pretrial stage of a criminal case. It is then that the maximum attention is received and the greatest impact is made upon the public mind. It is then that the greatest danger to a fair trial occurs. The bench, the bar and the news media must exercise good judgment to balance the possible release of prejudicial information with the real public interest. However, these considerations are not necessarily applicable once a jury has been empaneled in a case. It is inherent in the concept of freedom of the press that the news media be free to report what occurs in public proceedings, such as criminal trials. In the course of the trial it is the responsibility of the bench to take appropriate measures to insure that the deliberations of the jury are based upon what is presented to them in court.

These guidelines are proposed as a means of balancing the public's right to be informed with the accused's right to a fair trial before an impartial jury.

1
It is appropriate to make public the following information concerning the defendant:

(a) The defendant's name, age, residence, employment, marital status, and similar background information. There should be no restraint on biographical facts other than accuracy, good taste and judgment.
(b) The substance or text of the charge, such as complaint, indictment, information or, where appropriate, the identity of the complaining party.
(c) The identity of the investigating and arresting agency and the length of the investigation.
(d) The circumstances immediately surrounding an arrest, including the time and place of arrest, resistance, pursuit, possession and use of weapons, and a description of items seized at the time of arrest.

2
The release of certain types of information by law enforcement personnel, the bench and the bar and the publication thereof by news media generally tends to create dangers of prejudice without serving a significant law enforcement or public interest function. Therefore, all concerned should be aware of the dangers of prejudice in making pretrial public disclosures of the following:

(a) Opinions about a defendant's character, his guilt or innocence.
(b) Admissions, confessions or the contents of a statement or alibis attributable to a defendant.
(c) References to the results of investigative procedures, such as fingerprints, polygraph examinations, ballistic tests, or laboratory tests.
(d) Statements concerning the credibility or anticipated testimony of prospective witnesses.
(e) Opinions concerning evidence or argument in the case, whether or not it is anticipated that such evidence or argument will be used at trial.

Exceptions may be in order if information to the public is essential to the apprehension of a suspect, or where other public interests will be served.

3
Prior criminal charges and convictions are matters of public record and are available to the news media through police agencies or court clerks. Law enforcement agencies should make such information available to the news media after a legitimate inquiry. The public disclosure of this information by the news media may be highly prejudicial without any significant addition to the public's need to be informed. The publication of such information should be carefully reviewed.

4
Law enforcement and court personnel should not prevent the photographing of defendants when they are in public places outside the courtroom. They should not encourage pictures or televising nor should they pose the defendant.

5
Photographs of a suspect may be released by law enforcement personnel provided a valid law enforcement function is served thereby. It is proper to disclose such information as may be necessary to enlist public assistance in apprehending fugitives from justice. Such disclosure may include photographs as well as records of prior arrests and convictions.

6
The news media are free to report what occurs in the course of the judicial proceeding itself. The bench should utilize available measures, such as cautionary instructions, sequestration of the jury and the holding of hearings on evidence after the empaneling of the jury, to insure that the jury's deliberations are based upon evidence presented to them in court.

7
It is improper for members of the bench-bar-news media or law enforcement agencies to make available to the public any statement or information for the purpose of influencing the outcome of a criminal trial.

8
Sensationalism should be avoided by all persons and agencies connected with the trial or reporting of a criminal case.

Participants

The following list includes people who have participated in one or more meetings organized and sponsored by the New England Conference on Conflicts Between the Media and the Law, including sub-regional conferences, the Osgood Hill session and meetings of the Steering Committee. Their affiliations are cited as of the time of their participation.

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