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W. J. ...

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Re Bureau telephone call to New York, 10/7/71.

Enclosed herewith for the Bureau is the September-October, 1971 issue of the "Columbia Journalism Review" (10th Anniversary) entitled, "The First Amendment on Trial" with sub-caption, "After the Pentagon Papers - Special Issue".

It is noted that the above publication contained an article by BEN H. BAGDIKIAN captioned, "What Did We Learn".

Enclosed also for the Bureau are six copies of an LHM pertaining particularly to the article by BEN H. BAGDIKIAN. A copy of this LHM is being designated to the other recipient offices for information purposes.

ENCLO. BEHIND FILE

ENCLOSURE

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 3/8/82 BY [redacted] EX-112

- 2 - Bureau (Encls. 7) (RM)
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1 cc at desk plus 5 cc of LHM enc. 2 606 94D

No dress as 150 already has copy - Worthless Ho DOD also

7 OCT 13 1971

SPEC. INV. OFFICE

Deleted Copy Sent Ben H. Bagdikian by [redacted] Per [redacted]

Approved [redacted] Special Agent in Charge

59 OCT 19 1971

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UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

In Reply, Please Refer to
File No.

New York, New York
October 12, 1971

[Redacted]

Espionage - X

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The 10th anniversary issue of the "Columbia Journalism Review", September-October, 1971, entitled, "The First Amendment on Trial", with the additional caption, "After the Pentagon Papers - Special Issue", contained an article written by Ben H. Bagdikian captioned, "What Did We Learn". Bagdikian is the "Washington Post's" Assistant Managing Editor for National News and author of the recent book, "The Information Machines". A copy of Bagdikian's article is attached hereto.

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Attachment

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

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ENCLOSURE

"The need for press freedom is not simply an intellectually elegant idea. The open society avoids catastrophic accumulations of maladjustment."

What did we learn?

BEN H. BAGDIKIAN

■ To the casual eye, the newsroom of the *Washington Post* at mid-afternoon of June 30 must have looked normal—normal, that is, for the *Post*: cramped, noisy, anarchic-democratic, the most interesting journalistic slum in America. There were no obvious signs of stress created by nearly three weeks of the most extraordinary events in the history of American journalism.

At one end of the newsroom the *Post*'s owner and publisher, Katharine Graham, and its executive editor, Benjamin Bradlee, and a small band of associated sufferers were awaiting word from company lawyers at the Supreme Court building, two miles away. In the middle of the newsroom, Mary Lou Beatty, deputy national editor, held an open telephone line to the Supreme Court pressroom, waiting for the paper's court reporters to be handed the printed decision. In a communications room, Eugene Patterson, then managing editor, monitored the wire machines in case the word came first from them. Suddenly Miss Beatty held up her hands as she listened to a court reporter at the other end of the line rattle through the fifty-six-

Ben H. Bagdikian is the *Washington Post*'s assistant managing editor for national news and author of the recent book *The Information Machines*.

page decision. She yelled toward the executives, "It looks as though we've won." Then Gene Patterson rushed out of the wire room, leaped onto a desk, and with his hands cupped around his mouth shouted, "We win, 6-to-3!"

In the euphoria of the newsroom that afternoon and throughout the country's journalistic establishment in the weeks since, something ominous seems to have escaped notice. It is not the fact that the newspapers and journalists might be criminally prosecuted or cited for contempt when asked to testify about their sources—though at this writing there is a grand jury sitting and the Government is emanating strong signals. The journalists are affluent and well known and will march to court with much public notice and skilled lawyers, and at worst will probably avoid the psychopathic horrors of contemporary prisons; it is the uncelebrated little people who get quietly locked up on dubious grounds without glory.

The euphoria is unjustified because the Supreme Court decision probably signalizes not the triumphant end, but the start of a struggle. The astonishing cluster of major issues involved in the court case moves onward with an uncertain future: legitimacy of the war in Vietnam; deception

by the Government; secrecy in government; and freedom of the press.

This is not to slight the accomplishments so far. The *New York Times* acquired the Pentagon Papers first and took the icy plunge without benefit of precedent. Once the *Times* was silenced, the *Post* went ahead knowing that it would be hauled into court and knowing that the Nixon Administration hates the *Post* and the *Times* with a passion deeper than Spiro Agnew's thesaurus. Other metropolitan papers followed the silencing of the *Post* and *Times* with their own slices of the secret papers. Like relics of St. George, whose spine is in Portofino, skull in Rome, a hand in Genoa, a finger in London, the bits and pieces of the Pentagon Papers had escaped their secret reliquary in the crypts of the Government and reappeared throughout the country in a finally credible sense of reality about the Government and the war and a metastasized affront to the Espionage Act. The major papers did not shirk their duty and the Supreme Court upheld them.

But the Supreme Court victory should not obscure some troublesome facts. Courts officially ordered American newspapers not to publish certain materials because these materials offended the Government (like all censoring governments, Mr. Nixon's claimed that the offensive material would do grave and irreparable harm to the nation). From June 15 to June 30 there was official, effective, court-enforced suppression of information in the hands of American newspapers. Nothing prevents the Government from bringing similar suits in the future, and win or not in the Supreme Court it can suppress information for a period of time and intimidate a paper.

Government antagonism to the press is not new or bad. The press shouldn't expect to be loved. Franklin Roosevelt had a running battle with publishers, Harry Truman ridiculed "newspaper talk," Dwight Eisenhower viewed the press with cool contempt, John Kennedy enjoyed periodic outbursts of venom on the subject, and Lyndon Johnson's sentiments about newspapers would cause Bella Abzug to blush. But this Administration has a special attitude toward the working press that is ideological and cultural, it has a political stake in spreading hatred of the metropoli-

tan press, and unlike other administrations that fought with the press this one has an itch for the jugular.

A major reason given by some judges for refusing the Government request was that Congress had not yet passed a law giving the President the power to censor the press. If such a law existed, these judges said, the decision might have been different. In 1917, in a time of war and hysteria about spying, Congress specifically voted down an amendment to the Espionage Act that would have made the President a censor. In 1950 during

*"The tendency of
this court is not
encouraging . . ."*

the height of McCarthyism, the Espionage Act was amended to say—with puzzling implications—that nothing in the Act shall infringe on freedom of the press. Secrecy in government is by Executive Order, not law.

Given the Nixon Administration approach to the free press and broadcasting, the tendency of this court is not encouraging. Only three justices—Black, Douglas, and Brennan—explicitly turned their backs on the idea of both Presidential and Congressional power to censor. Justice Black said that when he reads that the First Amendment says Congress shall make no law abridging freedom of the press, he interprets "no law to mean no law." To which Erwin Griswold, Solicitor General, representing the Government, replied, "I can only say, Mr. Justice, that to me it is equally obvious that 'no law' does not mean 'no law'. . . . The First Amendment was not intended to make it impossible for the Executive to function or to protect the security of the United States." Each of the nine justices felt impelled to write a separate opinion, and if one reads these for attitudes on the legitimacy of Congress' taking up a measure to give the President censorship powers, the apparent willingness to accept this is 6-to-3.

The reversed 6-to-3 is ironic, but so was much more in the case. The New York *Times*' regular law firm, Lord, Day & Lord, did not take up the case. Its head is former Attorney General Herbert Brownell. The Washington *Post*'s law firm, Royall, Koegel & Wells, did take up the case. Its former head is the present Secretary of State and presumably one of the aggrieved parties in the printing of the Pentagon Papers, William P. Rogers. The case also saw those "strict constructionists," John Mitchell and Richard Nixon, asking the Supreme Court to "make law"—that is, give the President powers that Congress had refused.

Some judges asked in all earnestness why a responsible newspaper would not ask the Government what part of official papers it could publish. It is a discouraging question, asking that papers accept informally what the First Amendment forbids officially, putting a construction on "responsible" that makes the press an instrument of official policy on the most vital issues. This was not the kind of issue the framers of the Constitution had in mind. King George III didn't mind if the colonial press reported on the weather; it was all that disrespectful information about royal governors and tax collectors that it printed without the advice and consent of the local Governor. The First Amendment was not written with the idea that the press would be free to print the names of donors to the Santa Claus Fund but have to ask the Government for permission to write about war and peace.

In addition there seemed in some justices to be a personal hostility to the press. Chief Justice Burger wrote, "To me it is hardly believable that a newspaper long regarded as a great institution in American life would fail to perform one of the basic and simple duties of every citizen with respect to the discovery or possession of stolen property or secret government documents. That duty, I had thought—perhaps naïvely—was to report forthwith, to responsible public officers. This duty rests on taxi drivers, Justices, and the New York *Times*." He added in a footnote, "Interestingly, the *Times* explained its refusal to allow the Government to examine its own purloined documents by saying in substance this might compromise their sources and informants! The *Times*

thus asserts a right to guard the secrecy of its sources while denying that the Government of the United States has that power."

Judge Blackmun exhibited the same feelings. He wrote, ". . . the Washington *Post*, on the excuse that it was trying to protect its source of information, initially refused to reveal what material it actually possessed. . . ." He concluded, "I strongly urge, and sincerely hope, that these two newspapers will be fully aware of their ultimate responsibility to the United States of America. . . ."

What emerged throughout the case was a dangerous naïveté among judges, lawyers, and others about government propaganda, the frequency with which government agencies break the law or improperly invade privacy, and the true relationship between the federal government and the press in Washington. The grim and terrible condemnations about "secrets" look different when you know that highly placed government officials, beginning with the President of the United States

*"True security
lies in knowledge,
not secrecy . . ."*

and his Cabinet, the Joint Chiefs of Staff and their staffs, regularly and systematically violate the Espionage Act—or at least the Attorney General's interpretation of it—by knowingly and deliberately disclosing secret information to the press. [See articles elsewhere in this issue by James McCartney and Max Frankel.]

The quantity of military secrets that appear in the press is directly related to appropriation hearings for the military services. If the Air Force wants a few billion dollars for a new weapons system, it leaks a few secrets that put the system in a good light. Two days later the Navy leaks other secrets about the same weapons system showing that it fails much of the time. Or the State Department, wanting to bluff another nation, lets out a secret that is a half-truth, then denies it the next

day as "newspaper talk." And perhaps the Pentagon, which disapproved anyway, leaks the whole story of how the State Department leaked a half-truth. The net result is probably good because it is the only present remedy to secret government, but the point is that the U.S. Government is the biggest player in town of the Leaking Secrets Game. Only when the secrets are embarrassing do the words "national security" come into play.

The idea that in matters of secrecy and responsibility the press is beholden to "the United States of America" sees the Government as a policy monolith. There is no such entity, either in the

"The wisdom of Elmer Davis: 'Don't let them scare you' . . ."

Constitution or in practice. It is a pluralistic organism whose parts work on each other with various mechanisms, one of the more important being information. If the press did not obtain secrets or was not handed secrets on a silver platter, the Government would have to invent some other way of getting out sequestered information.

The harm done by disclosure of secrets is minimal; the harm done by concealing information inside the secrecy system is enormous. President Kennedy ultimately told the *New York Times* that it should have printed more about the Bay of Pigs invasion of Cuba rather than less. Both the *Times* and the *Post* knew about the U-2 airplane flights over Russia months before the story broke. Both suppressed it in what they thought was the national interest. Soviet Russia knew about the plane all the time—its radar picked it up—but for a while it lacked planes and missiles with the range to shoot down the plane. Nonpublication merely kept the information from the Russian and American publics, a convenience to each government whose implications are interesting indeed. Ultimately the U-2 was shot down, with the result that lives were endangered, a sum-

mit conference was wrecked, and a Presidential visit to Moscow cancelled—the usual scenario of what it is said will happen if secrets are published.

It seems safe to predict catastrophe if information is disclosed. If the information is protected by secrecy the prediction can never be tested, and keeping the secret seems the more prudent course. But intelligent, diligent men differ on the consequences of printing sensitive information. Justice White examined the Government lists of "worst cases" it wanted suppressed in the Pentagon Papers and said he was confident that publication by the *Post* and *Times* "will do substantial damage to public interests." Justice Stewart looked at the same lists and said, "I cannot say that disclosure of any of them will surely result in direct, immediate, and irreparable damage to our nation or its people."

The judges were not the only ones who differed on the wisdom of publishing. There were arguments within the papers themselves. The *Post* reached its initial decision after about twelve continuous hours of intense debate.*The argument, involving lawyers, editors, reporters, and management, was fierce and prolonged. It ran through one deadline and was finally resolved five minutes before the deadline for the main edition. In the end, Katharine Graham took the full weight of argument and said yes.

As the lawyers and later the judges began looking beneath the awesome claim of TOP SECRET they began to see that it was seldom justified. List after list submitted by the Government to the Court in secret was shown to be filled with items already in the public domain or already known to adversary nations. The Government official brought in to testify in secret court session on how bad it would be to publish the documents later told Congress that at least 6,000 pages of the 7,000 should not be classified.

Newspapermen in Washington already knew things like that. Last year during the heat of an armaments debate, the *Post* received in a plain envelope without return address a Xerox of a document marked, SECRET—SENSITIVE. We called the Pentagon to confirm the document's authenticity and then printed it in full. It was a memorandum from Secretary of Defense Melvin Laird to his

service secretaries and other military officials telling them they should say nothing in public that might imply that it would be good to have a moratorium on deploying MIRV missiles or ABMs. It was a directive to subordinates on what to say in public on an important public issue—a natural enough impulse from an official trying to win an argument among his rival officials in government. But SECRET? The *Post* received a letter from the Department of Defense telling it to turn over the memo under pain of prosecution under the Espionage Act.

When Mr. Laird was a member of the opposition in Congress, he wrote a stiff letter, in October of 1966, demanding to know the Government's negotiating position in the Vietnam war, including how many American troops we were offering to pull back in return for how many enemy troops. He demanded publicly that the Government "should spell out clearly and unequivocally what our short-term aims and long-term objectives are with regard to South Vietnam and Southeast Asia."

The issues involved are too profound to argue about whose ox is being gored, though that impels much of the secrecy machinery. What is more basic is that even when there is a discernible

reason for keeping information secret, every piece of information marked SECRET erodes the basis for a free society. It excludes the citizen from the process of his own government, and that is a cost that has to be put into the "national security" equation.

This country was started on the assumption that legitimate government derives its powers from the consent of the governed, and if that means anything those who are governed have to know what their government is doing. Yet we have lived under the spreading mystique of the official secret for so long that there is an assumption that information about public affairs is the private property of the Government. Somewhere, somehow, the burden has shifted from the Government having to prove why it should conceal information, to the citizen, who now has to prove why he should be told. The Solicitor General even argued the analogy of the copyright law to the Supreme Court.

The country seems to have lost sight of the fact that true security lies in knowledge, not secrecy. During the Supreme Court hearing Justice Stewart asked the *Times'* lawyer, Alexander Bickel, whether he would change his insistence on the Constitutional right to publish if doing so would result in the death of "100 young men whose only offense had been that they were nineteen years old and had low draft numbers."

The information in the Pentagon Papers covers the years 1945-1968. The documents were not published during that period. More than 1 million Indochinese have been killed, more than 50,000 young Americans were killed, we have spent \$120 billion dollars, and have descended into one of the most poisonous eras in our time. The calculation of the costs of secrecy is not small.

The need for press freedom is not simply an intellectually elegant idea. The perfect secret is useless because information is powerful only if it causes men to understand their environment better. If information is secret, not enough people know enough to put the information to use, nor to correct errors. The open society avoids catastrophic accumulations of maladjustment because everyone in the system is free to express himself and be heard by those who can make adjustments.

'Abe, I got a great idea for fooling
all of the people all of the time . . .'



—Darcy, *Newsday*.

"Responsibility" is not a safe standard. What is irresponsible to one man is responsible to another, or at another time. When Richard Nixon was a member of Congress he and his friends were prepared to send men to jail for suggesting normalizing relations with the Communist government of mainland China. It was a "bad," "treasonable," "subversive" idea. President Richard Nixon is now planning to go to China in order to start normalizing relations with the Communist government of mainland China.

The free marketplace of ideas, and the press's role in it, is not a luxury, nor is it a sometime thing to be tolerated only when it pleases the authorities. The press itself needs to remember its obligations. When the press insists on making its own decisions on publishing official information independent of government it is sometimes painted as arrogant. But the reverse is true. For a newspaper to know something to be accurate and important and not to trust the public with it is arrogant. To withhold the truth from the public is to hold the public in contempt.

Justice Burger was amazed that the press would not give up its documents while criticizing government secrecy. Justice Blackmun thought that the *Post* was using protection of its sources as an "excuse." The fact is that government has the full force of its police powers to shut off the porosity of information that saves the United States Government from the sickness of secrecy.

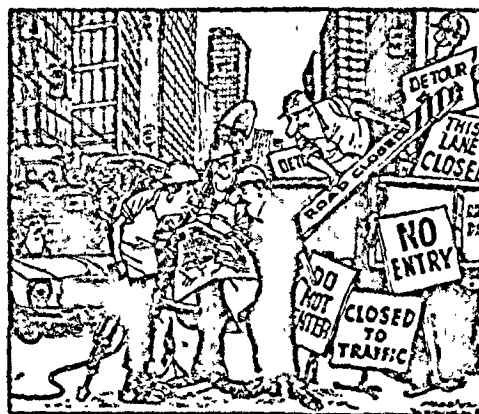
The anger of government at press intrusion is an ancient emotion. Roger L'Estrange was Licensor of the Press in London in 1680. He said: "A newspaper makes the multitude too familiar with the actions and councils of their superiors and gives them not only an itch but a kind of colorable right and license to be meddling with the Government."

Governments never like to be meddled with. But it happens to be the whole idea of the American political system.

Having won in the Supreme Court, the press now must fight the more insidious self-censorship that comes when it tries to avoid future confrontations, when it concedes in the newsroom what it won in the courts. Better than Roger L'Estrange is the more contemporary wisdom of Elmer Davis, who said in the height of the Joe McCarthy era:

"Don't let them scare you. For the men who are trying to do that to us are scared themselves. They are afraid that what they think will not stand critical examination; they are afraid that the principles on which this Republic was founded and has been conducted are wrong. They will tell you that there is a hazard in the freedom of the mind and of course there is, as in any freedom. In trying to think right you run the risk of thinking wrong. But there is no hazard at all, no uncertainty, in letting somebody else tell you what to think; that is sheer damnation."

Vancouver, B.C. Sun, July 19, 1969:



"We've got Fred Brown pretty well blocked, from across effectively closed, head of down here ready stopped ... now, I figure if we start digging here ..."

San Francisco Chronicle, Dec. 20, 1970:



"We've got Van Ness fairly well blocked, upper Market is effectively closed, most of downtown bottled up ... Now I figure if we start digging here ..."

Striking coincidence department