Rt/ 12, Frederick, Md. 21701
8/11/76

Mr. John MacKenzie
Newsroom
Washington Post
1150 15 St., NW
Washington, D.C. 20005

Dear Mr. MacKenzie,

Thanks for the good reporting of Dan Schorr's excellent Atlanta speech.

You are not responsible, obviously, for the headline-writer's elitism, "Daniel Schorr on Rights for Reporters." (Emphasis added.) Your copy includes the quote, "and, what's more, individual responsibility."

Schorr is precisely correct. Not only present reporters or former reporters.

He is no less on point, if perhaps fortunate in late learning, in telling the six lawyers that "no economic enterprise shall make rules abridging individual freedoms of speech and press."

In the late 1920s or early 1930s a very decent city editor taught me this in telling me, "Son, Mr. Dupont would not like this." In following his suggestion I became a syndicated feature writer before I cast my first vote. He called me "Son" partly from fatherliness and partly because the copy boy was older.

Schorr's other words remind me of our last exchange: "What has happened to the basic concept of freedom of expression as a freedom of every American." I bracket this with his appropriate reference to "individual responsibility."

Although much has happened to me since I last wrote you with, as I recall it, "individual responsibility" as my text, I do not write you seeking attention and I do not want any attention. I want to do my thing my way. If it is a futility to want to make the system work then it is my futility.

In your busy life you may have forgotten so I remind you. When I told you I had, under oath, charged the Department of Justice with perjury you exlaimed "That isn't done." Yes it is. In my individual responsibility - and on this I am certain I gave you an explanation - I did it. Perjury, as I also reminded you, is a felony. I am certain I also reminded you that not reporting a crime is in itself a crime. So I reported a crime by the prosecutor to the prosecutor. I did it under oath so that the prosecutor could prosecute me if I made a false charge.

As you can see, I do not have a jail as a return address.

And the prosecutor did have to respond. His Response was, I believe, novel. He filed with the court a statement that I could make and prove such charges ad infinitim because I know more about the subject than anyone in the FBI. (Naturally, this, too, was not news.)

It did not end there. It went to the court of appeals, which speeded its decision of July 7, making it coincide with one that, superficially considered, can have the effect of gutting FOIA. In "oral arguments" (quotes because my lawyer did not have to and did not make one) it became apparent that the court had read and comprehended the brief and the record.

It did not tell me what I may do but what I "must" do. its decision is not limited to what serves my interest as the litigant. The decision is explicit in mandating me to pursue what serves "the nation's interest."

This includes deposing FBI agents. And so four have taken an early retirement in ~~vain~~ vain. (News? Of course not!)

Maybe what I do isn't done.

I've sued the federal government none times. I've won eight, from the records. I consider the one case I've lost my most significant victory. It is the first of four cited in the debates on amending FOIA as requiring the amending. This is the case, the first filed anywhere under the amended law, in which I charged and proved official perjury, what just isn't done.

If you read the remand, please also read the same court's decision of the same day in the Hader case, Open America. If after this you'd care to express yourself on what should not be done as distinguished from what "isn't," I'd be interested.

I'm not asking anything of you. No response is necessary. I don't want a story. I'm trying to inform you only.

Maybe what isn't done needs being done more often and more effectively than, to date, I've been able to do?

My apologies for the typing and the errors. After I wrote you I had a rather severe phlebitis. I must keep my legs horizontal when I type. And this day began more than 19 hours ago.

Sincerely,

Harold Weisberg

Daniel Schorr on Rights for Reporters

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By John F. MacKenzie

ATLANTA—Suspended CBS newsman Daniel Schorr appealed yesterday for "an unofficial First Amendment" that would protect reporters' free press rights when reporters clash with their empolyers.

Schorr, in limbo with CBS News since leaking a secret House intelligence committee report to the Village Voice six months ago, called on "large press enterprises" not to discipline reporters if they go "outside normal channels" ot have information published in another medium.

He spoke at a luncheon meeting of the Individual Rights and Responsibilities section of the American Bar Association, which is holding its annual convention here. On advice of his own legal counsel—and with many legal questions with his empolyer and the House committee still unresolved—Schorr declined to say whether he consulted his CBS superiors before arranging for the Voice to publish long excerpts of the text of the committee's report on abuses by United States intelligence agencies.

"It has been astonishing," Schorr said, "how often I meet with important persons in the news establishment, completely ready to argue such matters as the professional necessity of acting in the face of a House resolution, the growing difficulty of reporting in the face of a secrecy backlash, the issues of disclosure versus national security and privacy—and find myself having instead to argue about the propriety of acting on my own and who owns the information I collect.

"When did freedom of the press evolve into a franchise to be exercised through large press enterprises?" Schorr asked. "What has happened to the basic concept of freedom of expression as a freedom for every American?"

Schorr admitted that his questions were "more complicated than they sound," since even reporters can waive their rights of free expression if they sign a contract giving a publisher or broadcaster control over the way they use their talents.

"If government should not control news," Schorr suggested, "then perhaps no one should. The First Amendment says only that Congress shall make no law abridging the freedom of the press and speech. Perhaps it is time for some unofficial First Amendment that says no economic enterprise shall make rules abridging individual freedoms of speech and press.

"I hold that the basic purpose of the First Amendment is to promote the broadest dissemination of legitimate information through all channels—and not only established, authorized channels. I would suggest that the First Amendment is not only the news establishment's First Amendment, but it is every journalist's and every American's individual right and, what's more, individual responsibility."

In the beginning, Schorr noted, the First Amendment was aimed at protecting pamphleteers like Thomas Paine and handpress publishers in the tradition of John Peter Zenger. More recently it required "the great news empires—The Washington Post-Newsweek Company, the New York and Los Angeles Times companies, Time Inc., yes, and CBS—to stand up to the Nixon administration and vindicate the First Amendment.

Schorr did make one disclosure: Contrary to the recent testimony of Rep. James Stanton (D-Ohio), Schorr said he never told Stanton that the CIA was the source of his contraband copy of the House committee report.

He said that only CBS News inquired whether Stanton had been correct. If other news organizations had called, Schorr said, they would have been told that he recalled no such conversation with the congressman.

But any more discussion about sources might give the House Ethics Committee, which has been investigating the leak, "an erroneous expectation about the usefulness of summoning journalists" as witnesses, Schorr said. He repeated that he will not divulge his source and hopes the ethics committee will remain "on its side of the constitutional Great Divide" by not calling him to the witness stand.

The audience, composed of the ABA's minority of lawyers whose concern is chiefly civil rights and civil liberties, applauded Schorr warmly, apparently as much for his televised Watergate coverage as for his untelevised fight with CBS and Congress. "It's nice to face some microphones again," Schorr said.

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Rep. Stratton on the Daniel Schorr Issue

Even the devil, as Shakespeare has observed, can quote scripture for his own purposes. As the person who originated the House investigation into Daniel Schorr's action in passing the Pike Committee report to the Village Voice, I find it appropriate that you should quote me in your July 21 editorial on that investigation. What disturbs me is that all you quote are remarks that seem to imply my disparagement of the investigation rather than my successful effort to get it under way.

In any event, because the Flynt Committee has not yet fingered the person who gave that report to Mr. Schorr, you say it should "close down its investigation" since the only thing left would be to subpoena Mr. Schorr and that would result in an unwelcome First Amendment confrontation.

There may well be strong practical reasons for not pushing Mr. Schorr all the way to contempt, although the courts have held that the First Amendment does not permit a reporter to refuse to answer all questions about his sources. But there are other questions that can and should be directed to Mr. Schorr without raising any question of constitutionality—for example, to verify on the official record what has already appeared in the press attributed to him; that he did in fact pass on the report to the Village Voice and under what circumstances. Press reports are hardly an adequate substitute in congressional hearings for direct testimony. To conclude this investigation without ever calling Schorr would be like playing Hamlet without the Dane.

But most important of all, and what The Post entirely overlooks, is that Mr. Schorr and his future are not the be-all and the end-all of the inquiry which my resolution directed. As I said at the time the matter was debated in the House, "How can we exercise any kind of intelligence oversight unless we have the capability of protecting our vital secrets themselves?" The mandate of the Flynt Committee goes far beyond Daniel Schorr. No limit is set to the recommendations they can make as a result of what they have learned.

Obviously, one of our most urgent needs in Congress today is a set of rules and regulations to govern the handling of classified matter. The Flynt inquiry has already discovered that current congressional security procedures leave much to be desired. We can never hope to exercise intelligence oversight as long as any member simply by virtue of his election not only has access to the nation's highest secrets but is also sole judge of which of them should be made public.

In my judgment the committee could perform no greater service than to devise and recommend to the House procedures that will prevent this kind of thing from ever happening again. If they do that, the $150,000 already spent on their undertaking will be the greatest bargain to the American taxpayer since William Seward bought Alaska for $7 million.

SAMUEL S. STRATTON,
Member of Congress (D-N.Y.)

Washington