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The House and the First Amendment

IT TAKES NOTHING AWAY from the performance of Daniel Schorr before the House Ethics Committee yesterday to observe that he had a lamentably easy act to follow. Some news executives of the Village Voice, who testified before Mr. Schorr was called to the stand, and some members of the committee as well, had twisted the First Amendment so far out of shape that it was barely recognizable—even to those of us who believe in it deeply and defend it zealously. The distinctions drawn by Mr. Schorr and his attorney, Joseph A. Califano Jr., between the rights of journalists to protect their confidential sources and to publish information and the right of government to try to withhold certain information from the public were a breath of fresh air.

Under our view of the First Amendment, contrary to what our colleagues from the Voice said yesterday, there is no obligation on the part of the press to publish every bit of information or every government secret it stumbles on. The First Amendment imposes no obligations on the press. It creates only protections—although certain responsibilities can be inferred from those protections. Even so, the First Amendment does not confer on anybody an obligation to publish the report of the House Select Committee on Intelligence, which Mr. Schorr obtained last winter. Whether the decision to publish it was a responsible one is a different question, on which individuals can reach different judgments. But it is reckless to rely, as one witness did, on the fact that one third of the members of the House had voted to make the report public, as support for the decision to publish.

We have no doubt that the government, and the

House for that matter, have a right to keep some information secret. And we have no doubt that Congress was entitled to make it a crime for government employees to release legitimately classified national security information without proper authority. Similarly, we have no doubt that certain kinds of government secrets ought not to be made public if they fall into the hands of the news media. Indeed, the First Amendment provides little protection for the press against criminal charges of violating the espionage laws. The constantly recurring questions concern which classified documents really merit secrecy—and when. Given the way classified information moves around this town—and out of government control—even documents that may have been properly classified can easily lose their standing as authentic secrets; the highest government officials traffic in secret materials with the press when it suits their political purposes. Like Mr. Schorr, we have in addition seen all too many instances in recent years when the stamp of national security has been used to withhold information that was embarrassing or even incriminating but had nothing to do with national security. And we, like Mr. Schorr, also think that while it is the government's right to create secrets, it is also the government's responsibility to keep them; once the government has lost control of its secrets, the decision about whether they should be published rests with the news media; it needs to be remembered that a wrong decision can result in a criminal conviction. That is the tension—of which Mr. Schorr spoke so eloquently—that is created by the First Amendment between the power of the government and the protections afforded a free press by the First Amendment.