The New York Times

Published every day by The New York Times Company

ADOLPH S. OCHS, *Publisher 1896-1935*
ARTHUR HAYS SULZBERGER, *Publisher 1935-1961*
ORVIL E. DRYFOOS, *Publisher 1961-1963*

9/26/71

The Public Sentinel

In recent years, press and Government have appeared to be increasingly on a collision course. The Justice Department's attempt to restrain publication of the Pentagon papers and the House Commerce Committee's effort to examine the unused film prepared for a Columbia Broadcasting System documentary both ended in failure, but both were significant efforts by Government to constrict the traditional freedom of the press. Grand juries investigating criminal cases have increasingly resorted to the practice of subpoenaing reporters and their notes in an effort to use the press as an arm of the law.

In the light of the wide uneasiness stirred by these developments, the Senate Subcommittee on Constitutional Rights chaired by Senator Ervin of North Carolina has decided to hold public hearings this week on the present status of the press's liberties. These hearings are certain to bring forward at least three distinct viewpoints with regard to the rights of the press under the First Amendment.

One view is that when the authors of the Bill of Rights wrote that Congress shall make no law abridging freedom of the press, they meant exactly that—no law. In numerous opinions, most recently in his concurrence in the Pentagon papers case, the late Justice Hugo Black vigorously and eloquently argued this absolutist construction. It is a position which commands the support of the American Society of Newspaper Editors and of many civil libertarians.

A conflicting view is that the press's right to publish or broadcast news and opinion is not overriding and that there are competing claims which should take precedence. Thus, the Solicitor General argued in the case of the Pentagon papers that the Government had a right to prevent the publication of documents which it deemed prejudicial to the public interest. Similarly, local prosecutors have contended that newsmen have no right to protect the confidentiality of their news sources if they have knowledge of a criminal act.

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In a "friend of the court" brief filed the other day on behalf of The Times and several other newsgathering organizations in a case pending before the Supreme Court involving Times reporter Earl Caldwell, Prof. Alexander M. Bickel of the Yale Law School sets forth an intermediate position which this newspaper believes is both reasonable and realistic. In essence, he argues that, although the reach of the First Amendment is broad and strong, it is not all-encompassing. A free society's vital interest in an enterprising, uninhibited press has to be reconciled with society's other interests such as the effective administration of justice.

The crucial question is what are the terms on which this necessary accommodation should take place. Such an accommodation is not impossible. Indeed, much of the time of appellate courts is taken up with the sensitive, unremitting work of defining and interpreting means of cushioning valid but conflicting interests. Where a grand jury's right to know contradicts a reporter's right to protect his sources, the problems in need of resolution are comparable to those involved in reconciling freedom of the press and the right of every individual to a fair trial—an area in which considerable progress toward rational guidelines has been made.

The press obviously cannot serve society effectively if it prints only what Government officials say or what private persons want known about their activities. Nor is it likely to serve society effectively if it recognizes no responsibilities in respect to the individual's right to fair trial or if it claims for its agents an absolute immunity from their obligations as citizens.

To do their job, reporters develop sources among radicals or in the underworld or among persons who, though entirely conventional, fear loss of jobs or other harassment if publicly identified. Such relationships would be destroyed—to the detriment of the public—if at the whim of prosecutors, reporters could be forced to become police informants. Only proof of the most overriding and pressing public necessity could justify subpoena of information gathered by newsmen in the performance of their duties.

The First Amendment was not written to protect anyone's career or profits. Those are private concerns. The Constitution protects the press because the press serves a high and essential public interest. When it does its work with courage and enterprise and integrity, the press acts as a sentinel guarding every citizen against tyranny, corruption and injustice. Government itself is also one of society's sentinels but with different and far stronger powers. Citizens are best served when press and Government operate independently in their different ways to defend the public interest.

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