

Back in June, the Supreme Court decision on the Pentagon papers was hailed by the press as a victory, but in September newspaper officials are less confident about who won—government or press.

Harding Bancroft, executive vice president of The New York Times, one of the newspapers temporarily restrained by the Justice Department from printing the classified war documents, offered this gloomy analysis to a Senate subcommittee yesterday:

"Although the Supreme Court ultimately denied the government's request for a prior restraint, the hard fact remains that for the first time in the history of our nation, the government sought and obtained a direct suppression of the news. Even though the restraint lasted only for 15 days, an extremely unfortunate precedent has been established. . . .

"The possibility of future attempts by the government to suppress the news is not good for the country and is a prospect with which the nation's press cannot easily live."

"Timidity" Possible

Bancroft fears that the threat of government suppression could produce "journalistic timidity or unwarranted self-censorship."

Another spokesman for journalism, Norman E. Isaacs, retired executive editor of the Courier-Journal and Louisville Times, now a Columbia University professor, fears that the damage has already been done. One analysis of the nine separate opinions written by the Supreme Court concluded that the doctrine against prior censorship of the press was "seriously undermined," he said.

"If important governmental information were to be leaked tonight to a newspaper or broadcast station," Isaacs speculated, "there would be what we can only term agonizing appraisal given as to the risks involved. I frankly prefer the days when we felt free to publish and accept the consequences."

Sen. Sam J. Ervin Jr. (D-N.C.), chairman of the Judiciary Subcommittee on Constitutional Rights, agrees with

the editors. He convened two days of hearings on "freedom of the press" in order "to re-examine and re-emphasize First Amendment principles."

The senator cited a variety of other threats to a free press—the "angry attacks" by high government officials, grand jury subpoenas to force reporters to reveal confidential sources, undercover policemen disguised as newsmen, tighter governmental controls over the content of radio and TV broadcasting.

Ervin asserted that the nine separate opinions on the Pentagon papers make it "uncertain just how free from government restraint the press is." In the 6-3 decision, several justices said the government had not established a case for injunction on the war documents—but conceivably might be entitled to prior restraint on publishing other sensitive materials.

Ervin is not proposing any legislative remedies. He hopes, he said, that airing the problems will help "challenge this uncertainty."

Shielding Newsmen

But he invited testimony on one legislative proposal, sponsored by Sen. James B. Pearson (R-Kan.) and Rep. Charles W. Whalen Jr. (R-Ohio), which would shield newsmen from courts and prosecutors who want them to reveal confidential sources and information.

Whalen testified that "when a reporter's notes are subpoenaed, in a very real sense he is transformed into an agent of the government—and he certainly is viewed as such by many potential sources of information. Some commentators fear that the press has lost much of its independence already—the pervasiveness of the government has smothered many reporters' critical perception. If newsmen are viewed as walking wiretap devices, the press is no longer an independent entity and we all suffer."

Sen. Ervin agreed, however, with Bancroft of The New York Times that it would be preferable if the Supreme Court sets guidelines protecting newsmen in this area rather than have Congress legislate on it.

Curb on Freedom Seen by Newsmen In 'Papers' Ruling

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By William Greider
Washington Post Staff Writer