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# Pressure on the Press

By Sam J. Ervin Jr.

WASHINGTON—It is my belief that the First Amendment was adopted for two basic reasons. One was to insure that Americans would be politically, intellectually and spiritually free. The other was to make certain that our system of government, a system designed to be responsive to the will of an informed public, would function effectively.

The Founding Fathers staked the existence of America as a free society upon their faith that it has nothing to fear from the exercise of First Amendment freedoms, no matter how much they may be abused, as long as truth is free to combat error.

Representatives of the press have been recently asserting that they are not free, that in effect the Nixon Administration has shackled them with threats and restrictions that do not permit them to fulfill the role which the Constitution gives them. There is substance to their assertions.

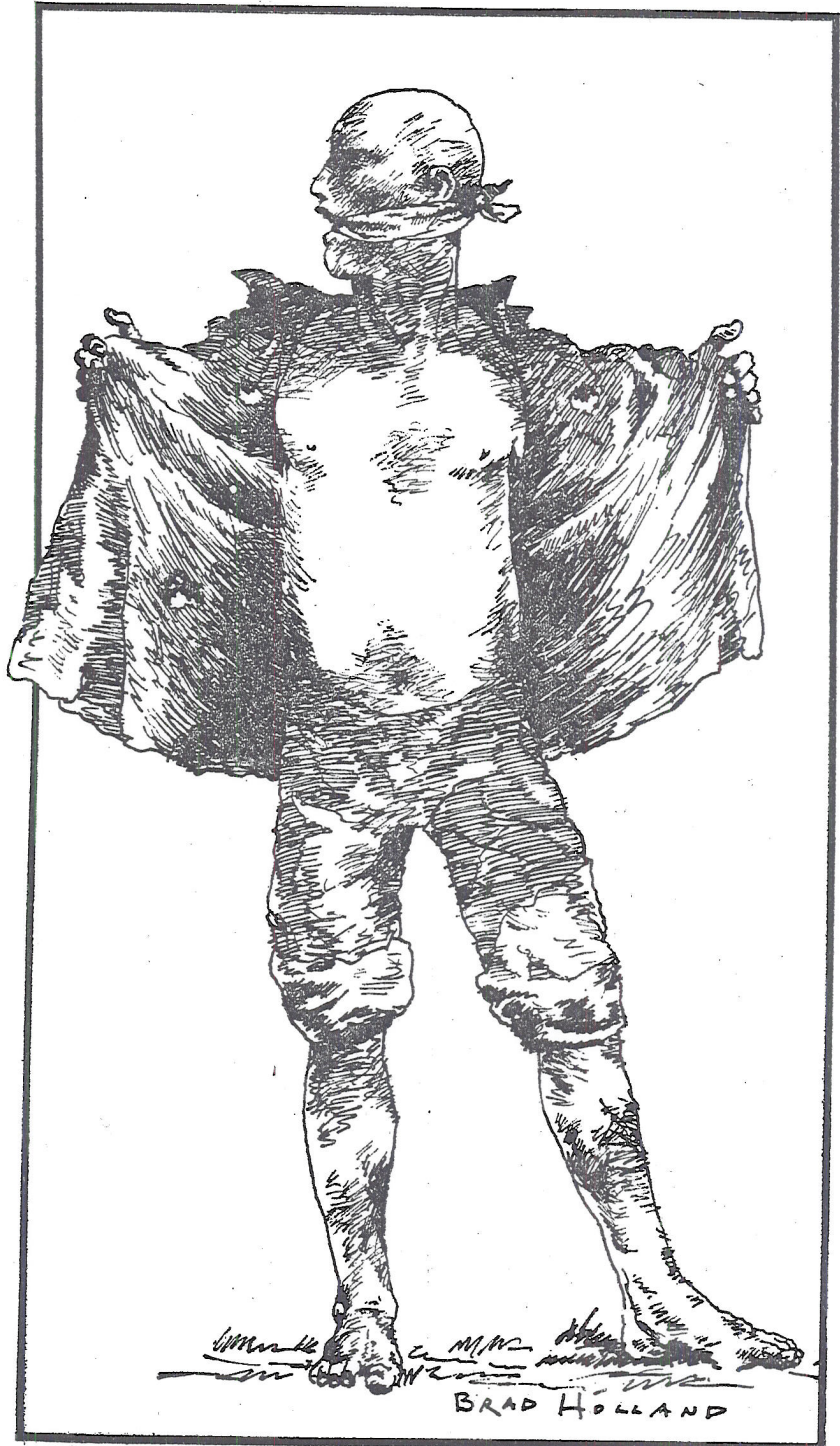
The press has typically played a role critical of government, and government has often responded with intemperate condemnation or simply with charges of irresponsibility. I cannot say that such responses have always been unjustified. But the actions of the present Administration appear to go beyond simple reactions to incidents of irresponsible or biased reporting, to efforts at wholesale intimidation of the press and broadcast media.

I believe that the threat of a subpoena to testify before a governmental tribunal is yet another means of governmental intimidation of the press. A newsman who publishes a story obtained from confidential sources which is critical or accusatory of public officials or programs now faces the threat of subpoena and a possible jail sentence if he refuses to reveal his source. If he decides to back off a controversial story, it is the public which has lost information which could lead to political and social improvement.

The passage of some type of statutory privilege for newsmen is compelling. Without the protection of anonymity, inside sources may simply dry up. The stories will not be written. We all will be the losers. And nobody—culprit or reporter—will go to jail.

I am aware of the criticism that has been leveled at these proposals. A testimonial privilege will act as a shield behind which biased, or otherwise irresponsible reporters will hide. Newsmen will be able to criticize unjustly and not be held accountable for it. I would answer by first having you note that most of the proposals creating a newsmen's privilege now provide that a newsman may not claim the privilege in a suit for defamation, which includes libel and slander. This means that the protection which we now have against irresponsible reporting, namely, a civil suit for defamation, would retain its vitality as a check.

Undoubtedly there are legitimate interests to be served by having newsmen testify as other citizens. Certainly it is desirable to have all the evidence possible before a court when a man's freedom or livelihood is at stake, or when society attempts to identify and punish an offender. The newsmen's privilege, as any testimonial privilege, must necessarily impede this search for truth to a degree. The question is whether, considering the effects on the flow of information to the public, it is worth it; and if so,



can it still be drafted to accommodate the competing interests.

There are now three newsmen's privilege bills and one resolution pending in the Senate, and a multitude of bills introduced in the House. The bills all concern themselves with four basic questions:

First, should the privilege be a qualified or an absolute one. The second question is whether the privilege should apply only to Federal tribunals or whether it should also apply to the states. A third area is the matter of who is a newsman. Who should be entitled to claim the privilege? The First Amendment applies to all citizens, and protects their right to publish information for the public. But the testimonial privilege can of course not be available to all. Finally, there is the question of the procedural mechanism through which the privilege is claimed.

A free press is vital to the democratic process. A press which is not free to gather news without threat of ultimate incarceration cannot play its role meaningfully. The people as a whole must suffer. If the sources of that information are limited to official spokesmen within government bodies, the people have no means of evaluating the worth of their promises and assurances. The search for truth among competing ideas, which the

First Amendment contemplates, would become a matter of reading official news releases. It is the responsibility of the press to insure that competing views are presented, and it is our responsibility as citizens to object to actions of the government which prevent the press from fulfilling this constitutional role.

Senator Sam J. Ervin Jr., Democrat from North Carolina, is chairman of the Subcommittee on Constitutional Rights. This is adapted from a talk to the North Carolina Press Association.