

The CBS Summer of '71

a review of what happened after 'The Selling of the Pentagon'

By CHARLES LONG

A CONSTITUTIONAL battle every bit as dramatic as the showdown between the newspapers and the government over the Pentagon Papers took place on Capitol Hill this summer.

This was the case of "The Selling of the Pentagon," the controversial television documentary which ultimately became the unprecedented subject of a contempt of Congress citation against the CBS network and its president, Dr. Frank Stanton.

Unlike the plight of the Pentagon Papers, the question of press freedom will not come before the Supreme Court as experts had anticipated in this instance. The House of Representatives put an end to any such speculation by somewhat surprisingly shelving the contempt citation, therefore postponing a high court opinion as to whether radio and television news should conclusively enjoy the same protections under the Constitution as newspapers and other printed media.

The course of events leading up to the House action, as a result, still leaves much of the public puzzled as to whether there truly is an impending danger of government censorship of the broadcast media, as forecast by Dr. Stanton; or if there may be an entirely different cause for alarm such as in the dire warnings of U.S. Rep. Harley O. Staggers (D-W.Va.): "The (broadcasters) can ruin any man, any President, any institution and account to nobody."

"The Selling of the Pentagon" was well on its way to becoming a cause celebre back in May with the filing of a \$12-million libel suit against CBS and the Washington Post Company by Col. John A. MacNeil of the U.S. Marine Corps. The Washington Post was included in the complaint because it owns WTOP-TV, the D.C. outlet for the CBS documentary.

Colonel MacNeil charges, before the U.S. District Court for the District of Columbia, that the defendants "willfully and wantonly" rearranged a film of a lecture he delivered in Peoria, Ill., with the result that he was portrayed to the television audience as saying what he did not say, making him "the object of public ridicule,

odium, shame and contempt." The colonel says the program — that was sharply critical of military public relations practices — made him appear as a military officer deliberately disobeying service regulations, that he was on a junket "criss-crossing" the country at a rate where he had to be "found" by the TV camera crew, and that he was propagandizing for the Caterpillar Tractor Company. His suit contends the CBS documentary caused him mental anguish and humiliation, as well as damaging his military career and outlook for promotion.

Another major complaint came from Assistant Defense Secretary Daniel Z. Henkin, who criticized the network for presenting his statements on the program out of sequence and rearranging questions and answers. The Henkin interview, which he said took more than 40 minutes, was edited down to 2:04 minutes.

Meanwhile, "The Selling of the Pentagon" was receiving a number of honors and awards, including the George Foster Peabody Award and an Emmy from the National Academy of Television Arts and Sciences.

This is only the beginning of the controversy.

On June 24, Dr. Stanton testified for nearly four hours before the House Investigations Subcommittee in answer to a subpoena, which also demanded the network produce all of its "out-takes," or unused pieces of film and tape.

Such compliance, Stanton said in his testimony, would have a "chilling effect" that strikes at the essence of the First Amendment. "If newsmen are told that their notes, films and tapes will be subject to compulsory process so that the Government can determine whether the news has been satisfactorily edited, the scope, nature and vigor of their news gathering and reporting activities will inevitably be curtailed."

Representative Staggers, chairman of the House panel, had opened the hearing by stating there was clear testimony under oath that CBS used electronic manipulation to alter the words of at least two speakers. But Dr. Stanton refused to produce the "out-takes," nor



DR. FRANK STANTON —

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would he answer questions "relating to the preparation of 'The Selling of the Pentagon' or any other particular CBS news or documentary broadcast."

Stanton said he "must respectfully decline" in both cases on the advice of network attorneys and "our own conviction that a fundamental principle of a free society is at stake." He added, however, that he would do his best to answer questions of the subcommittee "which do not seek to probe so deeply into the news process as to reach specific journalistic practices or the editing of particular broadcasts."

The CBS president was asked if he realized he could be held in contempt of Congress for refusing to produce the subpoenaed production material.

"Yes, I do," Stanton responded. "I respectfully decline."

"In my opinion, you are now in contempt," Stagers said.

It was Stagers' contention that "fraud and deception in the presentation of purportedly bona fide news events is no more protected by the First Amendment than is the presentation of fraud and deception in the context of commercial advertising or quiz programs." He said he wanted the CBS out-takes because of the difficulty in detecting the staging or distortion of news through the manipulation of film and sound tracks.

"Our purpose," he declared, "is not to look into whether CBS has been 'biased' against the Department of Defense," but whether the network was "giving view-

ers an erroneous impression that what they are seeing has really happened, or that it happened in the way and under the circumstances in which it is shown." Such an inquiry, Stagers concluded, is not offensive to the First Amendment.

With Dr. Stanton's refusal to comply to the order to turn over out-take material, the subcommittee voted unanimously (5-0) to seek from the full House Commerce Committee a contempt citation. Congressman Stagers is also chairman of this committee.

All parties concerned understood full well the possible consequences: If the committee endorsed the subcommittee's decision, then it would go to the House floor. If the House upheld the committee, the Justice Department would prosecute. If convicted, Dr. Stanton could be sent to prison for a year.

Following the subcommittee's vote, Stanton issued a statement from New York:

"We regret that the subcommittee has seen fit to take this step. It seems particularly ironic in view of the fact that the subcommittee for months has had access to the complete transcript, printed in the *Congressional Record*, of the specific interview (with Daniel Henkin) which was the focus of most of the critical comments. Thus the compulsory demand for the out-takes, which raises grave constitutional issues, was basically unnecessary.

"All this boils down to one central and vital question: Is this country going to continue to have a free press or is indirect censorship to be imposed upon it? The issue is as simple as that — and as crucial.

"We will take every step necessary and open to us to resist unwarranted action and to keep broadcast journalism free of government surveillance. Too much is at stake for us to do less."

Broadcasters must answer to the government in the sense that they are licensed by the Federal Communications Commission, but Stanton emphasized that this doesn't deprive the broadcast press of First Amendment protection. The courts have held, he said, that protection doesn't depend on whether the government believes the broadcaster is right or wrong in his news judgments.

But apparently FCC Chairman Dean Burch didn't see it that way. On June 18, Jerry Landauer, a staff reporter for *The Wall Street Journal*, revealed that Burch had expressed his opinions of the CBS case in a letter prepared for Stagers but never sent because a majority of the seven-member FCC commission disapproved of it. Burch spoke of "sheer hubris — overweening pride . . . that leads to the knee-jerk response of closing ranks against the critics" in his letter quoted by Landauer.

"None of this tough language survived the FCC's internal editing," Landauer said. "Out, too, came a clear Burch suggestion of government intervention if erring broadcasters don't shape up . . ."

The FCC, at the request of the Stagers subcommittee, studied the issues and concluded that the CBS editing decisions were a matter of journalistic judgment into which it should not inquire. The FCC also determined that the network had fulfilled its responsibilities

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under the fairness doctrine by providing significant opportunities for contrasting viewpoints to be heard.

The House Commerce Committee met early in July and voted by a 25 to 13 margin to follow Staggers' lead and cite CBS and Stanton for contempt of Congress. The 12-vote difference was large enough to suggest that the full House would endorse the panel's action. As a matter of course, the House almost automatically supports its committee chairmen in such matters.

Sigma Delta Chi and other news organizations urged Congress to kill the contempt citation, and numerous newspaper editorials and some public officials also came to the defense of the network. SDX's national Freedom of Information committee sent an open letter to all members of the House on July 8, pointing out the likely end result if the citation should be approved:

"Such action, endorsing efforts of governmental officials to snoop into nonbroadcast material, would serve to intimidate and harass all newsmen in the future.

"Sigma Delta Chi takes this occasion to reaffirm its stand against any interference with the crucial role of the news media in freely presenting information to the American people. Fishing expeditions such as the one undertaken by the Commerce Committee must be stopped if constitutional liberties are to be preserved."

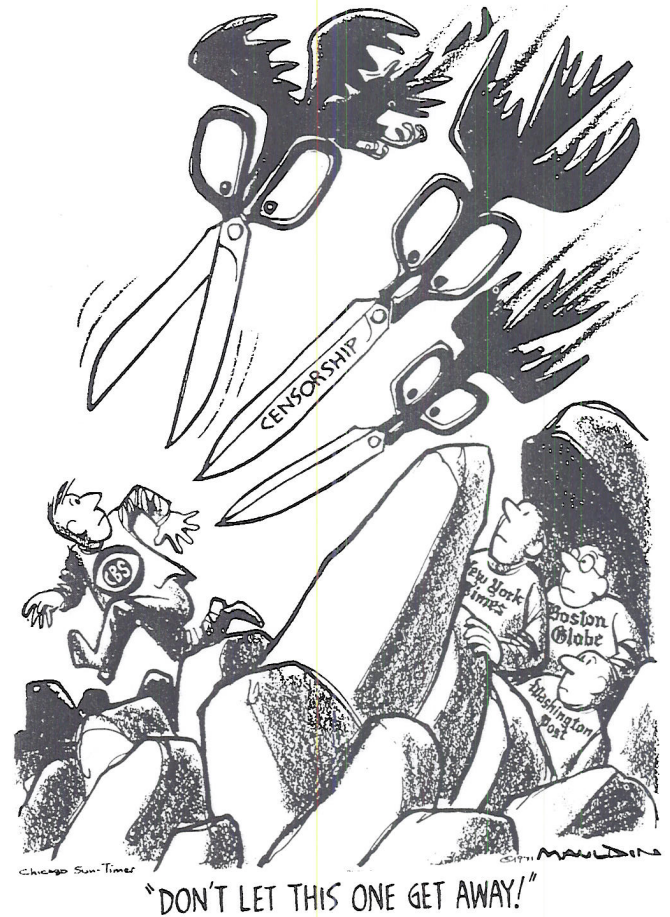
SDX headquarters in Chicago also sent the letter to the society's 103 professional chapters urging them to take action by contacting their respective congressmen. A number of chapters responded by forwarding statements or resolutions. The Deadline Club in New York earlier had written to Dr. Stanton offering that chapter's support to CBS.

Rep. Lionel Van Deerlin (D-Calif.), a former TV newsmen, called the committee vote an "absolutely outrageous intrusion of freedom of the press. I don't like some of the things CBS did, but that is not for Congress to decide." The gist of opposition within Congress to the citation was stated clearly by Rep. Dan Rostenkowski (D-Ill.): "The censure of CBS at this time would be an unnecessary political act and foolish as well. Unnecessary since it would not provide the committee with any specific information it does not already have and foolish in that if it has no constitutional basis it will be thrown out of court."

However, most Washington observers were predicting the citation would be approved by a comfortable margin, provided efforts by Staggers and other House leaders to arrange a compromise proved unsuccessful. Staggers reiterated his offer that CBS could avoid a House vote and possible Justice Department prosecution "simply by them coming down here and doing what they promised to do by letter. If they just do that, even this would end the case completely."

Staggers was referring to a letter addressed to him on April 8 from Stanton saying that hopefully the subcommittee would "reconsider the matter and modify the subpoena so that it calls for only such materials as were actually broadcast and other information directly related thereto — which we do not object to furnishing and which we will furnish on the date specified."

Staggers continued to reject Stanton's defense that



"DON'T LET THIS ONE GET AWAY!"

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the requested film was the equivalent of a reporter's notes and thus protected from scrutiny by the freedom-of-the-press guarantees of the First Amendment. "The issue is whether the American people have a right to know whether they are being deceived by the electronic media," Staggers said.

Now was a good time to clear the air, he contended, and show the American people that their elected officials were trying to get at the truth.

Congress convened on July 13 and overruled its powerful House Commerce Committee. The vote was 226 to 181 to send the contempt citation back to the committee. The issue was dead, and Staggers looked like the defeated man he was when he answered questions from television newsmen afterward. "This is a sad day for America," he said. He glumly blamed heavy lobbying and "the awesome power of the news media . . ."

CBS did not come out of the victory without its lumps. Congressmen voting in favor of the network's stand took the opportunity offered by the House floor to say a few words against television news. Rep. Jack Edward (R-Ala.) spoke for many of his colleagues when he assailed CBS: "There are times I get so exasperated with them that I'd like to ban all television." But he quickly added: "I wouldn't change all of this, as bad as it may be, for the evils of a controlled press."

It was the 83-year-old dean of the House chamber, Rep. Emanuel Celler (D-N.Y.), who spoke for all to listen: "The First Amendment towers over these proceedings like a colossus. No tenderness of one member for another should cause us to topple over this monument to our liberties."

The die was cast, and the summer — for CBS, at least — was becoming cooler for the first time. ■