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A reporters' committee that works

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■ Reporters, as anyone knows who has ever tried to organize them for a cause, are notorious nonjoiners, and this is probably more true in Washington than elsewhere. The National Press Club, despite repeated efforts to resurrect it, has become little more than a watering hole for government public relations men and private industry lobbyists. The local Sigma Delta Chi chapter, mixing newsmen and journalism academics, also largely fails to attract the city's reportorial mainstream, and the restricted Gridiron Club floats majestically overhead, establishing nothing but the longevity of its members and the crustiness of its traditions. Small "background groups" flourish, but not so much for the greater good of American journalism as for newsgathering and source-building for the participants.

It is particularly notable, therefore, that in little more than three years a small committee of reporters, mostly but not exclusively based in Washington, has become a serious and constructive force in the growing fight against executive, judicial, and legislative encroachment on the press' First Amendment rights. Called the Reporters Committee for Freedom of the Press, the group was formed in March, 1970, out of concern over the subpoena of Earl Caldwell of the New York *Times* to disclose Black Panther sources. Since then, with only a modest staff and treasury, the Committee has become a national clearinghouse for information and legal help for reporters similarly threatened around the country.

Like the movement by reporters to establish local journalism reviews, the Committee had its genesis in Chicago, in part as an aftermath of the 1968 Democratic convention riots. Two Chicago-based correspondents—Murray Fromson of CBS News and J. Anthony Lukas of the New York *Times* (now contributing editor of the New York journalism review [*More*])—became friends of Caldwell while covering the riots. One Sunday in

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late 1969, while having breakfast at Fromson's home, the two began discussing a federal grand jury's attempt to require Caldwell to disclose confidential background information and its sources.

"We were deeply upset at the implications," Lukas recalls, "and Murray and I decided to try to form a committee." Lukas, who at the time was a member with Caldwell of what the *Times* called its "riot squad," phoned Caldwell in San Francisco and discussed the prospect. Because other groups—Sigma Delta Chi, newspaper editors, and a reporters' group on the West Coast—all were involving themselves in the Caldwell case, a few months were allowed to pass in inactivity. Finally, Lukas decided that rather than responding narrowly to just the Caldwell matter, any new group should address itself to the longer-range problem of challenges from whatever quarter to protection of sources and information.

Lukas began casting about for foundation money to launch the project. He called McGeorge Bundy, president of the Ford Foundation. Bundy said Ford could not make a grant directly, but suggested that Lukas contact the Georgetown Law School, where Prof. Samuel Dash headed an Institute of Criminal Law and Procedure that had received Ford money. Dash, who now is on leave as chief counsel to the Senate committee investigating the Watergate case, agreed to sponsor an organization meeting, providing travel expenses for reporters from distant points.

Given this pledge, Lukas began in mid-February, 1970, to call reporters he knew would be interested—Fromson, fellow-*Times*man John Kifner, and Lem Tucker of ABC News in Chicago; Jack Nelson of the Los Angeles *Times* and Tom Wicker of the New York *Times* in Washington; and others. At the meeting in Georgetown, a panel of speakers—Anthony Amsterdam of the Stanford Law School; A. Kenneth Pye, dean of the Duke University Law School; Benjamin C. Bradlee, executive editor of the Washington *Post;* and Dash—outlined the problem. Then reporters swapped stories of their own First Amendment brushes with government and the courts, and discussed what to do.

Mike Wallace of CBS News in New York related a recent experience with the Justice Department. Federal agents, by going to network lawyers in his absence, had obtained outtakes, notes, and a copy of his expense account concerning an exclusive filmed interview with Black Panther leader Eldridge Cleaver in Algiers on Jan. 3, 1970. Wallace had resisted pressures to talk voluntarily to then Atty. Gen. John N. Mitchell, under threat of subpoena, and eventually the pressure eased. But the threat was real.

"It was decided," Lukas recalls, "that rather than issue any ringing declaration, as a first step we should get a study done, from the legal point of view, on what our rights were and how we could most shrewdly go about protecting them. There was a lot of speaking out without our really knowing what we were talking about. A good number of us were genuinely puzzled. There were a number of legal and ethical complications involved and we wanted someone to answer them for us. We were by no means unanimous in wanting a shield law (against press subpoenas), but we all agreed it would be helpful to have some astute lawyer look into the whole question."

Lukas and twelve others at the meeting agreed to serve on a steering committee, and he was delegated to investigate the possibilities of financing a study. Others on the original committee were: James S. Doyle and Barry Kalb of the Washington *Star* (now *Star-News*); Robert C. Maynard of the Washington *Post;* Fred P. Graham and Kifner of the New York *Times;* Nelson; Don Johnson of *Newsweek;* Marvin Zim of *Time;* Fromson and Bill Stout (who flew in from Los Angeles) of CBS; Lem Tucker; and Charles Quinn of NBC. Some at the meeting indicated they did not have the time to devote to the committee, or that their employers might frown on their participation. But according to Lukas and others, no employer ever protested membership by an employee or exerted pressure on him to quit.

The group agreed that it would act as a national center of information on press subpoenas and provide legal assistance to threatened newsmen who lacked satisfactory resources. Dash volunteered his Institute as the clearinghouse, and it so functioned for the first year. Among other things, the Committee entered a friend-of-the-court brief in the Caldwell case and began to com-

pile a log of subpoenas and other government pressures that now includes more than sixty instances involving newsmen around the country [*CJR*, Mar./Apr.].

After about three hours, the Georgetown meeting adjourned and Lukas, Nelson, and Graham, who was then the *Times*' Supreme Court reporter and now is with CBS News, went to the New York *Times*' Washington bureau, where they coined the Committee's name. Lukas wrote a press release expressing the group's concern over subpoenas served on reporters. Such actions, it said, endanger "the delicate process through which news is often gathered and disseminated to the public," and the practical impact "is to destroy whatever trust newsmen have developed among sources who can provide information not otherwise available to the general public. This has been particularly true in stories dealing with radical political organizations—such as the Black Panther Party or Students for a Democratic Society—whose suspicion of the courts and law enforcement agencies makes their confidence particularly difficult to develop." Graham and Nelson phoned the handout to the wire services and the Committee was in business.

In an effort to broaden the Committee base, other reporters were sought out; still others heard about it and offered to serve. The Committee was expanded to include Elsie Carper of the Washington *Post*, Eileen Shanahan of the New York *Times* Washington bureau, Howard K. Smith of ABC News, New York freelance Nat Hentoff, Kenneth Auchincloss of *Newsweek* in New York, Joel Weisman of *Chicago Today*, John Wood of the Boston *Globe*, and Gene Miller of the Miami *Herald*.

Lukas, after scouting foundations in New York, obtained a commitment from the Field Foundation for the study, provided a qualified director could be found. On Amsterdam's recommendation, Lukas contacted Vincent Blasi, an associate professor at the University of Michigan Law School. In the fall of 1971, Blasi undertook the study (for which the Field Foundation provided $27,000), with the assistance of Prof. Richard T. Baker of Columbia's journalism school.

Blasi's 292-page report, released on Feb. 11, 1972, in retrospect was thought by many members of the Committee to have been a tactical error; the study encompassed all reporting, rather than concentrating on the most sensitive areas, and the degree of concern for the press subpoena problem indicated among the 975 respondents was hardly resounding. Blasi concluded:

> Because most reporters do not, due to deadline pressures or laziness, probe deeply beneath the surface of news events, press subpoenas appear to have an adverse effect on only one limited but expanding segment of the journalism profession. Of the 975 reporters whom we surveyed, only 8 per cent were able to say with some certainty that their professional functioning had been adversely affected by the subpoena threat.

In addition, only 29 per cent said at least one of every four of their stories depended on explicit or implied understandings of confidentiality with sources who had helped on a story at least twice; only 13 per cent said one of four stories depended on such understandings with new sources.

Also disturbing to some reporters were some of Blasi's recommendations. He said he favored an absolute and unqualified privilege under the First Amendment to reporters against grand jury, legislative, and administrative agency subpoenas. But, he added, newsmen should be required to disclose confidential sources in civil trials if the information sought was "substantially different in quality or import from any other evidence admitted at the trial," if the source was not specifically promised confidentiality, and if disclosure of the source would not cause "irreparable harm" to the newsman's professional relationships.

In criminal trials, he proposed, newsmen should be required to disclose confidential information if they saw or took part in criminal behavior involving victims, or if a defendant invoked his Sixth Amendment right to call favorable witnesses and could show why he thought the reporter had relevant information. The Reporters Committee since that time has supported nothing short of an absolute, unqualified privilege.

At the very least, the scholarly Blasi report gave the Reporters Committee a basic framework. By this time, the group already was busily monitoring the subpoena threat. As with most committees, one man—Lukas—had carried the heaviest burden at the outset. After the selection of Blasi,

Lukas gave way to Fred Graham, Washington-based and himself a lawyer, who soon was joined and eventually replaced by another lawyer who covers the Supreme Court, Jack C. Landau of the Newhouse Newspapers' Washington bureau.

Landau, interestingly, had left the newspaper business at the time the Committee was formed and served as director of public information for the Justice Department of Atty. Gen. Mitchell—which had pressed the case against Caldwell. During the Mike Wallace subpoena threat, it was Landau who several times called Wallace and tried to persuade him to come to Washington to talk to Mitchell about the Cleaver interview. According to Wallace, Landau told him there were two factions in the Justice Department, one that wanted to subpoena anyone with information about the Panthers and one that thought such action unnecessary. If someone like Wallace were to come in voluntarily, subpoenas wouldn't be required. "The idea was to try to pick somebody who was known, and try to compromise the situation," Landau says. But Wallace would have none of it, and the department backed off.

Wallace says he was under the impression Landau did not relish his role. "He was always square with me," Wallace says. "I had the sense he was in the middle and he was working for the guy [Mitchell]. And I had the feeling that was why he got out."

(A few months later, according to Wallace, he was in Mitchell's Watergate apartment with CBS producer Don Hewitt, after having interviewed the Attorney General and his wife, Martha, on TV. "We were in Mitchell's study," Wallace recalls, "and he says to me, laughing, 'What did you pay those girls $100 for in Algiers?' He was trying to be funny, but he had seen my expense account. I had hired three girls to help us get through Customs with our cameras and other equipment, to arrange for exit visas, and ship our film. We had to get in and out in forty-eight hours and it wasn't easy." The expense account listed the girls' names and the amounts they received —$100, $100, and $150—and was accompanied by a receipt on stationery of the Black Panther Party signed by all three, for "arrangements, transportation, and technical advice.")

As the subpoena problem grew, Landau was the Justice Department official who drafted guidelines for Mitchell governing the circumstances under which press subpoenas would be sought, negotiating between the American Society of Newspaper Editors and Mitchell. It is Landau's position that these guidelines effectively neutralized the threat to First Amendment rights in federal courts, and he notes that since they went into force only thirteen subpoenas have been issued. While other committee members say the guidelines were fair, they disagree that the federal problem has been solved. Indeed, when Landau testified in February before a Senate subcommittee, he expressed the Reporters Committee's consensus view that the threat exists at all levels of government. Beyond that, he has labored so diligently on behalf of the Committee in the past year, when the source disclosure threat has mushroomed, that some of his colleagues freely suggest he is doing self-assigned penance for his days with Mitchell.

During the past year, the Committee has, among other actions, entered a plaintiff's complaint in the New York State Supreme Court against the prohibition of inmate interviews in the Attica State Prison riots; entered a friend-of-the-court brief in the William Farr jailing in California and pledged $500 to underwrite his Supreme Court appeal; established a Press Legal Defense and Complaint Center which negotiated standardized bail and rapid arraignment procedures for working reporters in the event of street outbreaks at the Democratic and Republican National Conventions last summer; and pledged $500 to Peter Bridge to underwrite his Supreme Court appeal in the New Jersey subpoena case.

The new awareness and concern among reporters—and the effectiveness of the Committee—were demonstrated in December when a federal court attempted to obtain tapes of a confidential interview by Jack Nelson and Ronald J. Ostrow of the Los Angeles *Times* with Watergate informant Alfred Baldwin. Within forty-eight hours, the Committee and friends in Washington produced an emergency petition signed by more than 450 working reporters attesting to the adverse impact

of court subpoenas on the newsgathering climate. One sympathetic newsman not on the Committee, Morton Kondracke of the Chicago *Sun-Times* Washington bureau, canvassed the thirteen-floor National Press Building.

More recently, the Committee has testified on request before subcommittees of the House and Senate on federal shield legislation and has counseled with members of Congress and their staffs on legislative drafts. Aware of the prohibition against lobbying by newsmen accredited to cover Congress, the Committee involves itself only by invitation and clears its activities with the Standing Committee of Correspondents in the Congressional press galleries.

A major activity this spring has been planning of a suit against the American Telephone & Telegraph Co. as a result of AT&T's providing of columnist Jack Anderson's telephone records to the Justice Department in the Bureau of Indian Affairs documents case. The Committee's objective is to find out what other newsmen's phone records have been sought and disclosed, and to require AT&T to give notice before such records are surrendered, so newsmen may take legal action.

When a First Amendment threat surfaces in Washington, it gets immediate publicity. But elsewhere, the few active Committee members have had to monitor the problem mainly through the journalistic gossip vine and wire-service files. When a new case is uncovered, the Committee contacts the reporter involved and offers him legal assistance. "We call him up and sort of do reporting on the case," Landau says. "We offer to pay for a lawyer if he doesn't have one, and if he does, we call the lawyer and offer him help on opinions and briefs in the field. We try to have fairly well known, established lawyers. I feel the court kind of expects us to show up with bomb-throwers, but we try to give the press a responsible vehicle and presence in the court process. As Eileen Shanahan says, 'We can't chain ourselves to the White House fence' and be influential."

Perhaps the most dramatic example of how the Committee functions occurred last June, when reporter Robert Boczkiewicz of the St. Louis *Globe-Democrat* was called before a State Ethics Committee and told he could be held in contempt if he refused to disclose the source of an article he wrote alleging improprieties involving a state supreme court justice. From the St. Louis hearing room, he telephoned Landau. "I need help right now," he said. Landau and Graham conferred briefly, then Landau phoned a St. Louis lawyer they knew, and he immediately sent a young colleague to the court. The lawyer counseled Boczkiewicz and two other subpoenaed reporters, and Boczkiewicz, on his advice, held his ground. The Ethics Committee also had informed the reporters they were forbidden to write any story about their own interrogation by the Committee, but Boczkiewicz served notice that since the hearing was being conducted by a public body he would not feel bound by any such prohibition. The source involved finally released the reporter from his confidentiality pledge and the Committee withdrew its demand that Boczkiewicz testify.

In another case, reporters Larry Dickinson of the Baton Rouge *State Times* and Gibbs Adams of the Baton Rouge *Morning Advocate* were told by a federal court judge they could not report testimony in an open civil rights case. When they reported it anyway, the judge held them in contempt, contending newsmen were obliged to obey even an invalid injunction and then appeal it. He cited as examples of this procedure the four original newspapers in the Pentagon Papers case —the New York *Times,* the Washington *Post,* the Boston *Globe,* and the St. Louis *Post-Dispatch.* Landau learned of the decision and discussed with Committee members whether the relatively obscure ruling should be allowed to stand or should be opposed. The Committee decided to challenge the ruling. A Washington lawyer specializing in First Amendment cases, E. Barrett Prettyman, Jr., wrote the brief on prior restraint, and the four papers in the Pentagon Papers case submitted affidavits stipulating that their actions should in no way be interpreted to mean they believed they had to obey invalid prior restraint. The reporters' own lawyer, who according to Landau had been ready to concede the First Amendment issue, thereupon joined the fight. The judge in effect shelved the case.

These and other Committee functions have

continued on page 43

continued from page 30

made the group's workload too great for a few reporters to manage—or finance—on an ad hoc basis. Thus in the spring of 1972, as the Boston *Globe* approached its 100th anniversary, Landau proposed to *Globe* executive editor Robert Healy that the paper establish a legal defense fund in Boston. The *Globe* declined, but instead offered the committee $3,000 (from which the Farr and Bridge pledges came). "For the first time," Landau recalls, "we stopped doing our own typing."

By year's end, thanks to the unsolicited interest of John I. Taylor, the *Globe*'s president, an office was leased and a fulltime secretary-aide was hired. In mid-December, Taylor sent Landau a letter saying he had heard the Committee had made such good use of the $3,000 that he intended to raise as much money from his publisher friends as the Committee needed to keep going. After a meeting with Committee members, Taylor pledged to try to raise most of $180,000 set as a goal for three years' operations. According to Landau, early commitments indicate the goal will be reached. A legal defense fund run by working reporters and underwritten by publishers, he says, permits the publishers to choose those cases with which they want to be associated and to dissociate themselves from those that,. for various reasons, they may prefer to bypass.

This financial breakthrough, however, does not mean that the Committee has no problems. Most members of the original steering committee have never attended another meeting, leaving the decision-making to a five-member executive committee of indefinite tenure—Nelson, Doyle, Landau, Shanahan, and Maynard. Earlier efforts to broaden the base, and thus strengthen the Committee's impact, have fizzled. At one juncture, after release of the Blasi report, the Committee sent letters to city desks around the country enclosing a notice that said, in part:

> Publishers are not reporters. Neither are editors, television station owners, journalism professors, network executives, or company lawyers. Reporters sometimes have problems and points of view that are distinct from other elements of the news media.

Citing the Caldwell case, the notice observed that "the interests of the media organizations—and the advice given by their lawyers—was not always thought by the reporters involved to be in their best interests." Reporters were urged to sign up for a $2 membership fee. According to Lukas, only about five responded.

The group, the executive committee members acknowledge, is at an organizational crossroads. With responsibility for upwards of $60,000 soon to be in their hands, members realize they must adopt more formal accounting practices; they must consider incorporation and the opening of the Committee to reporters who were not informed of the Georgetown meeting, or were not interested in it. A full-fledged membership organization, requiring membership approval in an area where quick decisions are imperative, has been rejected as unwieldy and bureaucratic. But active members of the Committee know that a broader base can strengthen their voice. Recently they have invited other newsmen to sign as "sponsors" and contribute.

In the months ahead, as government at all levels seeks inroads into traditional First Amendment protection for the working press, a major task for the Committee will be to adjust its structure to cope with the larger responsibilities its impressive early achievements have brought. Those achievements have led some to suggest that the Committee branch into other areas of concern to reporters—perhaps, because of growing dissatisfaction with the Newspaper Guild, that it even undertake to form a professional reporters organization. But Committee members reject the idea. "We've resisted getting bigger," says Nelson, "but with all that's going on concerning the First Amendment, we've had to get bigger. We're in it strictly because we want to protect our legal rights." Landau adds: "We already have more than we can handle." The Committee, he says, on occasion has talked about pressing such cases as that of the exclusion of a Washington *Post* reporter from the reporting pool for White House social events. But the judgment has been that monitoring broad threats to First Amendment freedoms has been, and will be, sufficient to occupy reporters who also hold fulltime jobs.