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First Amendment Guerillas: Formative Years of the Reporters Committee for Freedom of the Press

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MANUSCRIPTS AND OTHER EDITORIAL CORRESPONDENCE SHOULD BE ADDRESSED TO THE EDITOR, ANANTHA S. BABBILI, MIDDLE TENNESSEE STATE UNIVERSITY, SEIGENTHALER CENTER FOR FIRST AMENDMENT STUDIES, PO BOX 51, MURFREESBORO, TN 37132 USA.

EDITOR'S NOTE

With this issue of the *Journalism & Communication Monographs,* I am pleased to announce the appointment of Professor Bonnie Brennan of Temple University as its Associate Editor. I have relied on her reviewing of manuscripts submitted to the *Monographs* in the past and have benefited by her timely advice and familiarity of scholarship of the field. I am grateful that she has consented to accept this responsibility.

I am also deeply indebted to David Eason, the director of the John Seigenthaler Chair of Excellence in First Amendment Studies at MTSU, for assisting me and the journal as the associate editor the last two years. The journal now stands in extremely good shape in terms of reasonable review time spent on manuscripts, efficient tracking and communication between submissions, authors and the editor. The journal and I thank David for his service. He will remain as active reviewer and advisor to me.

Our acceptance rate of manuscripts remains 8-10 percent, one of the lowest in any field. The publishing of only four manuscripts every year remained a great challenge given the frequency of the journal. With the urging of the AEJMC Publications Committee, I have decided to publish at least one issue from next year as a double feature carrying two manuscripts in a single issue. (This won't be a new feature since the last editor, John Soloski, has published two-in-one issues to clear the backlog of accepted manuscripts). I am pleased to have the budgetary support from the AEJMC Central Office for this endeavor.

Thank you for your continuing interest and patronage of the *J&C Monographs.* Please look forward to our usual variety and diverse scholarly topics being addressed by the journal.

Anantha Babbili

First Amendment Guerillas: Formative Years of the Reporters Committee for Freedom of the Press

Floyd J. McKay

The author is professor of journalism (emeritus) at Western Washington University, and was a member of the steering committee of the Reporters Committee for Freedom of the Press from 1976 to 1986. He wishes to thank RCFP pioneers, in particular Jack C. Landau, for their cooperation, as well as Executive Director Lucy Dalglish and the staff of the RCFP for opening their records. Western Washington University provided a leave for portions of this research.

Abstract

Fueled by bitter disputes over the issuance of subpoenas to reporters and operating in the contentious climate of the Watergate Era, an innovative effort in 1970 to aggressively defend the interests of working journalists gave rise to the Reporters Committee for Freedom of the Press. Governed by working reporters in Washington, the Committee confronted former President Richard Nixon when he attempted to remove documents from the public domain. Shifts in the political climate, deep divisions over a media response to Grenada, and a change in leadership style brought a retreat from "guerilla" tactics in the mid-1980s. The Committee remains a reliable defender of journalists' rights and a bridge between the working press and a First Amendment Bar created during this period. Feverish activity, inner tensions, and confrontations with both publishers and public officials mark the early years of the RCFP as a significant time in the history of the American press, and also reflect a time of high drama, high stakes, and zealous actors in American political and media history.

"Basically, the idea was to fight back, and if you couldn't do it nicely, you did it through warfare . . . I'm the guerilla, and if you can't get it one way you can get it another. And that's what we did." Jack C. Landau, executive director 1974-85, Reporters Committee for Freedom of the Press.

ashington lawyer Robert Herzstein read the front-page news that President Gerald R. Ford had pardoned Richard M. Nixon; a secondary story was a deal cut by Nixon and the General Services Administration, giving the disgraced former president control of his personal papers.

"It struck me as pretty insulting," Herzstein recalled three decades later.[1] But it set in motion a chain of events that reclaimed the papers for the public and thrust a little-known group of journalists into the national spotlight as they took on a former President of the United States.

Herzstein's first call was to the Newhouse News Service's Supreme Court reporter, an attorney and the husband of a junior associate in Herzstein's powerful Washington law firm, Arnold and Porter. Jack C. Landau had become the point man for a group of reporters, primarily Washington-based, who had organized in 1970 as the Reporters Committee for Freedom of the Press. When the Nixon pardon was issued on September 8, 1974, the Committee was only four years old and had been engaged primarily in efforts to protect reporters from subpoenas issued by law enforcement officers. Three years later, when the U.S. Supreme Court issued its final ruling on the papers, rejecting Nixon's appeal and upholding the position of the Reporters Committee, the Committee had established itself as a force in what was emerging as a new field in the practice of law, that of First Amendment law.

From the vantage point of more than 30 years, its role in helping establish this new legal specialty is arguably the Reporters Committee's most lasting legacy to the media. But at the time, with reporters in jail for refusing to surrender notes or films, and courts and public officials closing proceedings or records the laws said were public, it was the trench battles that occupied the new organization. In a nation tearing itself apart, reporters and reporting were vital to a democratic process under extreme pressure. Cautious news

executives were uncertain of how to respond, only a handful of lawyers dealt with First Amendment issues on a regular basis, and the media had a genuine enemy in the White House.

The early history of the Reporters Committee is in effect the history of a volatile time in the relations between the news media and government, and the successes and failures of the Committee would prove to be important for succeeding generations of news workers. Early efforts of the Committee reflect the serious distrust between the Nixon Administration and the media, played out at a time of national unrest and an unfolding scandal in the form of Watergate. As the Committee gained support within its industry, its efforts also opened rifts between working reporters and the powerful publishing interests that funded its operations. Ultimately, the disagreements climaxed in 1983 with a split over strategy at the time of the Grenada incursion, which pitted the more cautious publishers against the "in-your-face" tactics of the Committee and its zealous executive director, Jack C. Landau.

In a nation tearing itself apart, reporters and reporting were vital to a democratic process under extreme pressure. Cautious news executives were uncertain of how to respond, only a handful of lawyers dealt with First Amendment issues on a regular basis, and the media had a genuine enemy in the White House.

This study of the formative years of the Reporters Committee is a study of reporter-publisher-government relations and how they changed from the angry days of Richard M. Nixon to the relative harmony of the Ronald Reagan White House. For at least a dozen years, the Reporters Committee reflected the anger and paranoia of working journalists in Washington and across the nation, at times reaching a fever pitch in the face of extensive governmental pressures. This study is a first look inside the Committee itself, the challenges it faced, its decision-making, its financial problems and the donors who rescued it from failure, and finally the internal divisions that sent it in another direction for the remainder of the century. The author had full access to RCFP records and used interviews with founders, staff members, and leading First Amendment attorneys to fill out the historic record.

The early years of the Reporters Committee saw the creation of research and education tools used daily by today's reporters and editors, as they face challenges of open-records laws, closed meetings, and threats of subpoenas. A corps of First Amendment lawyers was also emerging at the time in parallel with the activism of the Reporters Committee. Publications—legal, academic and professional—began serving this specialized area of the law. Perhaps most of all, the Committee gave working reporters a policy voice separate from that of their employers, and put that voice on a public stage.

The Committee was formed out of the concern generated among reporters by the 1970 demand of federal prosecutors that Earl Caldwell, a *New York Times* reporter based in San Francisco, turn over notes of interviews he had with members of the Black Panthers. Caldwell refused, citing the need for

reporters to maintain confidential sources, and his employers appeared to be wavering in his defense. Some 35-40 reporters attended a meeting at Georgetown University to examine the Caldwell case; the meeting was called by *Times* colleague J. Anthony Lukas and quickly turned into a round of testimonials citing other governmental intrusions on the press.[2]

After the meeting, Lukas, Jack Nelson of the *Los Angeles Times*, and Fred Graham of the *New York Times* coined the committee's name, sent out a news release, and established an informal steering committee of eleven colleagues.[3] It was determined from the beginning that the committee would be governed by working reporters; even sympathetic editors and publishers would not decide policy. "Reporters needed their own advocacy group," recalled James Doyle, then with the *Washington Star*, "and we could not be sure publishers would do the job."[4]

The group agreed to serve as a clearing house for information on the subpoena threat. Sam Dash, then head of Georgetown's Institute of Criminal Law and Procedure, offered his office to help sort out inquiries, and it functioned in that manner in the first year, although few inquiries were received because the Committee was not well-known.[5]

Founders saw beyond the Caldwell case to what they felt was a pervasive anti-media bias on the part of the Nixon Administration, including Attorney General John Mitchell. "We had a sense long before the public as a whole that Nixon did not believe in the First Amendment or anything else we believed in," said the late Eileen Shanahan, then with the *New York Times*.[6] Mitchell had "a thuggish cast at Justice," said Graham.[7]

Well before Watergate, evidence was revealing that the "New Nixon" maintained much of his anti-media venom from past confrontations. Writing shortly after he left his post in the Nixon White House, William Safire described what he saw as Nixon's attitude toward the press:

> When Nixon said, 'The press is the enemy,' he was not saying, as some of us had hoped, 'Be careful, its interest in gathering information is not our interest of developing policy' or 'There is an ideological bias as well as an institutional opposition in the attitude of the press' or even 'They're a pain in the neck, and don't waste your time with 'em.' He was saying exactly what he meant: 'The press is the *enemy*' to be hated and beaten, and in that vein of vengeance that ran through his relationship with another power center, in his indulgence of his most combative and abrasive instincts against what he saw to be an unelected and unrepresentative elite, lay Nixon's greatest personal and political weakness and the cause of his downfall.[8] (italics original)

Accounts of the Nixon years, some written while he was still in office and others decades later, agree that Nixon's hatred of the press was real and deep, and it spread to other elements of the administration.[9]

The so-called "Eastern establishment media" had been attacked by Vice President Spiro Agnew in 1969, and federal prosecutors subpoenaed files of

Time, *Newsweek*, and *Life* later that year as part of the Weathermen investigation. The Caldwell case followed in 1970, and the Pentagon Papers case broke in June 1971. It was a time of paranoia on both sides, and civil libertarians were alarmed. In 1971 the American Civil Liberties Union issued a study by Fred Powledge, a former reporter, citing cases of Administration moves against the press, and concluding that there was already "a chilling effect" resulting in decisions not to publish sensitive material. Powledge concluded:

> The decision *not to do the story* appears to be multiplying all over the nation, and before long there will just not be very much interpretation of complex events and social movements. What will be left will be the relatively safe 'hard news' of speeches and statements, that can be easily manipulated.
>
> It is in these ways that the First Amendment is being lost, a little each day. It could and should be argued that the threat would not be nearly so great if the press itself had fought harder for its own freedom. But it must not matter that the press has chosen to approach this delicate matter with kid gloves on; the First Amendment does not belong to the press, but to the people, and they must not allow it to be given away or traded for a little respectability, or a little immunity from a politician's criticism.[10] (italics original)

Other civil liberties groups were becoming active. Fred Graham authored a comprehensive background paper for the Twentieth Century Fund Task Force on the Government and the Press, and also served as one of twelve members of the task force, which published its study in 1972.[11] The task force, about half with news backgrounds and the remainder representing the legal community, provided a remarkably strong defense of press rights, including an absolute ban on prior restraint—this in the wake of the Pentagon Papers case, which was decided while the committee deliberated (this recommendation did gather three dissents from attorneys on the committee).

Turning to the issue that had launched the Reporters Committee, the task force report recommended press protection against subpoenas seeking confidential notes, films, and sources. It backed a strong "reporter shield" law, adding, "If the privilege is to be qualified, the qualifications should be as narrow and as specific as possible. This could be done by specifying that if newsmen possess information about particular violent crimes, such as murder or kidnapping, they may be compelled to testify." The task force would extend the privilege to "all journalists," specifically to the underground, collegiate, and minority press. Addressing grand juries, the task force recommended, "The privilege should shield journalists from having to appear for questioning before grand juries or other secret investigative agencies to the following extent: that when a subpoenaed newsman can make a showing that his newsgathering capacity would be seriously damaged merely by his entry into the secrecy of the interrogation room, then the official who subpoenaed him should be required to demonstrate a compel-

ling need for his testimony before the journalist could be required to appear."[12]

The need for such a policy became apparent when the Caldwell case blew into a national issue for reporters. Caldwell, an African American, won the confidence of some Black Panthers and wrote about the movement. Subpoenaed by a federal grand jury, he refused to testify, citing a promise of confidentiality to his sources. Joined with two similar cases, those of Paul Branzburg and Paul Pappas, the cases were on their way to the Supreme Court. But the *Times* appeared to be ambivalent in defending Caldwell; initially he was advised to testify, *Times* lawyers fearing a loss of some earlier gains for the press.

Reporters saw the Caldwell case as emblematic of a growing trend on the part of prosecutors, from the federal to local level, toward the use of reporters as sources. The use of subpoenas to require reporters to reveal sources was, according to William J. Small, "one powerful tool which the government has used rarely in the past but dramatically and with chilling effect beginning in the late 1960s," particularly in the period following the 1968 Democratic National Convention.[13]

"Over the last decade," media scholar Benno C. Schmidt Jr. wrote in 1973, "journalism and the law have both struggled to accommodate traditional procedures and principles to the development of widespread disenchantment and disobedience in American society." Schmidt noted that the challenge of electronic media has forced print journalists to turn more to investigative reporting and analysis, which rely heavily on confidential sources. Finally, he added, "changes in official attitudes seem to have led to the increased use of subpoenas against members of the press ... A journalist who has accumulated evidence of official corruption or probed the activities of militant radicals must seem a tempting investigative aid to these pressured officials ... Concerned journalists see in the increased use of subpoena a technique to harass the press and to emasculate its efforts at uncovering facts that officialdom would prefer to remain unpublicized."[14]

Reporters saw the Caldwell case as emblematic of a growing trend on the part of prosecutors, from the federal to local level, toward the use of reporters as sources.

The practice of a reporter refusing to reveal a source dates at least to 1857, when a *New York Times* reporter refused to name sources in a story about congressmen taking bribes. J. W. Simonton was held by the sergeant of arms of the House for 19 days before being discharged.[15] Several rulings over the next century had failed to set an absolute rule regarding confidential sources, and it was clear in 1970 that a major showdown in the Supreme Court was in the offing.

In the uneasy climate of the times, prosecutors often lacked good sources among militant racial groups, the anti-war movement, or the drug culture. Reporters who were able to penetrate these organizations were seen as a

source of notes, pictures, and other investigative gems. This was a new challenge for reporters, appearing without warning and in force; it caught them by surprise, and they were uncertain where to turn for counsel.

Commenting in 1987, Caldwell stated the need for such an advocate:

> Seventeen years ago there was nothing there. It's just like the *New York Times* one day put a note on the board and said, 'We all feel bad for Earl Caldwell and the difficult position *he* finds *himself* in. The Reporters Committee made it more than individuals being alone out there ... the Reporters Committee really is something that said, we're going to come together and provide (protection for the individual). If you're not a Mike Wallace, which most aren't, but if you're just another reporter out here trying to do your job, we're going to make sure that you're not going to be alone.[16] (italics original)

The rapid increase in the number of subpoenas was staggering. Subsequent research by the Committee indicates that from 1960 to 1968, about a dozen subpoenas had been served on reporters; from 1970 to 1976, about 500 subpoenas were served.[17] The Reporters Committee was emerging as the principal advocate of the "no compromise" position on reporter confidentiality. Graham was a key spokesman, along with Landau, who had just returned to his Supreme Court desk for Newhouse after a fling with John Mitchell's Justice Department.

Landau had joined Mitchell as press spokesman when the Nixon Administration took office. He hoped to be a force for moderation and described himself as a "liberal Democrat" in a regime that was decidedly neither Democrat nor liberal. Although he found himself out-flanked by the conservative wing led by Richard Kleindeist, Landau did play a major role in drafting what would prove to be a long-lasting departmental policy on subpoenas. Working with future Chief Justice William Rehnquist, Landau drafted guidelines under which the Attorney General would be required to personally approve a media subpoena. Failure to get approval would result in the prosecutor's inability to use the material in court. Three decades later, the rule stands as department operating policy, although it has been amended (and weakened, in Landau's view) by subsequent attorneys general. Landau left Mitchell in April 1970 and shortly afterward joined the Reporters Committee. His parting was described as "amicable," and Landau described Mitchell as one focused on the re-election of Nixon and "not wanting a thoroughly hostile press over this issue (subpoenas)." Mitchell's idea, Landau felt, was that if subpoenas were reduced at the federal level, state and local authorities would follow suit.[18] That did not prove to be the case, although federal subpoenas were dramatically reduced under the Mitchell guidelines.

Freed from the constraints of the Justice Department and with understanding and supportive editors at Newhouse, Landau plunged into the Reporters Committee with a vengeance. Although some assumed he was

"paying penance" for working with the enemy, the mission that became a crusade was typical of Landau's aggressive approach to journalism, a style he brought to the Committee. "The Reporters Committee was founded to be the way reporters are," he recalled, "reporters want to move in and slug it out."[19] Landau saw himself as a "First Amendment guerilla" and quickly became the major player in the organization. A Harvard graduate with a law degree from New York University, Landau had just come off a prestigious Nieman Fellowship at Harvard, and with his attorney wife, Brooksley Born, a rising star at Arnold and Porter, he was well-connected to both the journalistic and legal communities in Washington.

When he joined the Committee in 1970, it was essentially a letterhead. Lukas, who had called the original meeting, had engineered a grant to commission an academic study of the confidentiality issue, and the committee had filed an *amicus curiae* brief on behalf of Earl Caldwell. The academic study, by University of Michigan law professor Vincent Blasi, was of mixed value for the emerging committee. Blasi surveyed reporters across a broad spectrum, rather than concentrating on those areas that would be sensitive to subpoenas. As a result, he found relatively little direct threat from subpoenas, although most reporters did have some concerns about confidentiality and wanted at least a qualified shield. Blasi recommended a broad but qualified shield law, falling short of the proposals by the Reporters Committee.[20] The Blasi report gave the Committee some useful data, but did not build a strong case for an absolute shield.

Word of the Committee's existence was spreading, particularly in the media centers of Washington and New York, but the Committee had no office, no staff, and no budget.

Word of the Committee's existence was spreading, particularly in the media centers of Washington and New York, but the Committee had no office, no staff, and no budget. Because both were lawyers, Landau and Graham initially fielded most of the calls from reporters who had heard about the Committee but had no idea how to use it.

By 1972, with interest growing in their work, Committee founders realized a need for a more formal structure. At a meeting on November 29, 1972, an executive committee was formed, including Doyle, Nelson, Landau, Shanahan, and Robert Maynard of the *Washington Post*. Graham was in the process of moving to CBS News and declined to serve, although he remained active. Doyle soon changed jobs and was replaced by Lyle Denniston of the *Washington Star*. An outside steering committee was set at about twenty-five members, from throughout the nation. The Committee had a post office box but no telephone and was operating on funds from members' pockets and donations amounting to a few thousand dollars. A financial report on November 1 indicated a 1972 income of $4,334.41 and expenses of $1,253.[21]

As Graham moved into his new position at CBS, the committee's calls increasingly came to Landau, now the only person on the executive committee with a background in law. Soon he became the group's point man.

Landau's view of the Committee's role was broader than some of the others. "They didn't have a concept of exactly what it ought to do, other than the (confidentiality) study. I did. I knew that they needed legal advice, I knew that we had to start some type of information publication to let people all around the country know what was going on, so they wouldn't feel alone. I also felt that from time to time we might show up in court or file a law suit."

Committee support for an absolute shield was up against political, legal, and some journalistic support for a "qualified shield" that would require reporters to testify in cases involving violent crime or in libel actions.

Landau said he was using the ACLU as a model for what the Committee might become.[22] He was working nights and weekends, and in 1973 the first issue of the *Press Censorship Newsletter* was published, as an April/May issue. The sixteen-page report—essentially an outline of Landau's growing files—was distributed with the *Columbia Journalism Review* and for most of the working press was the first notice of the Reporters Committee.

The 1972 Supreme Court ruling in the case of Caldwell, Branzburg, and Pappas was a narrow 5-4 decision denying that reporters have a First Amendment right to protect sources but allowing states to adopt such protection. Justice Byron White, writing for the majority in *Branzburg v. Hayes,* found that the public interest in investigating and prosecuting crime should prevail against the press's argument for a free flow of information. But the Court left open the door for future interpretation and acknowledged that Congress and state legislatures were free to legislate a protective shield for reporters.[23]

Shield legislation was not entirely new—Maryland had a shield law since 1898, and by 1973 similar laws were on the books in at least nineteen states. Federal shield laws were first introduced in 1929, but that and subsequent efforts all failed passage. Some fifty shield laws of one stripe or another were introduced in the 92d Congress, primarily in 1973.[24] The Reporters Committee joined a conglomeration of media groups to seek federal shield legislation in 1973 and fought the battle for nearly a decade, all to no avail.

There was a record interest in press issues during this period, and in the early 1970s the reporter shield debate was only the most prominent of several battlefields as press and government—often the Nixon Administration—took adversarial positions. From 1972 to 1975 the *Washington Post* index shows an annual average of more than one hundred stories dealing with "Freedom of Information."

Branzburg v. Hayes launched a full-fledged effort to pass both a federal statute and separate state laws, and the Reporters Committee was the major advocate. Landau and Graham wrote an extensive justification of an absolute shield for *Columbia Journalism Review,* and Landau debated the issue at a special Nieman Fellows convocation in May.[25] Committee support for an

absolute shield was up against political, legal, and some journalistic support for a "qualified shield" that would require reporters to testify in cases involving violent crime or in libel actions.

There appeared to be public support for some sort of a shield. Gallup Polls in 1972 and 1973 showed majority approval of this question: "Suppose a newspaper reporter obtains information for a news article he is writing from a person who asks that his name be withheld. Do you think that the reporter should or should not be required to reveal the name of this man if he is taken to court to testify about the information in his news article?" In 1972, 57 percent supported confidentiality, to 34 percent opposed, with 9 percent undecided. A year later the figures were 62-27-11, a significant increase as the Watergate investigations began to unfold.[26] The pollster, The Gallup Opinion Index, noted that the 1973 findings came in the wake of investigations into the conduct of Vice President Spiro Agnew, the Watergate hearings and the jailing of two newsmen, Peter Bridge of the *Newark Evening News* and William Farr of the *Los Angeles Times*. "One argument frequently given by persons in the survey who think newsmen should not be required to reveal confidential sources is that decisions to jail newspaper reporters could eventually deplete the confidential sources on which newsmen often rely to meet the public's right to know," the pollster reported.[27]

Public support for reporter protection continued to grow throughout the decade. Gallup polled again (for the last time) in 1978 and found 68 percent in favor of a shield, with 23 percent opposed and 9 percent undecided. And despite the fact that it was a Republican administration that had squared off against the press on this issue, the polls in 1972, 1973, and 1978 showed Republicans supported protection of sources by heavy margins. In 1972, 52 percent of Republicans polled supported the reporters' position, with only 38 percent willing to reveal a source; this compared to a 59 percent and 31 percent, respectively, for Democrats. Support for a reporters' shield increased slightly for both parties in 1973, and in 1978, after all the Watergate-related scandals, Republican support for a shield had increased to 70 percent, with only 22 percent opposed. This was even stronger than Democratic support of 66 percent, with 24 percent willing to reveal sources.[28]

Considerable public attention was paid to the shield debate. A 1975 debate at the National Press Club, convened by the American Enterprise Institute, saw strong resistance to shield laws from future Supreme Court Justice Antonin Scalia, then an assistant attorney general. Scalia, rebutting Jack Nelson and Charles Seib, the *Washington Post* ombudsman, grilled the reporters on definition of a reporter and the role of the underground press. He termed a qualified shield law unworkable and an absolute shield something the courts "could not live with." Scalia was the point man for Justice on this issue, testifying in Congress in 1975 against a shield of any sort.[29]

Despite public support and the efforts of several prominent members of Congress, shield legislation foundered and did not survive the 1970s. The role of the Reporters Committee was pivotal. On the one hand the Committee more than any other group had raised the profile of the issue; on the other, its absolutist view left little room for compromise, even within the profes-

sion. Ultimately, Congress was unable to come up with legislation satisfactory to all parties.

In 1975, a compromise bill sponsored by Rep. Robert Kastenmeier (D-Wisconsin) appeared to be advancing, but the unlikely combination of the Justice Department (represented by Antonin Scalia) and the Reporters Committee played a big role in failure of the bill. Fred Graham and Jack Nelson, testifying for the RCFP, resisted qualifications in the bill and urged its defeat. That put the Committee in opposition to the American Newspaper Publishers Association, which testified in support of Kastenmeier's bill.[30]

The Committee was part of an ad hoc group, including ANPA, that met irregularly from 1973 to 1977 to work on shield legislation. In 1977, the committee erupted in an angry exchange of memos and comments between Landau for the RCFP and Tim Hanson, general counsel for ANPA. The Hanson memo branded as "intemperate and unjustified" a Landau objection to Senate 1, the latest attempt to draft a compromise shield law. Additional acrimony ensued between Landau and Jerry Friedheim, the ANPA executive director.[31] The Senate did approve this measure, but with provisions that brought a variety of objections from news groups when the bill went before a House committee. It failed to gain House approval, and efforts for a federal shield law soon evaporated.

Landau was having remarkable success using his connections in Washington legal circles to obtain pro bono attorneys. At the time only a handful of attorneys really practiced what would come to be known as First Amendment law; most media were represented by corporate firms that knew about tax and labor law but had little experience with the First Amendment.

Meanwhile, more states adopted some form of shield legislation. In 1973 alone, shield laws were enacted in Minnesota, Nebraska, North Dakota, Oregon, Pennsylvania, and Rhode Island. By the end of the decade, 26 states had laws granting some measure of protection to reporters under subpoena.[32] Despite the state laws, the use of subpoenas in both federal and state courts continues to be an issue for journalists. In the most recent phase of a five-year study on the incidence of subpoenas served on the news media, the Reporters Committee reported that 1,326 subpoenas were served on 440 news organizations in 1999. Forty-six percent of all news media responding said they received at least one subpoena during 1999.[33]

Although shield legislation was the most prominent debate during this period, it was a time of pressures on the news media from many sides. The Reporters Committee threw itself into the battle, with Landau attempting to raise funds on the one hand and obtain lawyers to carry media cases on the other. With Watergate coming down at the same time, it was a heady time to be a journalist and a heady time for the Committee.

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of attorneys really practiced what would come to be known as First Amendment law; most media were represented by corporate firms that knew about tax and labor law but had little experience with the First Amendment. The host of challenges that came down in the early 1970s gave lawyers a chance to practice this area of the law, and their firms built expertise. One of the agreements among prominent First Amendment lawyers, recalled Cameron DeVore, was to accept requests for pro bono work if it did not conflict with the interests of a client.[34]

E. Barrett Prettyman Jr., a prominent Washington lawyer who became one of the Committee's premier pro bono attorneys, regularly was consulted by Landau and carried several major cases. Landau was "very acquisitive—once he's got you, he's not likely to let you go," Prettyman later observed.[35] Like several other attorneys who got involved in Committee litigation, Prettyman had been a reporter in his youth (*Providence Journal*). Prettyman came into play in 1973, when the *Boston Globe's* Tom Oliphant was sought by the FBI as an alleged participant in the Wounded Knee protest in South Dakota; Oliphant had witnessed an event, and the FBI charged him with crossing state lines to promote a riot. Landau called Prettyman, who phoned the Justice Department's chief criminal lawyer, Will Wilson, at 2:30 in the morning with a demand that Oliphant be arrested in the District of Columbia rather than in Maryland, because of the differences in the courts he would face. Prettyman, Landau, and Wilson met at Wilson's office at about 3:30 a.m. and hammered out the deal. Prettyman was tough, Landau recalls; when the negotiating was over, Prettyman turned to Wilson, saying, "Will, if you go back on your word, I'm going to cut your balls off!" The deal stuck, and Oliphant was eventually released.[36]

Prettyman remembers "paranoia on both sides, a mistrust of the press by government and the press wary of Nixon and the others. It was hurtful on both sides, not very clever on the part of the White House." He provided legal advice in many instances, finding "in those days, reporters in trouble had virtually nowhere to turn."[37]

Pressed for time, Landau simply organized his files to create a new magazine, *Press Censorship Newsletter* (in 1977 it became *News Media & the Law*). Although lacking in format and readability, PCN was an early attempt to define an entirely new classification of law, specializing in the First Amendment's protection of press freedom. Most issues had articles grouped under these headings: freedom of information, libel, confidentiality, privacy, prior restraints, secret courts, broadcasting, and labor. The Committee involved itself in most of these areas, staying out of labor issues and generally out of libel matters, the two areas of law that most media attorneys understood. The committee also declined to intervene in obscenity cases, although pressed by Larry Flynt and others, on the basis that it was not journalism and news people were not involved.

The Committee began attracting favorable notice in the profession; a 1973 article in *Columbia Journalism Review* was titled, "A Reporters' Committee that Works." Author Jules Witcover described the Committee as "a serious and constructive force in the growing fight against executive,

judicial and legislative encroachment on the press' First Amendment rights." Witcover described cases in which quick action by Landau, Graham, and others helped reporters with small newspapers deal with legal challenges.[38]

Plenty of examples of help existed. When Jack Nelson and Ron Ostrow of the *Los Angeles Times* faced a federal court demand for tapes of a confidential interview with Watergate defendant Alfred Baldwin, the Reporters Committee produced a petition signed by some 450 working reporters in defense of the two newsmen. This form of activism—or guerilla tactic—was foreign to most reporters, steeped in the concept of objectivity and avoidance of any form of political statement. Reporter Robert Bocziewicz of the *St. Louis Globe-Democrat* faced a contempt proceeding in a state ethics committee; from the hearing room he telephoned Landau, who conferred with Graham and produced a lawyer for Bocziewicz. The ethics committee retreated. In another 1973 case, the Committee obtained Prettyman as the lawyer for two Louisiana reporters facing a judicial gag order; the judge retreated.[39]

The Committee was operating on a shoestring, both in terms of finances and personal commitment. Reporters were unaccustomed to soliciting funds and were busy on their jobs; Landau took the lead, still working without compensation. Gradually, money was arriving and, despite the Committee's desire to remain independent of publishers, it came from media owners and foundations. Preliminary appeals to the working press for support produced little cash. Landau began a serious effort at raising funds, targeting major publishers. *Boston Globe* publisher John I. Taylor was the first serious contributor, with an initial $3,000 as 1973 opened, and another $5,000 during the year. By year's end, seventeen contributions of $500 or more had been received, totaling $42,500 for the year; Landau had launched what would be an endless search for financial stability. In that first fund-raising year the Committee also received $5,000 from the *New York Times* and $5,000 from a triumvirate of media humorists, Art Buchwald, Russell Baker, and Art Hoppe. But individual gifts were unusual—most of the Committee funding then, and now, came from media owners and related foundations.[40]

The injection of cash allowed Landau to open a pigeon-hole office near the Newhouse bureau and hire a part-time secretary and the Committee's first lawyer, a young man named Phil Lehman, the first of many recent law school graduates to do a stint in the office before heading into practice. This allowed the Committee to step up its interest in advising reporters and pursuing litigation. On that front, 1974 would be a major year, as the Committee stepped boldly into litigation, filing in addition to the Nixon Papers case a major lawsuit against the telephone giant AT&T. The cases brought out two of Washington's most prominent law firms as pro bono attorneys and launched long and expensive appeals that would wind their way to the Supreme Court.

The telephone company had been routinely turning records over to the FBI, without informing subscribers, including reporters, about the transaction. Columnist Jack Anderson and others protested, claiming this was an invasion of their privacy and also revealed confidential sources. AT&T did

agree to notify subscribers of subpoenas, but the FBI and other agencies were allowed to delay notification for ninety days, effectively preventing subscribers from challenging the subpoenas. This was well short of the reporters' demands, and they announced intent to sue.[41] Prominent Washington attorney Lloyd Cutler carried the case for the Reporters Committee, filing the suit in December 1974 after attempts to negotiate a better deal with the telephone company. Fourteen reporters and news organizations joined the Reporters Committee and Anderson in seeking to stop the practice. The AT&T case progressed through the federal courts, the telephone company prevailing in district and appellate courts; finally in 1979 the Supreme Court on a 6-3 decision declined to review the case, sealing the AT&T victory. The rulings held that the telephone company owned the records; therefore reporters had no right to protect them from subpoenas.

Pursued simultaneously in 1974, the Nixon Papers case went well beyond the interests of reporters, and Landau forged a broad coalition to fight the issue. After his conversation with Herzstein, he met with *Washington Post* publisher Katharine Graham, who had been through the Watergate affair with the *Post*; she advised that the press should not carry the case alone. "It would look like we were picking his bones," was Landau's recollection of Graham's comments. Herzstein shared that opinion, and Landau and Fred Graham approached the American Historical Association; Graham had a brother on the AHA board, and the group agreed to join. Next to join was the American Political Science Association, followed by several prominent historians and journalists. Arnold and Porter agreed to take the case, with Herzstein as lead lawyer. "I never envisioned the depth of Arnold and Porter's commitment; I thought it would be some young lawyers," Landau recalled. "They set up a war room, people working 24 hours a day, and they got the temporary restraining order, which made it so Nixon could not take the papers away." The Reporters Committee request for a restraining order was combined with a similar request from the Watergate prosecutor, and granted by Judge Charles Richey on October 21.[42]

Attacks on the media seemed to be coming from every corner in the early 1970s, and the *Press Censorship Newsletter* was becoming more bulky as each edition went to press.

As the lawsuit began its path through the federal courts, Congress passed a law negating Nixon's agreement with the General Services Administration. The Reporters Committee suit prevailed in the U.S. Court of Appeals, but Nixon then sued to overcome the Congressional act, and the Reporters Committee found itself a defendant in his appeal. The Supreme Court ultimately ruled against the former president in 1977. The long process had put the Reporters Committee on the public screen and cost the Arnold and Porter firm more than $500,000 in pro bono work, Herzstein estimated. "We lifted the issue above the noise level," Herzstein recalled. The lawsuit had helped save the records from possible destruction.[43]

Attacks on the media seemed to be coming from every corner in the early 1970s, and the *Press Censorship Newsletter* was becoming more bulky as each edition went to press; Landau was using interns (primarily law students) to keep track of cases throughout the nation. The original sixteen-page newsletter had grown to forty pages by its third issue in December 1973, and it was a major time commitment to produce.

Ironically, considering the widespread readership of the publications on which members of the Committee labored, the Reporters Committee newsletter served in some ways as an alternative publication, in the manner of the 19th-century abolitionist or feminist newspapers. By compiling and publicizing the numerous cases in which working reporters were under fire, *Press Censorship Newsletter* helped establish the legitimacy of their cause, alert outsiders to the issue, and—perhaps most importantly—tell reporters under pressure that they were not alone and there was a place to turn for help. These are traditional functions of the alternative press, and they also marked the early years of *Press Censorship Newsletter.* A reporter or an editor on a small publication in Kansas or Georgia could know there was a source of help beyond the country-club attorney hired by his publisher, and that he or she was not alone.

The August/September 1974 issue of *Press Censorship Newsletter* had grown to ninety-six pages, a compendium of actions threatening press rights. Clearly, a part-time office and executive committee could not handle the growing workload.

Despite the workload, with Richard Nixon and his administration gone, there was consideration of folding the committee in hopes that the major threat had passed. Fred Graham recalls advocating that position, but he was a minority voice. In fact, the executive committee in September asked the steering committee to pay Landau and launch a major fund-raising effort. Lyle Denniston, writing for the committee, noted that "without Jack, the Reporters Committee would not be functioning even approximately as well as it does. He personally handles many of our legal defense contacts, involves himself deeply and intimately in the Newsletter's preparation and development, negotiates for us with a widening array of professional and legal organizations, and travels extensively to spread the gospel."[44] Initially hired at $12,000 on a part-time retainer, Landau was advanced a year later to fulltime employment as executive director, at about $32,000 annually. He continued to write a law column for Newhouse.

Fund-raising in 1973 and 1974 was heavily dependent on a few major publishers. The *Boston Globe* contributed $13,000; The New York Times Foundation, $10,000; Playboy Enterprises, $7,000; Philip L. Graham Fund, $8,000; CBS, $6,000, and Dow Jones, $6,000. In February 1975 the Committee received a $20,000 grant from the Stern Fund, its first major foundation gift, and one used to expand office capabilities. With that gift, 1975 contributions totaled $106,558, the first time in six figures. Other major donors that year included the New York Times Foundation, the Philip Graham Fund, Harte-Hanks Newspapers, *Boston Globe,* American Newspaper Publishers Association, and the Field Foundation, each more than $5,000.

Landau gives credit for this advance to John I. Taylor of the *Globe* and to Katharine Graham, who spoke for the Committee at a publishers' meeting. In 1976 contributions amounted to $156,700 and the Committee received its first major gift from Gannett newspapers, $10,000. Through the years, Gannett and its Freedom Forum foundation would become the Committee's largest donors.

The Committee also embarked on a sophisticated fundraising effort in 1975 headed by Arthur Taylor, president of CBS; it proved to be an ill-fated and frustrating effort that raised little money beyond an enhanced contribution from CBS itself. Broadcasters had never been prominent in Committee efforts, with the major exception of Walter Cronkite. The CBS anchor joined the steering committee in 1973 and regularly helped in fund-raising. But he found it difficult to find support among colleagues and the industry. Broadcast organizations, he found, "had a cold attitude toward freedom of the press." He was encouraged, however, when his CBS boss decided to play a fund-raising role.[45]

Taylor entered the field with a news release on May 30, announcing a target of a $2 million trust fund to move the Committee away from its day-to-day need for funds. The campaign was titled "The First Amendment Research and Defense Fund," and Taylor began hiring a professional staff. A veteran fund-raiser, Vincent McGee, was retained, as was an event planner, George Trescher Associates.

The effort set forth with fanfare, and high expectations on Taylor's part. Taylor's concept was that major corporations outside the media would contribute to a First Amendment campaign; a budget was drawn in which 25 percent of the $2 million would come from these blue-chip companies, along with another $75,000 from advertising agencies, $150,000 from a speakers' bureau, $150,000 from foundations, and $150,000 from individuals. Taylor hoped that Fortune 500 companies would each give at least $2,500.[46]

Little came of the effort, particularly from the big corporations. Luncheons were planned, elaborate material was printed, but the only tangible result was an increase in giving from CBS, to $27,000 in 1976. Taylor resigned in July 1976, stating that "creation of such an endowment is not feasible until the Reporters Committee can establish a fiduciary entity with reliable long-range administrative and substantive policy-making mechanisms and adequate legal and auditing procedures to meet accepted requirements of public accountability ... When we embarked on this endeavor, it was with the implicit understanding that such procedures would be established. Unfortunately, they have not."[47] Taylor was looking for an organization more suited to a corporate boardroom than to a group of reporters operating on a volunteer basis with a tiny staff, most of whom were law school interns. The worlds of the boardroom and the newsroom did not converge.

Limited corporate support did come, in the form of full-page advertisements in *News Media & the Law*. The major sponsor was General Motors; others included Arthur D. Little, American Forest Institute, Chrysler, State Farm Insurance, Mobil, and US Air. No money came from advertising agencies, and individual contributions were small. But the failure of the

much ballyhooed Taylor fund made Landau and the executive committee realize that, other than isolated foundation grants, the Committee would be dependent on its own industry for funding. Special events could raise operating funds—the major successes were a First Amendment Fair at the 1980 convention of the American Society of Newspaper Editors, raising $20,000, and a premiere of *Absence of Malice* in 1981, which raised $52,230 despite the anti-press tone of the movie itself (the Executive Committee had split 4-2 on sponsoring the show).[48] The special events took an enormous amount of effort, but also served to draw more support to the Committee and allow journalists to have some fun during a difficult time. The 1980 Fair featured booths with media notables selling things (Evans and Novak ran a pie-throwing booth, Dan Rather sold kisses), along with fiddlin' by West Virginia Sen. Robert Byrd, then the majority leader. "We couldn't get Byrd to stop playing," recalled Landau, "everyone wanted to go home, but we sat around while he played on."[49]

The Committee did not achieve a measure of financial security until completion of a capital drive under John I. Taylor of the *Boston Globe*, conducted from 1979 to 1981 with results of $926,605.

The need for an endowment was growing, and the Committee got a big lift in 1977 when John Knight contributed $150,000 to begin a capital fund. Knight had been solicited by Gene Miller of the *Miami Herald*. Miller, a steering committee member and two-time Pulitzer Prize winner for Knight, compiled a list of Knight columns supporting the First Amendment and then asked his boss for help. Knight had an assistant research the committee, told Miller his only concern was that "it appeared to be a one-man band," but then sent the check.[50] The Knight Foundation would contribute an additional $435,500 from 1981 to 1994. The Knight gift was critical; the Committee was literally running out of money. "That was the first real money we had ever seen. Up until then, really, I literally used to hide in the closet when the bill collectors came around," Landau told an interviewer in 1987, "Up 'til then, it (the RCFP) could have disappeared at any time. That was a lot of money to us, a tremendous amount of money."[51]

The Committee did not achieve a measure of financial security until completion of a capital drive under John I. Taylor of the *Boston Globe*, conducted from 1979 to 1981 with results of $926,605. Taylor, "a First Amendment saint" in Landau's words, worked on the campaign tirelessly, often flying with Landau to meet publishers in some far-flung city. Landau recalled as typical a two-hour lunch with Taylor, his brother, Davis Taylor, and Arthur "Punch" Sulzberger of the *New York Times*. After lunch, during which no mention was made of its purpose, the Taylors told an anecdote, "that said 'our families have been friendly for several generations and we need a favor,' and that's the way it worked with the people we went to, who were old family publishers." Publishers were not always comfortable with financing an organization made up of their employees. Landau recalls

Marshall Field, the Chicago publisher, listening to a pitch for funds and replying, "Well, Mr. Landau, I'm not really very comfortable funding a group that calls itself the *Reporters* Committee!" Field did make a modest contribution.[52]

The traditional industry leaders once more came to the table, and the drive also marked a big increase in help from Gannett and its Freedom Forum. From 1976 to 1993 the company and/or the foundation contributed $743,130 to the Committee for various projects as well as the capital fund. Support continues to the present day; the Freedom Forum pays the lease for the Committee's offices as well as helping in other projects.

Fund-raising was broadened in 1980 to include a state-by-state drive that raised $148,325 under leadership of Gene Roberts, then with the *Philadelphia Inquirer.* The campaign was repeated three additional years, chaired by Donald Graham, Charles Glover, and C. K. McClatchy. Funding continued to be print based; only CBS among the broadcasters made a major contribution. CBS contributed $152,500 from 1979 to 1994. Landau estimated the broadcast contribution in 1980 as 3 percent of operating and 7 percent of capital.[53]

The funding was needed, as the Committee expanded in several new directions during the late 1970s. Among them were the Student Press Law Center and the Freedom of Information (FOI) Service Center, both of which continue as major elements in Committee work.

The Student Press Law Center was a project of the Robert F. Kennedy Memorial Foundation in 1974, and initial funding was shared by the Foundation and the Committee. The proposal came through Jack Nelson, who had written a book on the student press and was contacted by the Memorial. Initial funding was an estimated $6,400 from the RFK Memorial and $13,000 from the Reporters Committee. The project hired a part-time lawyer to work with high school and college press issues, publish a newsletter, and provide office support. Much of the cost for the first year was carried by the $20,000 Stern Fund grant. Kennedy Memorial support lapsed in 1982, and the SPLC is now fully supported by the Reporters Committee.

The FOI Service Center came out of meetings between Landau and leaders of the Society of Professional Journalists (SPJ) in 1978 and 1979, at which it was agreed to create a center to handle state FOI requests. SPJ, with members and chapters in all states, was uniquely situated to handle this work, and the center was set up in the Reporters Committee office under Peter Lovenheim, a young attorney who was succeeded in 1980 by Tonda Rush. Grants of $20,000 from the John Ben Snow Foundation and $14,000 from the Kaplan Foundation allowed the center to establish a computerized cross-index of FOI laws and rules from every state, as well as federal law. The "How to use the Federal FOI" brochure was started and updated periodically. The original budget of about $40,000 a year was split between SPJ and the Reporters Committee. FOI cases continued to grow as a proportion of Committee work during the next two decades.

A third major expansion was attempted, but failed, during this period. The Committee petitioned the Ford Foundation twice for support of its

media law activities; and was twice denied. The Ford contact was Fred Friendly, a former CBS executive and a television pioneer who worked with Edward R. Murrow. Friendly was now at Columbia University and a consultant to the Ford Foundation. Ford in July 1975 turned down a request to fund legal defense efforts of the Reporters Committee. Friendly informed the Committee that, "We believe that one of our greatest assets in trying to bring people of varying persuasions together is our appearance of neutrality." Friendly wrote, "On numerous occasions we have had people both from the press and from the judiciary and government comment that a particular result could not have been achieved had it not been for the neutral presence of the Foundation ... we think it essential that we make every effort to maintain that appearance and credibility." Friendly said Ford had a "broader, more comprehensive view of the whole First Amendment area" than the absolutist position of the Reporters Committee.[54]

Shortly thereafter, the Ford Foundation also rejected a Reporters Committee proposal for a media law reporter. At the time, it would have been the first journal in the field and would have greatly expanded the literature available to lawyers working in media law, particularly First Amendment law. With the formal endorsements of The American Newspaper Publishers Association, American Society of Newspaper Editors, Associated Press Managing Editors, and National Association of Broadcasters, the proposal revealed the importance of expanding the resources available in First Amendment litigation. The Committee also took its appeal to the Rockefeller Family Fund, again to no avail.[55] Subsequently, Ford issued a major grant to the Bureau of National Affairs for creation of the *Media Law Reporter*, which largely followed the categories of the Press Censorship Newsletter and continues to this day.

Attorneys for media companies, and other private-practice lawyers working in the field, began sharing their notes early in the 1970s, long before the advent of e-mail lists, recalls Seattle attorney Cameron DeVore.

The *Media Law Reporter* was primarily the creation of attorneys James Goodale and Dick Schmidt, pioneers in what was emerging as a First Amendment Bar. Attorneys for media companies, and other private-practice lawyers working in the field, began sharing their notes early in the 1970s, long before the advent of e-mail lists, recalls Seattle attorney Cameron DeVore. The major player in this effort was Goodale, who was general counsel for the *New York Times* in the Pentagon Papers case. DeVore and others credit Goodale with being the organizing arm behind the emergence of a First Amendment Bar.[56]

In 1973, Goodale spearheaded the first seminars on media law as part of the Practicing Law Institute. Attendance, under 100 the first year, now regularly reaches 400 to 500. Schmidt was the moving factor behind the Forum on Communications Law, through the American Bar Association, now the Media Law Defense Center in New York. Articles began appearing

in the prestigious law journals, focusing on First Amendment issues.

Goodale, Schmidt, DeVore, and others were working in parallel with the Reporters Committee, with the Committee providing energy and publicity and the attorneys making the law. Goodale says the Committee, "played a terrific role ... raised the level of sensitivity and appreciation, and expressed their own sense of importance (of the First Amendment) to the owners."[57]

In this climate, the First Amendment Bar emerged. Perhaps its godfather, ironically, could be President Richard M. Nixon, for it was during his administration that the issues emerged to create the body of law that became the First Amendment Bar. The subpoenas, the Pentagon Papers, and other frontline cases created the law and brought forth the lawyers to form this important section of the American bar. "It takes law and lawyers to create a Bar," Goodale reminds an interviewer, making it clear that the First Amendment Bar would have emerged with or without the RCFP. But in this instance the stridency and advocacy of the Reporters Committee also helped move the cause forward.[58]

The Reporters Committee *was* strident and sometimes off-putting to owners, and its legal ideas were not always in tune with the attorneys it called upon. But the stridency was a factor in helping build the First Amendment Bar. DeVore cites the Committee for keeping pressure on publishers not to cave on these issues. "Thank goodness Jack (Landau) was there, pushing and shoving," Goodale says, "They were a sensational advocacy group."[59]

Stridency was also creating enemies, both inside and outside the media, as Landau in particular and the Committee in general gained recognition as spokesman for the working press. The conflict in styles put Landau and Fred Friendly at odds.

Friendly had launched, with Ford support, a series of televised seminars or confrontations in which he placed opponents in press-related cases together with a mediator, to see if they could find common ground. Landau and Graham had participated in one of the sessions. Friendly's theme—let us seek common ground, find acceptable compromise—was antithetical to the zealous First Amendment stand of Landau and most of the Reporters Committee. Landau and Friendly, neither lacking in ego, developed a dislike for each other, and Friendly expressed on several occasions his fear of the Reporters Committee absolutist opinion.

In 1976 he disparaged the aggressive role of the Committee in what became *Nebraska Press Association v. Stuart*, calling instead for reasonable people to work out differences that had resulted in a gag order in a sensational murder case.[60] (The case, argued in the Supreme Court by E. Barrett Prettyman Jr. for the Nebraska press and Floyd Abrams for several other media outlets, was a victory for open courtrooms; the Reporters Committee had convinced the Nebraska press to oppose the order and brought Prettyman to argue the case). Friendly conceded *Nebraska* was a win for the press, but in an interview he criticized hardline First-Amendment supporters, such as Landau and Graham. "A few years ago I realized that the press had a big chip on its shoulder," Friendly told *The New Yorker*, "It

wanted a confrontation on the free-press issue. It wanted to fight all the way to the Supreme Court *every* attempt by *any* court to limit its total freedom to do as it pleased." (italics original)[61] Friendly did not agree with this tactic, and he was outspoken.

Despite strong support in the profession for the Committee, Friendly was not the only critic. Landau in particular maintained an absolutist view of the First Amendment and was ready to take on any offense against the press. Moreover, the guerilla campaign had lost some of its sense of impending danger with the removal of Nixon from office. Voices inside and outside the media were calling for moderation. Michael Kinsley, managing editor of *The New Republic*, issued a sharp rebuke in 1979: "Despite what you read in the papers, the biggest threat to the First Amendment roaming loose in Washington these days is not Justice Byron White of the United States Supreme Court. It is Jack Landau, the monomaniacal head of the Reporters Committee for Freedom of the Press." Kinsley was upset at Landau's comments after a Supreme Court decision. He warned that such talk undermined public support for the press.[62]

It was inevitable that a group in such constant motion would generate controversy. Sometimes it attracted it like a magnet. In 1976, the Committee was pulled into the furor surrounding CBS reporter Dan Schorr's leaking of an unpublished House of Representatives report on the CIA. The so-called Pike Papers were published by the *Village Voice*, and Schorr needed a way to avoid the charge of profiteering from the purloined papers. He approached his colleague Fred Graham and offered to give any profits to the Reporters Committee. The Committee, as always hard up for funds, took the offer and soon found itself under attack as well. Steering Committee members Lem Tucker and Kenneth Auchincloss resigned to avoid association with Schorr's tactics. In the end, no proceeds were received by the Committee.[63]

More serious, certainly in the long run, was a split between the RCFP and the American Newspaper Publishers Association (ANPA), the major industry lobbying organization, over reporter-shield legislation in Congress. Both groups had been part of an ad hoc committee attempting to negotiate in 1977 with the Justice Department and Senate on proposed legislation. Landau, testifying before the Senate, held to the usual absolutist view of the Reporters Committee, and was blasted by ANPA counsel Tim Hanson in a letter to Sen. Ted Kennedy (D-Mass). The Committee's view was more strident than major elements of the industry, and Hanson termed the testimony "an intemperate, unjustified attack" on the legislation. Portions of the letter were leaked to the *Washington Star*.[64]

Despite these criticisms, the Committee, as it neared its tenth birthday, was well-received in the profession. In 1979 it received the first of several national awards, the National Broadcast Editorial Association's Madison Award; previous winners included Eric Severeid and Justice William O. Douglas. Landau began receiving major recognition, including Freedom of the Press awards from the Society of Professional Journalists and National Association of Broadcast Editorial Writers; also the John Peter Zenger award (University of Arizona), the Elijah Parish Lovejoy Award (Colby College),

and Kruglak Gold Medal (University of Southern California).

In 1978 the Committee brought out 400 supporters for a First Amendment Rally; among the speakers were Katharine Graham and Howard K. Smith. Feelings were running high. Smith compared the use of subpoenas against reporters to the Nazi tactics he witnessed in World War II Germany. Graham warned that, "in the short run we may suffer setbacks, but we and the country will certainly lose more if we pull back, abandon some stories, give up our notes, or otherwise in any way compromise this vital cause."[65] In 1982 the Foundation for Public Affairs in its annual Public Interest Profiles reported that the Committee "is generally viewed as an authoritative and important advocate for First Amendment rights," and quoted A. M. Rosenthal, executive editor of the *New York Times,* describing the Committee as "the most effective press organization in the whole field."[66]

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As the decade neared its end, the Committee was running at full capacity, and the major innovations for the remainder of the century were in place. They included *News Media & the Law*, the FOI Service Center, Student Press Law Center, *Media Alerts* (with SPJ, a bulletin on Congressional legislation, sent to news outlets), the First Amendment Hotline, and a staff that in 1981 included four attorneys, including Landau as executive director; two administrators; and ten student interns. The office operated on $310,789 in 1981 and had already accumulated $740,855 in its capital fund thanks to the efforts of John I. Taylor. The fiscally cautious executive committee had set a policy against stock ownership, so the endowment was invested in federal Treasury bonds.

The organization now wore the clear stamp of Landau's sometimes manic personality. Clemens Work, a lawyer-journalist hired in 1980, described the climate as swinging from routine to chaotic. "Jack was brilliant in many ways, but he also liked creative chaos," recalled Work, who went on to *U.S. News and World Reports* and an academic career. Landau's confrontational style permeated every aspect of the Committee's work, including the magazine, Work found.[67] But press concerns were now shifting from the emotional and confrontational press-shield issues of the Nixon years to conflicts over Freedom of Information and access to court hearings, issues involving more process and procedure and less political activism.

The matter of closed courtrooms had been advancing as a serious press issue since before the *Nebraska* case in 1975; *Nebraska*, the case aggressively pushed by the Reporters Committee, barred judges from ordering the press not to publish material obtained in open court. But in 1979, in a case involving a Gannett newspaper, the *Rochester Times-Union*, the Supreme

Court allowed a judge to close pretrial criminal proceedings anytime the judge believes there is "a reasonable probability" that press reports may prejudice a criminal defendant's ability to obtain an impartial jury. The 5-4 ruling indicated a split court, and later in the year the court agreed to hear a case brought by two Richmond, Virginia, newspapers, in which a judge closed a murder trial to the press and public, without a hearing. The occasion brought a special issue of *News Media & the Law*, documenting a wave of some 109 court closures and related actions since the *Gannett* case, and including a "How to fight back" primer for reporters.[68] The spotlight, once focused on reporters' sources, had now moved to the courtroom and conflicts between the First and Fourth amendments.

Additional battles were taking place in the always-fertile area of open records, with Freedom of Information issues at the state and federal levels. In 1977 the Committee tried to expand its victory in the Nixon Papers case by extending it to Cabinet officers, specifically former Secretary of State Henry Kissinger, who had compiled transcripts of telephone conversations but refused to open them to the public. Joined again by the American Historical Association and the American Political Science Association, the Committee relied on its victory in the Nixon case but to no avail. After prevailing at the district and appellate court levels, the plaintiffs lost in the Supreme Court in 1981.[69]

In 1978 the Reporters Committee and CBS correspondent Robert Schakne challenged the FBI to release its compiled criminal conviction records of four men allegedly involved in organized crime. The FBI claimed that the request violated the privacy of the men, although the information was a public record in the individual jurisdictions in which they were convicted. The case was not finally decided until 1989, when the Supreme Court ruled unanimously that the records could be withheld to protect the privacy of individuals.[70] The FBI case was the last one in which the Committee was a lead plaintiff; subsequent cases were limited to *amicus curiae* briefs or other interventions.

The FOI controversy also was moving on a parallel track in Congress, as the Judicial Conference attempted to narrow the scope of federal FOI laws and Sen. Orrin Hatch (R-Utah) began efforts to reduce the number of documents subject to FOI requests. The Committee strongly opposed both efforts and testified on the bills.[71] Landau also launched a guerilla attack on Hatch during his 1981 hearings. With his interns, he sent news releases and called every radio and TV station and weekly newspaper in Utah, alerting them to Hatch's role in trying to subvert the FOI. Although few would ever use the FOI, the small news operations showered editorials on Hatch, who was not amused. "Nobody had ever asked station KLLB in Desert Springs, Utah, to get involved in the First Amendment," Landau recalled. "These guys were fabulous, I mean they got on the radio, virtually nonstop editorials. Hatch called me up and said I was the most unethical reporter he had ever met!"[72]

The Utah ploy was vintage Landau, and it was the sort of action that was needed during the 1970s to get above the noise of a nation in constant turmoil. "Basically, the idea was to fight back, and if you couldn't do it nicely,

you did it through warfare ... I'm the guerilla, and if you can't get it one way you can get it another. And that's what we did."[73] A 1981 full-page appeal for funding support, in *News Media & the Law*, was headlined, "The Reporters Committee Fights Back," detailing major cases in which help had been given to reporters or major issues had been raised in court.[74]

In 1982, while the Committee was undertaking a major court effort to overturn a judge's order sealing records in a libel action against the *Washington Post (Tavoulareas v. Washington Post)*, Landau put together a compendium of recent cases that revealed how far-flung and broad-based the Committee's work had become. Among the 56 actions he listed were the following, in which the Committee:

> Helped a McGraw-Hill oil-marketing newsletter overturn a subpoena for confidential sources in a case filed by several states.
>
> Supported a federal prisoner who wrote a column for a Connecticut newspaper, when authorities wanted him transferred, allegedly because of his writing.
>
> Obtained a pro bono lawyer for an author trying to get access to records on American-Israeli relations from several presidential libraries.
>
> Got a federal appeals court to reject former President Nixon's objection to the establishment of public listening stations for the Nixon Tapes.
>
> Helped *The Iberville* (Louisiana) *South* defend itself against invasion of privacy for publishing a 25-year-old story about men convicted of cattle rustling.
>
> Obtained pro bono lawyers for a reporter for a small North Carolina weekly who was arrested for photographing an arrest scene; a *National Catholic Reporter* reporter who was illegally detained, searched, and handcuffed while covering an anti-war protest; and a Wyoming reporter subpoenaed after interviewing a death-row inmate.[75]

The compendium of issues revealed both the strength and, ultimately, a weakness of the Committee's approach, for it apparently never met a challenge it could resist. It was spreading its resources, personnel, and credibility over an increasingly wide field.

The Committee was also pursuing a wide range of interests in legislation, often to blunt proposals in Congress. In 1980 the Executive Committee voted to oppose a new CIA charter that included language allowing prosecution of a reporter for identifying an agent, an issue that would emerge 23 years later

when columnist Robert Novak acted on confidential information and identified a CIA agent. The charter would also have allowed the CIA to use reporters as paid agents; the Executive Committee strongly resisted.[76] The committee prevailed on both issues.

Although there was no shortage of battles to fight, the mood of the nation and of the media itself was changing, and the First Amendment guerilla style was less in demand. An increasing corps of lawyers was now prepared to file cases, where in 1970 there was only a handful to supplement the Reporters Committee.

When the Committee began, media lawyers almost universally reflected the financial interests of publishers, specializing in libel, tax matters, and labor negotiations. "The Reporters Committee broadened the horizons of media law," says Don R. Pember, whose press-law textbook, *Mass Media Law*, is widely used in college and university journalism programs. Pember believes the lawsuits and active involvement in press-shield legislation helped raise interest in those areas of press law.[77]

Landau's ability to persuade high-profile attorneys to donate services to defend First Amendment rights was a major factor in the Committee's ability to project itself onto the media-law field. Staff attorney Clemens Work was astounded at Landau's ability to find outstanding pro bono attorneys, and he was surprised at the extent of the work they put into cases. "We helped shape First Amendment law," he believes, through a matching of Landau, the pro bono lawyers, the magazine, and other publications.[78]

A "First Amendment Bar" of sorts was emerging, through the efforts of James Goodale, Dick Schmidt, Cameron DeVore, Floyd Abrams, and other prominent attorneys. And media law issues were now seen not only from the standpoint of publishers and corporate executives; there was a corps of lawyers ready to defend the First Amendment rights of working reporters, some of whom could not count on their own employers to defend them.

But much was changing. The Supreme Court was changing—media friends Marshall, Brennan, and Stewart were gone or planning retirement, President Jimmy Carter had no opportunity to appoint justices who might be friendly toward the press, and a conservative Republican was in the White House. When Ronald Reagan entered the White House in 1981, a media branded by Reaganites as "liberal" were determined to give the Gipper a break.[79] Watergate was over, reporters were no longer prime-time heroes, and the expansion of soft-news programs on television was changing the public's perception of the news media and of reporters.

Nowhere was this more apparent than in the 1983 invasion of Grenada, in which the Reagan Administration completely shut the press out, turning away press boats and essentially dictating that the news be made, compiled, and edited by the American military. Landau and his interns did a comprehensive search of coverage of past wars, concluding that Grenada was the first "war" in which reporters were excluded and arriving at the conclusion that a lawsuit could be brought on one or more grounds: a First Amendment right of access to combat; equal protection of the law because military reporters were allowed but civilian reporters were barred; damages for false

imprisonment of several reporters held aboard Navy ships against their will; or an order prohibiting the government from intentionally giving out false and misleading information.

Landau took the issues to several leading attorneys and law scholars, including E. Barrett Prettyman Jr. and Floyd Abrams, and turned up conflicting advice as to whether a suit should be filed and the best approach to take in such a suit. Washington attorney Ben Heineman, one of those researching the issue, drafted a brief for the Committee, challenging the exclusion on constitutional grounds. "It struck me at the time that reporters couldn't be shut out," Heineman later recalled, "It was more a matter of time, place and manner (of access) than a prohibition."[80] Ben Heineman, telephone interview with author, 9 January, 2004.

But no lawsuit was ever filed, by the Committee or by anyone else, primarily because of objections from publishers.

Landau was finding that publishers had little interest in a lawsuit. "It (the lawsuit) was not terribly popular with the major media players, partially because there was this patriotic thing and partially because of the big tax bill (then in Congress)."[81] In addition, a turf war of sorts was raging.

On November 8, the Committee shelved the idea of a lawsuit in favor of talks between the newspaper industry, represented by the American Newspaper Publishers Association, and the White House.

Landau began working with Jerry Friedheim of ANPA and Creed Black, publisher of the *Lexington Herald Lead*er, to put together a team of leading publishers to meet with Reagan's top advisors. Landau was also attempting to put together a Reporters Committee delegation to the Pentagon, to meet with Secretary of Defense Caspar Weinberger, while publishers were at the White House. He ran this idea by the lawyers for some of the large newspapers and discovered that publishers were "infuriated" by a role for reporters in the negotiations. After a week of phone calls and negotiations, the efforts broke up abruptly. Things went downhill from that point. According to a memo from Landau to the executive committee, he received a call from Black in which he (Landau) was accused of interfering in ANPA affairs and charging that "the Reporters Committee is fighting the industry," warning that "we give you money and we can teach you a lesson."[82]

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Landau fired off a lengthy editorial and background report in the Jan./Feb. 1984 issue of *News Media & the Law*. The editorial was a damning condemnation of the White House's Grenada actions, but it also asked: "Why then—when this case is stronger than *Gannett* or *Nixon*—are many of the media lawyers telling their news organizations that the risk should not be taken? Is this issue less one of morality than access to pretrial hearings? Will

this issue be of less importance to the nation than accurate information about the Nixon Administration from its own archives? Is this issue of less interest politically than raiding newsrooms?" He concluded by calling for a lawsuit if other methods failed. No suit was filed.[83]

Taking on the President, the U.S. military, and public opinion in a highly publicized legal challenge over Grenada would have been a First Amendment guerilla attack of the first order. But it was a battle for which the industry clearly did not have the stomach.

Little came of press efforts to improve the situation; a joint military-media committee headed by retired Maj. Gen. Winant Sidle came up with a formula that was tested in Panama and then used in the Persian Gulf War. Many reporters criticized the formula because they found that it limited access and censorship was endemic.

Two decades later, Landau believes the media lost an opportunity to get better coverage conditions, and paid a price in subsequent military actions in Panama and the first Gulf War. The type of military-media cooperation in the Iraq invasion in 2003 is more akin to what should have happened in those conflicts, he believes.[84]

The residue from Landau's clash with ANPA went beyond the immediate issue, and Landau believes it was a major factor in his forced resignation a year later.[85] Publishers had always been leery of funding an organization controlled by reporters, and on high-visibility issues such as Grenada they wanted to call the shots for the industry. Jane Kirtley, Landau's successor as executive director of the Committee, told an interviewer that a "prominent publisher" told her, "It wasn't so much that we were troubled by Jack expressing an opinion, a point of view; the problem was that in some quarters he was perceived to speak for the media."[86]

But Grenada was also a symptom of a change in the relationship between press and the national government, a relationship that had been gradually improving since the dark days of the Nixon White House.

What Landau was not seeing, but others were seeing, was that the era of the media guerilla had come to an end. Publishers were tired of conflict, and reporters had other pressing needs. To a great extent, the Committee had already begun to serve those needs, particularly with its frequently used FOI Service Center, and with publications on how to use the FOI and how to deal with other legal or quasi-legal issues, including closed courtrooms. However, the Committee staff was still geared up to do battle on the legal front; there was little clerical support for the office and publications staff, and the work depended heavily on interns who changed every semester.

The question of how often to go to court, and which cases to defend, had always been critical for the Committee, and from the beginning there was internal debate over individual cases. Graham tended to take a more cautious view, Landau to be more aggressive in pursuing legal remedies. Even some of the Committee's supporters felt it was overextended. Arthur B. Hanson, a Washington lawyer who had taken pro bono work for the Committee, told an interviewer in 1982, "My feeling has always been that the committee has over-litigated—has cried wolf in a number of cases that had no legitimate

value to the press."[87]

In April 1985 the end of the guerilla era was formalized, with a brief announcement that Landau had begun a six-month sabbatical and Jane Kirtley, an attorney hired several months previously from the law firm that represented Gannett, would be acting director. Landau had hired Kirtley to be legal defense coordinator. A graduate of Vanderbilt University Law School, Kirtley had also been a reporter in Indiana and Tennessee. The next issue of *News Media & the Law* (Summer 1985) announced Kirtley's appointment as permanent director.

The change came after a protracted period of physical and emotional stress on Landau's part, during which relations between him and his staff deteriorated. "I was just plain exhausted," Landau said two years later, "I wasn't handling the staff very well. Another thing was Grenada. I was also letting the fund-raising slide."[88] Years later, Landau described his physical condition as a nervous breakdown, the combination of personal and professional strain that included a divorce as well as his high-pressure job.[89]

The decision to force a resignation was debated by the executive committee, with several of the founders involved in the decision, including Jack Nelson and Fred Graham. Nelson took the leadership, as the senior member of the committee, citing a loss of communication between Landau and the executive committee, and staff morale. The change was not without rancor, and Landau left with an agreement for two years' severance pay. "We had to make a change," said Nelson, explaining that it was difficult because, "Jack *was* the Reporters Committee for a time. We need to give him great credit for his work."[90]

The task of negotiating a departure fell to Nelson, his *Los Angeles Times* colleague Sarah Fritz, and Hayes Gorey of *Time*. Fritz cites personal issues as the major reason for the rift. Committee staff complained to Executive Committee members that Landau was "stuck," unable to pursue Committee work, and the office was barely functioning. This supports Landau's description of a nervous breakdown caused by overwork and tension. Fritz recalls serious concern on the Executive Committee that the organization might not be able to function without Landau: "He really was the committee for a long time. There was a big question of whether we could survive without him."[91]

Landau was caught in changing times, Graham believes. "Jack was one of us, the original group." Graham believes the early Reporters Committee had a legitimate role as a 'bomb-thrower' but times were different in 1985. "Government ignorance or hubris caused problems, but not malevolence," was his view of the Reagan era.[92]

Also important was the rift between Landau and the newspaper industry at the time of the Grenada affair. Kirtley told an interviewer in 1987 that, in taking an absolutist position on access to the war zone, Landau was "somewhat strident ... and I think there were a number of news organizations that felt that by taking this very hard line they were going to end up with a worse situation than was already the case."[93]

The Committee changed focus in the ensuing 15 years, partly to reflect changing times and partly as a reflection of the different personalities of

Landau and Kirtley. Landau was a reporter with a law degree, Kirtley a lawyer with a journalism degree; their style reflected this difference.

Kirtley reduced the number of cases where the Committee was a major player, feeling that in the early 1980s the Committee "took very extreme positions that were not always legally supported." The Committee, she felt, should become an organization that "will become authoritative on issues, including some that others may not want to weigh in on." Threats were increasingly coming from the private sector rather than government, she noted, including a rising incidence of privacy-press conflicts, an area in which she wanted the Committee to take the leadership.[94]

Landau's concept of the Committee involved litigation, which he felt was necessary to keep press issues alive and publicized, and maintain a spirit of aggressive defense of the First Amendment. "Once you lose the fire, you begin to constrict your vision," he said later, "You don't want to lose your political or financial base."[95]

But the Executive Committee, Fritz recalls, wanted a lower key presence and less litigation. "Jack loved the politics of the First Amendment crowd," but Kirtley was instructed to pay more attention to organization and pursuing Committee goals without the high visibility. "We wanted to stay out of the First Amendment politicking, but continue to be a force," Fritz recalled.[96]

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Kirtley changed the emphasis of the Committee, picking up the role of publications and education; additional brochures were published regularly, guiding reporters in such areas as photojournalism and privacy, access to electronic records, and others. In a 1987 interview in Washington's *City Paper*, Eleanor Randolph, who covered media for the *Washington Post*, was quoted as saying: "Several years ago I found that the Committee worked so hard to be advocates that you really couldn't get the kind of solid information you needed about some of the really important things that were going on ... since Jane Kirtley has taken over ... I have noticed that the information has become more useful for a reporter."[97]

Kirtley's administration got off to a contentious start in November, with a nasty split on the steering committee over a proposal to host a special showing of the HBO film, "Murrow." Broadcasters on the committee, particularly Walter Cronkite, were incensed at some of the portrayals in the film. Howard K. Smith labeled it, "a libel on Frank Stanton," and Smith, Cronkite, Tom Brokaw, Ed Fouhy, and Dan Rather all voted against sponsoring the film. Only Peter Jennings among the broadcasters voted with the majority in a 16-10 split in favor of sponsoring the showing.[98]

Staff and Committee members agree that the organization functioned

more smoothly under Kirtley, who left in 1999 to become a professor of media ethics at the University of Minnesota. A polished spokesperson, she made a strong television appearance and wrote a regular column for *American Journalism Review*. With the advent of the Worldwide Web, the Committee moved to a web-based publication and offers guidance to reporters through the web.

The Reporters Committee offices now are quiet and orderly, a marked contrast to the cramped, noisy, and often chaotic days of guerilla tactics. Litigation that in the past might have been pursued by Committee pro bono lawyers is now more likely to be pursued by the growing "First Amendment Bar", some of whom obtained their start as interns for the Reporters Committee. The only founder still on the steering committee is Fred Graham, although Jack Nelson maintains an active interest. The Committee in 2000 had an operating expense of $403,145, and its endowment fund held common stocks valued at $1,476,754. One of the largest holdings was its old antagonist, AT&T.

It remains the only organization of its kind, governed by working reporters and serving the working press on First Amendment issues. Its publications, vastly expanded in the Kirtley years, are well regarded and used in newsrooms throughout the nation. Legal fellows, recent law graduates, have replaced much of the early reliance on law-school interns, lending more of a professional air to the Committee's efforts. The executive director since 2000, Lucy Dalglish, has both a news and legal background. As the Committee matured and was more cautious in selecting its targets, its legal work became more credible in the view of attorneys such as Goodale and DeVore.

For working reporters, the environment three decades later is less dominated by government than were the guerilla days of the Reporters Committee. Today's reporters work in a new technological environment with competitors that did not exist in 1970, and they are far more likely to work for one of a handful of increasingly powerful media conglomerates. The camaraderie of an earlier day existed side-by-side with news competition, but today concentration rather than competition is the norm. Owners of the media giants need no pro bono lawyers, and pro bono lawyers don't offer help to Gannett or Knight-Ridder. Yet the media giants, through their foundations, are the largest donors to the Committee. Some of the economic and journalistic reasons for the Committee have gone the way of media mergers, bottom-line corporate managers, and editors with management degrees. More than the passage of Richard Nixon and John Mitchell, this has changed the landscape in which the Reporters Committee functions three decades after its beginnings.

Public support for journalists has also declined. Three decades after the epic struggles between the news media and the Nixon Administration, much of the public support for press freedom appears to have evaporated. Some of this, according to the Freedom Forum, the primary chronicler of press freedom issues, can be traced to September 11, 2001, but even before that tragedy there was an erosion of public support for the First Amendment.

In its 2002 survey of First Amendment support, the Freedom Forum found 49 percent of those surveyed feel that the First Amendment "goes too far in the rights it guarantees." That is up from the 39 percent of 2001 (pre 9/11) and 22 percent in 2000. The least popular First Amendment right is the press, with 42 percent feeling that the press has "too much freedom," about the same as in 2001. And more than 40 percent said the press should not be allowed to freely criticize the American military about its strategy and performance. In spite of these feelings, 48 percent of those surveyed also want more information about governmental actions, and 94 percent support the right to be informed by a free press.[99]

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The Reporters Committee in 2004 has regained some of its former prominence by involvement in a series of issues resulting from the attacks of September 11, 2001. Provisions of the Patriot Act and the government's secrecy regarding prisoners held at Guantanamo Bay and at other federal facilities have brought the Committee into a more active public role than was the case prior to 9-11. The Committee played a major role in exposing a secret court docket in Miami's federal district court, and it was later called into service when reporters began receiving subpoenas in several federal cases. Dalglish, who had maintained a low public profile in her first years as RCFP executive director, began to be a familiar face as First Amendment cases increased in the wake of 9-11 and Bush Administration efforts to close down information in the name of national security. Despite this increased visibility and controversy, the Committee in 2004 is still largely known within the profession, where its comprehensive Web pages are an invaluable resource for reporters, and its publications are a staple in newsrooms around the country.

That the Committee is more professional, better organized, better financed. and less contentious seems beyond doubt as it enters its fourth decade. But it seems also beyond doubt that the lasting legacy of the Committee was created in the guerilla years, from the anger of the Nixon-era confrontations and subsequent struggles with closed courtrooms and locked files. "I'd never seen such anger," Eileen Shanahan recalled of the early executive committee meetings. Herself never one to walk away from a fight, Shanahan found herself cautioning, "indoor voices, please," as the arguments proceeded.[100] Today's Committee has more of an "indoor voice," but the anger of the 1970s, directed against specific abuses and specific abusers, left its mark.

"Without us, who knows what would have happened?" asks Fred Graham. "We have become a voice that's respected, a place to call for help, the recognized source of comment on reporter's issues." Landau, typically seeing the issue in confrontational language, cites two "revolutions" from the

guerilla days: "The first revolution was getting the press to fight back ... in effect a revolution in the psychology of the press, who had never believed in litigating ... and the second was we broke down the categories (of press law) and started collecting the cases, providing the momentum to get people to think about this ... now there is something called press law and it is (separate) from other law."[101]

The guerillas of the 1970s waged their war without fax, e-mail, the Web, and a host of other electronic marvels, along the way proving that notoriously independent reporters could not only join forces to help colleagues but forge and govern a team that was right for the challenges of that time.

Endnotes

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2. Jules Witcover, "A Reporters' Committee that Works." *Columbia Journalism Review* 12 (May/June 1973): 27.

3. Original members of the committee were J. Anthony Lukas, Fred P. Graham, and John Kifner, *New York Times*; James Doyle and Barry Kalb, *Washington Star*; Robert Maynard, *Washington Post*; Jack Nelson, *Los Angeles Times*; Don Johnson, *Newsweek*; Marvin Zim, *Time*; Murray Fromson and Bill Stout, CBS; Lem Tucker, ABC; and Charles Quinn, NBC.

4. James Doyle, telephone interview with author, 18 October, 2001, Washington, D.C.

5. Witcover, "A Reporters' Committee that Works."

6. Eileen Shanahan, interview with author, 22 October, 2001, Washington, D.C.

7. Fred Graham, interview with author, 18 October, 2001, Washington, D.C.

8. William Safire, *Before the Fall: An Inside View of the Pre—Watergate White House* (Garden City, N.Y.: Doubleday & Co., 1975), 343.

9. Among the many volumes written about this era, press relations are discussed in some detail in: John Erlichman, *Witness to Power: The Nixon Years* (New York: Simon and Schuster, 1982); James Keogh, *President Nixon and the Press* (New York: Funk & Wagnalls, 1972); Herbert G. Klein, *Making it Perfectly Clear* (New York: Doubleday & Company, 1980); William E. Porter, *Assault on the Media: The Nixon Years* (Ann Arbor: University of Michigan Press, 1976); Joseph C. Spear, *Presidents and the Press: The Nixon Legacy* (Cambridge, Mass: The MIT Press, 1986); William J. Small, *Political Power and the Press* (New York: W.W. Norton Co., 1972); Jonathan Aitken, *Nixon: A Life* (London: Weidenfeld and Nicolson, 1993). See also Lewis W. Wolfson and James McCartney, *The Press Covers Government* (Washington: American University, 1973).

10. Fred Powledge, *The Engineering of Restraint: The Nixon Administration and the Press* (Washington, D.C.: Public Affairs Press, 1971), 41.

11. Twentieth Century Fund Task Force on the Government and the Press, *Press Freedoms Under Pressure* (New York: Twentieth Century Fund, 1972).

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14. Benno C. Schmidt Jr., "Journalists' Privilege: One Year After Branzburg," in *"The First Amendment and the News Media, Final Report,"* Annual Chief Justice Earl Warren Conference on Advocacy in the United States (Cambridge, Mass.: The Roscoe Pound-American Trial Lawyers Foundation, 1973), 42.

15. Ibid. See also "The Question of Federal Newsmen's Shield Legislation," *Congressional Digest* 52 (May 1973): 131-148.

16. Earl Caldwell, quoted in Jon Cohen, "Guarded Speech," *City Paper*, 7 August, 1987, 18.

17. Curt Matthews, "Journalism's Full Court Press," *Washington Journalism Review* (March 1982): 40.

18. Jack C. Landau interview with author, 13 and 23 October, 2001, Washington, D.C. See also Christopher Lydon, "Mitchell's Press Aide Quitting; Parting Described as Amicable," *New York Times*, 22 April, 1970.

19. Jack Landau interview.

20. The study is described in Vincent Blasi, "The Newsmen's Privilege: An Empirical Study," *Michigan Law Review* 70 (December 1971), 229-284.

21. Memorandum to the Steering Committee, 29 November, 1972, files of Reporters Committee for Freedom of the Press.

22. Jack Landau interview.

23. *Branzburg v. Hayes*, 408 US 665 (1972).

24. "The Question of Federal 'Newsmen's Shield' Legislation," *Congressional Digest* 52 (May 1973): 131-148.

25. Fred Graham and Jack C. Landau, "The Federal Shield Law We Need" *Columbia Journalism Review* 11 (March/April 1973): 26-36. "Does the First Amendment Need Saving?" *Nieman Reports* 27 (June 1973): 9-19.

26. Gallup Poll, "Public Backs Press in Debate Over Revealing Confidential Sources," Report 90 (December 1972): 18-20; and "Large Majority Thinks News Sources Should be Protected," Report 101 (November 1973): 22-23.

27. "Large Majority Thinks . . .", 22.

28. "Confidential News Sources," *The Gallup Poll*, 1978 (Wilmington, Del.: Scholarly Resources Inc., 1978), 246.

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30. Verbatim excerpts from testimony of Antonin Scalia for the Justice Department, Fred Graham and Jack Nelson for RCFP; Len H. Small for ANPA; and Riohard W. Jencks for CBS, *Press Censorship Newsletter* 7 (April/May 1975): 99.

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34. Cameron DeVore, telephone interview with author, 20 November, 2003, Lopez Island, Washington.

35. E. Barrett Prettyman Jr. telephone interview with author, 18 October, 2001, Washington, D.C.

36. Jack Landau interview.

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50. Gene Miller, telephone interview with author, 15 October, 2001, Miami.

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52. Jack Landau interview.

53. Jack Landau to Walter Cronkite, 29 January, 1981, RCFP files.

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57. James Goodale, telephone interview, 10 November, 2003, New York City.

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59. James Goodale and Cameron DeVore interviews.

60. Fred Friendly, "A Crime and its Aftershock," *New York Times Magazine,* 21 March, 1976: 16-18, 85-96.

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89. Jack Landau interview.

90. Jack Nelson, interview with author, 18 October, 2001, Washington, D.C.

91. Sarah Fritz, telephone interview with author, 13 November, 2003, Washington, D.C.

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96. Sarah Fritz, telephone interview.

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98. Steering Committee minutes, 27 November, 1985, files of RCFP.

99. "*State of the First Amendment, 2002*" (Arlington, Va.: First Amendment Center, The Freedom Forum, 2003).

100. Eileen Shanahan interview.

101. Fred Graham, Jack Landau interviews

AEJMC

Association for Education in Journalism
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