

Heroin

## Winding down the First Amendment with Harper & Row

In his letter in last week's Voice, B. Brooks Thomas, Vice President and General Counsel of Harper & Row, writes that he felt compelled to respond to my column about his firm and the CIA because of the potential impact of my assertions on "the author community."

I had written (Voice, August 10) that any writer working on a book which might offend the government ought to be wary of going to Harper & Row in view of that publisher having yielded to a request by the CIA that it see Alfred McCoy's "The Politics of Heroin in Southeast Asia," *before* publication.

Nothing I wrote then, or will write now, is more harmful to Harper & Row in "the author community" than Brooks Thomas's own letter last week in The Voice and Harper & Row's apologia in the form of an ad on the August 15 New York Times book page. The ad was signed by Winthrop Knowlton, President of Harper & Row.

Both Thomas and Knowlton claim that letting the CIA see the book in advance of publication is the very model of "responsible" publishing—no matter what the author in this case thinks. After all, they emphasize, the book has now been published without a single change: So what harm has been done?

Quite a lot, as you will see, and as I expect most writers—certainly those involved in investigative reporting—already know. Alfred McCoy, the author of "The

Politics of Heroin in Southeast Asia," certainly knows. This is what he said on August 14, after Harper & Row had decided to go ahead and publish his book without any changes: "I disagree absolutely with their decision to show the book to the CIA before publication on pragmatic and on philosophical grounds. It was a bad decision in every possible way."

Melvin Wulf, legal director of the American Civil Liberties Union, said to me the following day: "Harper & Row's point that it did not accede to any of the CIA's requests for changes begs the fundamental question, because Harper & Row should never have let the CIA see the book in advance of publication in the first place. Harper & Row doesn't

seem to realize that there is a whole amendment to the United States Constitution—the First—that would have protected it against the arrogance of the CIA. It's pathetic that a leading publisher would surrender its integrity to the CIA or to any government agency that had the presumption to demand, or even merely to ask, to review an unpublished manuscript. A terribly bad precedent has been set. Today, the CIA—tomorrow, HEW or some other government agency."

Before examining Brooks Thomas's remarkable document in last week's Voice, some additional background which you won't find in Harper & Row's statements on the case. Mel Wulf speaks of the CIA's "arrogance." In early June, the CIA did indeed come on very strong to Harper & Row—verbally. But by the time the agency sent in its written review of the book in late July, the CIA's tone had become much less importunate.

A primary reason for that change in tone was the decision of Alfred McCoy—once he learned that CIA pressure was on Harper & Row—to go to the media. ("I thought the liberal media would be outraged and would find material to corroborate what I was saying.") He did this *against* the wishes of Harper & Row. Taking his case to the press and to television, McCoy was responsible in part for three sizable New York Times stories on the politics of heroin in Southeast Asia (two of them on the front page, including one breaking the story of Harper & Row's agreement to let the CIA review the book). There was also an editorial, "Heroin and the War," in the July 26 Washington Post. And McCoy himself appeared on NBC-TV's "Chronolog" on July 28.

It was during that week that the CIA, courtesy of Harper & Row, had official possession of McCoy's book. Because his publisher would not fight for him, McCoy

fought for himself and for the integrity of his book. In that week, McCoy, by publicly pressing his case against the CIA, was instrumental in putting the CIA on the defensive. If there has been a

"victory" over the CIA in this case, the credit is due McCoy. As a man close to the events put it, "If the CIA had come on as strong at the end as it did in the beginning, I am far from sure that Harper & Row would have refused to make *all* the changes the CIA wanted. I believe McCoy going public had a considerable effect on so toning down the CIA's final response that Harper & Row could itself—belatedly—come to the defense of its author."

Another point that ought to be cleared up. In my August 10 column, I quoted Brooks Thomas as telling me that he didn't know whether Harper & Row would have published the book if McCoy had resisted turning it over to the CIA before publication.

Mr. Thomas, to put it kindly, was being disingenuous in that statement.

From a July 18 letter from Alfred McCoy to James Fox, assistant general counsel of Harper & Row: "I have only acceded to Harper & Row's determination to give the book to the CIA *because you have told me that unless I did so, you would categorically refuse to publish the book.*" (Emphasis added—N. H.)

Harper & Row twisted the arm of its author—let there be no mistake about that.

But, says Mr. Thomas in last week's Voice:

"In this case, the author had other equally attractive publishing options which did not involve showing the manuscript to the CIA. The fact that he chose to go along with us rather than publish elsewhere only reflects the fact that our commitment to the book was clearly more important to him than our difference of opinion about showing it to the CIA."

Aw, Mr. Thomas, do you really think this paper's readership is that gullible?

From Alfred McCoy's July 18 letter to James Fox, assistant general counsel, Harper & Row:

"... the delays involved in going to a new publisher would most certainly delay publication so long that the American people would be denied the information until after the November elections." (Emphasis added—N. H.)

That's why McCoy "chose to go along."

So McCoy, having been "persuaded" to let the CIA look, then went to the media to fight to keep his book intact. As he also wrote to James Fox, McCoy was well aware that he had sacrificed a key principle in submitting to Harper & Row's suspend-your-First-Amendments-rights-or-leave-edict. But he would not sacrifice the contents of his book.

As for Brooks Thomas's letter to The Voice, he quite clumsily tries to play word games. Thomas emphasizes that the CIA asked "only for permission to review the book." If Thomas doesn't understand that act by the CIA as an attempt at prior restraint of certain portions of the book, I'm afraid he needs a reading comprehension course.

I mean, did the CIA want an advance copy in order to give Harper & Row a quote for an ad? ("Enthralling! Couldn't put it down!"—Richard Helms.)

Thomas also writes: "Hentoff's claim that what is involved here is prior restraint is a classic exercise in bootstrap logic."

But that is not what I said. This was a CIA attempt at prior restraint, and though it didn't work this time, Harper & Row's having given the agency the book before publication is likely to increase and intensify more such attempts from government agencies. Why, the President of Harper & Row

himself believes that bypassing the First Amendment rights of one of his authors shows that "we have acted responsibly, in the best interests of all concerned, including the American reading public" (Harper & Row ad in the August 15 Times).

Thomas also writes that the CIA's request to see the book was not "confidential." Then how come someone in Thomas's own office was so shocked when I called the day Seymour Hersh's story broke that I was told, "Why that was supposed to be a very confidential agreement"?

Had you intended to let us know about that agreement, Mr. Thomas, if the press hadn't found out first? Would the wording of that August 15 ad in the Times have been the same if the press had not initially revealed this "non-confidential" agreement?

But why was the agreement made? As Thomas says again, and Winthrop Knowlton underlines, Alfred McCoy's book had been read by independent authorities; and Harper & Row, to quote Knowlton, was "convinced that the work is carefully reasoned, scholarly, and well documented." Nonetheless, Thomas explains, since the CIA wanted to rebut and try to disprove McCoy's facts and conclusions, by all means let them look at the book before publication. "This is simply a matter of intellectual honesty," he writes. "To convert it into some form of political surrender is an exercise in knee jerk paranoia."

How quaintly anachronistic a phrase—"knee-jerk paranoia"—in the fourth year of the Nixon administration's assault on the Bill of Rights. I know of at least six members of the Association of American Publishers' Freedom to Read Committee who also deplored, to put it mildly, Harper & Row's decision to accede to the CIA. Are they too afflicted with "knee-jerk paranoia"? They, as editors and publishers, would have resisted the CIA. Does that make them "egoistic and irresponsible," to quote from Thomas's characterization of us "simplistic" First Amendment types?

I wonder if Thomas dares poll his own editors and writers—by secret ballot—as to how they would define "responsible" publishing in this case.

Thomas goes on to say: "We are in the business of publishing books, not litigating with the CIA."

Clearly not even when the First Amendment is involved.

But then the paragraph turns as Thomas writes: "One of the reasons for volunteering (sic) the book was in the hope of avoiding such expense and delay (of a court case) by convincing the CIA that they had no case for court action. Another was to put us in the strongest possible position should the CIA go to court anyway, in which case we would have fought them to the limit. It seems rather ungenerous to fault this strategy for having paid off, as it appears

to have done."

Says Melvin Wulf, legal director of the American Civil Liberties Union: "I do not understand how Harper & Row can even be talking about the possibility that the CIA would have filed a law suit with regard to McCoy's book. No court in the United States would entertain, would tolerate such a suit. Not even the judge in the Marchetti case" (Voice, August 10).

Or, as a man closely involved in literary litigation for publishers says, "There are no absolutely no grounds for a CIA suit against Harper & Row. That's all a figment of Harper & Row's imagination."

Some strategy, Mr. Thomas. A game plan without a game.

Then Thomas addresses himself to my point that letting a government agency see a book before publication can have a damaging effect on the author's sources.

"What difference did it make," Thomas writes, "that the CIA saw the book three weeks earlier than it otherwise would have? This is not a series of newspaper exposes where future sources might dry up. And the CIA can intimidate past sources just as well after publication as before, even assuming they need our copy of the manuscript to do it."

My point, which Thomas evades, is that if a publisher submits a book to a government agency before publication, the writer cannot but be concerned with the pressures that agency can put on his sources before the book is published. If the pressures are fierce enough, one or more sources can quickly retract what they told the writer, thereby putting his credibility in question before the book is even out if the agency decides to go to the media immediately.

A publisher who puts a writer into that kind of position is one for investigative reporters to stay away from.

And there's another danger to a writer when his publisher lets a government agency he has criticized see the book prior to publication. Alfred McCoy, August 14: "I was afraid the CIA would lean on my sources so hard that they'd come up with massive retractions and the book wouldn't be published at all."

But Harper & Row was firmly behind the book, wasn't it?

McCoy: "Until the CIA's final response, I was very pessimistic that Harper & Row would publish my book."

Not that the CIA didn't try to lean on some of McCoy's sources. As he said to me on August 14, and said again on NBC's Today show the next morning, the CIA did put on enough pressure to get denials before publication date

from at least two of McCoy's sources in Southeast Asia. But, Thomas implies, the CIA didn't necessarily need Harper & Row to send it a copy of McCoy's manuscript in order to start working over McCoy's sources. (Isn't Thomas at all concerned, let alone outraged, at what he considers the very real possibility that the CIA already had secretly, and illegally, obtained a copy of McCoy's manuscript? No trace of any such concern in his letter.)

What Thomas fails to understand is that by officially giving the CIA the manuscript, Harper & Row exculpated the CIA from having to explain any retractions it might have forced out of McCoy's sources before the book was published. ("We didn't do anything illegal; we didn't steal the manuscript to find out who was giving McCoy those stories. Why, his own publisher gave it to us.")

Finally, Thomas says that what this columnist "really resents" is "the notion that a publisher should have a point of view on such a matter" "as turning the book over to the CIA before publication" . . . "Surely the author has no more right to force the publisher to publish against his scruples than the publisher has to force the author to write against his."

Thomas really does have problems in reading comprehension. The whole thrust of my first column was that a publisher should indeed have a point of view on such a matter. He should, above all, be committed to protecting the First Amendment rights of his author, his own firm,

and the reading public. In this case, Harper & Row's "scruples" were more powerful than that commitment. Harper & Row decided to play it safe, skirting the First Amendment, and forcing its author to go along or go elsewhere—and if the latter, have his book delayed until after November.

As I told Thomas in one of our phone conversations a few weeks ago, if I had no choice except between a publisher with those kinds of "scruples" and a vanity house, I would take my manuscript to the vanity house and pay for its publication myself.

But Alfred McCoy's views on this matter are particularly germane in the present instance.

From a letter by McCoy to Brooks Thomas of Harper & Row, July 17: "The CIA has already denied my charges and giving them the book to review is like asking the U. S. Army to review Mylai." (He meant, I later found out, it was like asking the U. S. Army to review either Sy Hersh's book on Mylai or Richard Hammer's "One Morning in the War.")

Also from the July 17 McCoy letter to Brooks Thomas: "I believe that the CIA's actions in this case constitute interference in our author-publisher relationship, and I feel strongly that submitting the manuscript to the CIA for prior review is to agree to take the first step toward abandoning the First Amendment protection against prior censorship."

McCoy, after a 21-hour negotiation session, yielded to Harper & Row in order to have his book come out before November. The basic First Amendment issue, however, is the same now as it was then. Harper & Row yielded its own—and its author's—First Amendment rights.

Harper & Row has presented its side of the case—in this newspaper, and in its ad in the Times. Writers have thereby been warned by Harper & Row itself that it is capable of allowing its "scruples" to prevail over the First Amendment. There are other publishers, however, who will not turn over manuscripts to a government agency.

Random House is one of them. Recently the CIA contacted

Random House and asked to review Jack Anderson's "The Anderson Papers" before publication. At the time, there wasn't much for Random House to send if it had wanted to, because the book had not been finished yet. But Random House made it clear to the CIA that when it did have the full manuscript, it would not let the CIA see it before publication.

Says Random House senior editor Bob Loomis: "It is our conviction that we do not have the right to show an author's work to a government agency before publication. If the author chooses to, that's his decision, but we would not bring any pressure on an author to do that. We can say 'no' to a manuscript; but once we have decided to publish a book—and have assured ourselves that it is a responsible piece of work—then it is our responsibility to protect the author's First Amendment rights. And our own, and yours too."

That, Mr. Thomas, is not knee-jerk paranoia; it is, in the most basic sense, responsible publishing.

I still have hope—I always have hope—that the Freedom to Read Committee of the Association of American Publishers will again consider the question of a publisher turning over a book to a government agency before publication. Meanwhile, writers ought to be clear exactly where their publishers stand on this before they sign a contract.

The "author community" has learned a lot from this episode, Mr. Thomas. Thanks.

—Nat Hentoff