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## ARTICLES.

## ■ BEYOND WESTMORELAND

The Right's Attack  
On the Press

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**T**he outcome of the Westmoreland trial is a gain for America—the America of the Constitution and the Bill of Rights. But for the political movement that funded and supported it, the case is merely a lost battle. The New Right's war against the mass media continues unabated and that outcome is still in doubt.

In their quest for political power, the energetic and ambitious leaders of the New Right (many of whom now call themselves "conservative populists") regard the media as a formidable barrier. The problem, as they see it, is that the media is controlled by liberals, who are their natural enemies. The leaders' animus toward the media appears to be shared by their foot soldiers, the millions of "social conservatives" concentrated in the Sun Belt and the Midwest, who support a "pro-family" agenda and respond favorably to appeals for patriotism and a strong national defense.

Central to the thinking of the movement is the idea that the media is now the dominant force in America. Patrick Buchanan, the President's recently appointed Director of Communications, argued in 1977 that the main obstacle to the victory of conservative forces in this country was not the Democratic Party but the liberal media. Kevin Phillips, one of the right's most admired theorists, maintains that the old political parties have "lost their logic." He says, "Effective communications are replacing party organizations as the key to political success." It follows then that to take power—as opposed to winning an election—the right must capture the liberal media, lock, stock and barrel.

Phillips and other New Right social critics lean heavily on the theory of elites propounded by the early twentieth-century sociologists Vilfredo Pareto and Gaetano Mosca, who, not coincidentally—since elite theory counters the concept of class conflict—strongly influenced the young Mussolini and early Italian Fascism. New Right analysis, following another line trod by Italian Fascism, claims a unity of interest among "producers": business, labor and agriculture. "The basic economic and political split in America today," according to William A. Rusher, publisher of *National Review*, "is no longer between 'business and labor' but between 'producers and non-producers.'"

Among the nonproducers are the print and electronic media, part of a "verbalist" elite that battens on the hide of the hard-working producers. Rusher believes this unjust situation should not be permitted. So does Samuel T. Fran-

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cis, a former policy analyst for the Heritage Foundation and now a legislative assistant to North Carolina Senator John East. He cites the media as one of those "power preserves of the entrenched elite whose values and interests are hostile to the traditional American ethos and which is a parasitical tumor on the body of Middle America. These structures should be leveled."

Although the New Right believes that the Presidency will continue to be held by conservatives, they see liberals clinging to control of the all-powerful media. In this situation, they sometimes regard the First Amendment as a weapon used by their enemies. How to convince people that the First Amendment is not sacrosanct? The New Right has already broached that touchy subject.

An article by Kevin Phillips in *Human Events* on January 13, 1973, was titled "Is the First Amendment Obsolete?" To which Phillips answered "Yes," noting, "'The Public's right to know' is a code for the Manhattan Adversary Culture's desire to wrap the 1st Amendment around its attack on the politicians, government and institutions of Middle America."

Two years later in a book titled *Mediacracy*, Phillips pursued the argument:

The Bill of Rights is hardly a static legal concept. . . . perhaps the First Amendment may undergo a shifting interpretation . . . to reflect the new status of the communications industry. The media may be forced into the status of utilities regulated to provide access.

Phillips gave no specific details as to how the media was to be "regulated." But in 1981 some extraordinary suggestions were offered by James L. Tyson in *Target America: The Influence of Communist Propaganda on U.S. Media*. Tyson, who lists as his past affiliations the Office of Strategic Services (precursor to the Central Intelligence Agency), *Time-Life International* and *I.B.M. World Trade Corporation*, proposes that a government official be stationed at each of the three major television networks to check news stories for fairness and accuracy. The networks have "become so powerful in opinion formation that national survival demands some assurance that they will not be free to disseminate the misinformation and distortions that have occurred in recent years," he writes. "In a word, TV news has become much too important a matter to be left to TV newsmen."

As a "solution to this problem," Tyson offers what he terms a preliminary recommendation. He would "require an ombudsman for each major network . . . appointed by an independent outside body such as the FCC." This individual would see that the Fairness Doctrine is adhered to and would insure that the networks follow "expert advice" on issues like "the neutron bomb, nuclear power, or our policy in Indo-China."

Several New Right groups, including the American Security Council and the National Strategy Information Center, assisted Tyson with his research. But what gives his book the imprimatur of the New Right is the endorsement of Reed Irvine, the movement's pre-eminent media maven. When

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a "disgraceful example of the atrocious journalism practiced" by CBS News. He suggested the motive behind it: "CBS is smarting under the charge that they and others in the media helped cause our defeat in Vietnam."

Soon, another stalwart of the right came galloping in hot pursuit of CBS. The May 29, 1982, issue of Walter Annenberg's *TV Guide* ran a highly unusual twelve-page cover story titled "Anatomy of a Smear: How CBS News Broke the Rules and 'Got' General Westmoreland." Using unedited transcripts of interviews that were leaked to *TV Guide* by a CBS Deep Throat, the magazine accused CBS News, producer George Crile and Mike Wallace of numerous serious violations of journalistic standards. The fact that Annenberg is a longtime right-winger and a close friend and supporter of Ronald Reagan made some members of the press skeptical about the magazine's objectivity. *Newsweek* questioned whether *TV Guide* was a suitably "neutral forum" for such an investigation, given Annenberg's conservative background and his declared opposition to "adversary journalism."

But at the time the *TV Guide* article appeared, CBS News had a new president, Van Gordon Sauter. Faced with the exposé, Sauter responded by announcing that he had commissioned an investigation of the documentary by network executive Burton Benjamin. The harshly critical "Benjamin Report" was released in summary form in July 1982 and stated that the makers of the documentary had committed mistakes in procedure and violations of CBS News guidelines—though both Benjamin and Sauter affirmed that they supported "the substance of the broadcast."

It is easy to understand why New Right ideologues would have thought the Westmoreland affair had all the makings of a perfect antimedia project—their most ambitious one to date. Thus some time before the fall of 1982 an individual named Richard Larry approached Washington attorney Dan Burt, president of the Capital Legal Foundation. Larry is a trusted agent of Richard Mellon Scaife, the great-grandson of the founder of the Mellon banking fortune and one of the principal moneybags of the New Right movement. If Burt would fight CBS on behalf of Westmoreland, Larry proposed, Scaife would help pay for the suit. That secret arrangement was not disclosed until after the suit ended. Burt has now revealed that Scaife contributed well over \$2 million to Capital Legal (more than 70 percent of the cost of the litigation), which suggests that the trial might more aptly be titled *Richard Mellon Scaife v. CBS*. (Other major backers were the Smith Richardson and the John M. Olin foundations.)

That little has been written about Scaife is not for lack of journalistic enterprise. He has come into his own only since the early 1970s and goes to great lengths to avoid publicity. The most useful elucidation of his political financing activities is an article in the *Columbia Journalism Review* by Karen Rothmyer, a former *Wall Street Journal* reporter who teaches at the Columbia School of Journalism. Based on public and private financial records, Rothmyer's 1981 story estimated that Scaife's charitable foundations already

had granted \$100 million and were continuing to contribute heavily to a variety of conservative, neoconservative and especially New Right organizations. (Both *Accuracy in Media* and *The Public Interest*, a magazine run by Irving Kristol and Nathan Glazer, are funded in part by Scaife.) Moreover, Scaife has been particularly influential as a source of seed money for such organizations as the Committee for the Free World, the Institute for Foreign Policy Analysis, the Institute for Contemporary Studies, the Media Institute and the Heritage Foundation. All this bespeaks a good deal of political sophistication.

Rothmyer was never able to discuss her findings with Scaife. Although she repeatedly requested an interview, he repeatedly refused. She finally cornered him at an exclusive club in Boston one evening and shot a question at him: "Mr. Scaife, could you explain why you give so much money to the New Right?" He responded, "You fucking Communist cunt, get out of here."

Scaife is also known to have provided seed money for the National Legal Center for the Public Interest and six affiliates, one of which was the Capital Legal Foundation. Other benefactors of this New Right legal network were the Coors and Fluor families, both closely identified with conservative causes. In 1977, when Capital Legal was incorporated, its board included Leslie Burgess, a vice president of the Fluor Corporation; Peter J. Fluor, president of Texas Crude and a major stockholder of Fluor; and associates of two leading conservative organizations, the American Enterprise Institute and the Media Institute.

In 1980 Dan Burt left a lucrative private law practice (he had an office in Al Khobar, Saudi Arabia, where Fluor Arabian has headquarters) to become president of the Capital Legal Foundation. That same year Scaife commissioned Michael Horowitz to study conservative public interest law firms. Horowitz concluded they were too stereotypically pro-business to capture the sympathy of many Americans. Burt may have followed this advice, or perhaps he had a natural affinity for playing the kind of role recommended by Horowitz. He severed the foundation's ties to the National Legal Center and publicly criticized his erstwhile counterparts. He began to tell interviewers that his firm practiced a new breed of public interest law. It was for the little guy rather than big business and was more libertarian than conservative. Nevertheless, his connections to the right do not appear to have suffered as a result of his apostasy. He developed a working relationship with Senators Paul Laxalt, Orrin Hatch and Edward Zorinsky; he was accorded the honor of a long interview in the John Birch Society's newsletter, "Review of the News"; and his big-business, New Right board of directors was virtually unchanged. Moreover, Capital Legal's budget tripled between 1980 and 1982, with much of the money still coming from Scaife.

In spite of—or perhaps because of—his independent stance, Burt and his foundation were chosen by Scaife to handle the Westmoreland suit. At a press conference attended by Burt on September 13, 1982, the general announced that on that day the Capital Legal Foundation had filed a \$120 million libel suit against CBS on his behalf.

Soon after, Reed Irvine solicited donations for a Westmoreland legal fund (he later said he did this at Burt's request). He also sent out a nationwide mailing of a letter signed by Westmoreland, blasting CBS and appealing for contributions to AIM. In addition, Irvine ran a three-quarter-page advertisement in *The Washington Times* for AIM and the Tyson book, with a photograph of Westmoreland in full military dress, captioned: "General Westmoreland wrote that 'Accuracy in Media did a fantastic job of exposing the dishonest smear job that CBS perpetrated. Everyone should read the AIM Report.'"

In late January 1983, CBS News president Sauter told a meeting of journalists in Philadelphia that the Westmoreland libel suit "has become a rallying point for people who seek to use it as an instrument for damaging the image, spirit and aggressiveness of the news media." Westmoreland, he added, "is merely the point man in their search-and-destroy mission." A CBS spokesman identified AIM and the American Legal Foundation as the "people" Sauter had had in mind.

Burt struck back sharply in the press, insisting that Capital Legal followed no particular political philosophy and that he had tried to distance himself from AIM and the American Legal Foundation. He was quoted as saying, "Sure, there are crazy groups on the right, but what can I do?" Irvine later reported in his newsletter that Burt had refused \$41,000 that AIM had raised for the suit, and commented bitterly: "He apparently decided that the case might in some way be jeopardized if Accuracy in Media was in any way connected with it. He said that he would not want to run the risk of being accused of carrying out an anti-media crusade." That the dispute was tactical, not substantive, however, is suggested by the fact that in May, Irvine could announce to his readers that AIM had received a new contribution of \$100,000 from Richard Mellon Scaife—the *eminence grise* of the Westmoreland case.

After AIM ran the ad with Westmoreland's picture a second time, Capital Legal released a letter the general had written Irvine. The letter disclaimed any animosity toward the press. "The ad, by implication, could give the reader the impression that my fight is with the media," Westmoreland wrote. "It is not! It is with CBS over a specific issue. Your ad adds fuel to the frequent allegations by some that my case is a right-wing effort to 'get' the press."

Forgotten by nearly everyone was that some years earlier the general had not hesitated to associate himself with AIM's criticisms of the media. In 1978 he had been the principal speaker at an AIM conference in Arlington, Virginia, that was also addressed by William Rusher and Patrick Buchanan. In a rambling but combative talk, Westmoreland did not go so far in his condemnation of the press as many in the New Right have, but he charged that journalists in Vietnam were "abusive, arrogant and hypocritical," that Americans had been "masterfully manipulated by Hanoi and Moscow" and that the public's "false perception" that Tet was a victory for the Communists was "directly attributable to inaccurate reporting." He declared, "If the media can create a defeat of our armies on the battlefield, they can

also eventually defeat the viability of our system."

As the trial date neared, Burt—despite one slip when he exclaimed, "We are about to see the dismantling of a major news network"—sounded more and more like a benign professor of journalistic ethics. He managed to focus the press on such matters as media responsibility and the right of an old man to preserve his reputation. Although a few stories made passing reference to Capital Legal's New Right funding, Burt largely succeeded in diverting attention from the motives of those who were paying Westmoreland's legal fees and the political significance of the case. Instead, the media turned on itself in a paroxysm of self-criticism. On the eve of the testimony of the first witness, *Newsweek* bore a picture of Westmoreland on its cover and a story inside with the headline "The Media in the Dock: Scrutiny of the making of a TV documentary highlights shortcomings throughout the news business."

But for Burt the party ended when the trial began.

To win his case, he had to prove that the documentary's statements about the general were false and were made with "malice"—that is, with knowledge they were false or with reckless disregard for the truth. George Crile, the producer of "The Uncounted Enemy," was one witness from whom Burt confidently expected he could extract testimony showing malice, but his examination of Crile was a disaster. Expected by some to become the scapegoat of the entire affair, Crile saved himself by coolly demonstrating that he was extraordinarily knowledgeable about the subject. He came across as a serious, well-informed journalist, who had done impressive research.

Burt's last chance to undermine Crile's testimony and prove malice was Ira Klein, a former CBS employee. Burt had stressed the importance of Klein's testimony to his case in his opening statement to the jury:

Crile fabricated his story with the help of a film editor. . . . [who] complained to Crile time and again about the way he was making the broadcast. . . . That film editor, Ira Klein, the man who physically made the broadcast, you will see testify at this trial as a witness for General Westmoreland. He will describe how Crile created "The Uncounted Enemy: A Vietnam Deception" with reckless disregard for the truth.

CBS attorney David Boies delivered the *coup de grâce* to Westmoreland's case when he cross-examined Klein. This was the man who had been airily giving his "expert" opinions on alleged distortions in the broadcast for the previous three years. First, Boies forced Klein to admit that he had told a reporter that Crile was a "social pervert" and was "devious and slimy" (tape recordings of those conversations were available). Then he proceeded:

Q.: During the preparation of the broadcast, did you attend any of the interviews of people that were being interviewed?

A.: No.

Q.: Were you aware that Mr. Crile and Mr. [Sam] Adams and others associated with the broadcast took notes of interviews that they conducted in preparation for the broadcast, interviews that were not filmed interviews?

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