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LIBERTY UNDER SIEGE

The Reagan Administration's taste for autocracy

By Walter Karp

Walter Karp is a contributing editor of Harper's *and the author of* The Politics of War. *He is at work on a book about the Korean War,* The Empire and the Mob.

The Reagan Administration came to power firm in its resolve to liberate corporate enterprise from government regulation, to free the economy from the incubus of the welfare system, and to reduce the government's role in the life of the country. It never said that these far-reaching goals could not be achieved by the ordinary methods of democratic persuasion and the established procedures of congressional lawmaking. The Administration never contended in public, and perhaps not even in private, that the exercise of liberty gave its enemies an unfair advantage, or that the traditional sources of public information kept the electorate too well informed, or that popular government in general was a hindrance to its aims. Only once did any ranking member of the Administration publicly admit that the "Reagan Revolution" included—indeed necessitated—a program of drastic political change. This occurred in late 1981, when David Stockman, the White House budget director, said that the new Administration's success "boils down to a political question, not of budget policy, or economic policy, but whether we can change the habits of the political system." After Stockman's outburst of perilous candor, the curtain came abruptly down. It has not risen again on the political intentions of the Reagan Administration, for the habits the Administration has striven to change have been, by and large, the habits of freedom.

"What we are witnessing," said the American Civil Liberties Union in November 1981, "is a systematic assault on the concept of government accountability and deterrence of illegal government conduct." Alas, "we," the people, were not witnessing a thing, and have not been witnessing a thing for almost five years. In politics, what is seen is what is talked about, and the "systematic assault" has not been talked about—not by the Administration, not by Congress, not by the opposition party, not by the press.

Nothing is more important, however, than what public men prefer *not* to discuss. For nearly five years now the Reagan Administration has been engaged in an unflagging campaign to exalt the power of the presidency and to undermine the power of the law, the courts, the Congress, and the people. That is what our politicians have not discussed with us, and what lies hidden behind the screen of political rhetoric and the smile of a popular President.

What follows is a chronicle of that campaign, told simply by means of recounting the deeds that comprise it. This chronicle is not the secret history of an alleged secret plot. Most of the events have been duly reported in the daily newspapers. The chronicle is simply a matter of paying attention to public deeds that have been largely ignored or made light of outside the confines of congressional hearings. The chronicle is remorseless because the campaign is remorseless, and it is shocking because the campaign is shocking. When a concerted assault on the habits of freedom ceases to shock us, there will be no further need to assault them, for they will have been uprooted once and for all.

I. 1981

The newly elected Reagan Administration promised to "hit the ground running" and it does—like a company of commandos fanning out in a hostile country that just happens to be its own.

What it besieges at once is the old, unsung bulwark against overweening presidential power: the open, garrulous, decentralized executive branch itself. Bureaucrats practiced in rudeness and evasion are put in place of helpful press officers. Telephone requests for information are suddenly given short shrift. Press briefings become so grudging, notes one veteran reporter, that a State Department spokesman says "no comment" and "I can't say" more than thirty times in the course of one forty-five-minute session. Pentagon officials are warned that the polygraph test—which accuses the guilty and the innocent alike—will be used to identify those who "leak" classified information to the press.

In late April the President declares a moratorium on the preparation and dissemination of government publications, and the huge, habitual outflow of official reports, bulletins, and pamphlets is quickly brought under control. The Administration's stated goal is the "elimination of wasteful spending on government periodicals." Dropped in the moratorium is a government booklet on bedbugs, which Edwin Meese III, counselor to the President, brandishes for reporters with a hearty chuckle, as well as Central Intelligence Agency reports on "U.S.–Soviet Military Dollar-Cost Comparisons," which disappear unbrandished. Meanwhile, the White House musters every specious argument it can find to justify the biggest arms buildup in history. Something considerably more important than thrift lies behind this moratorium.

Whatever can be hidden the Administration hides. "The White House is structuring key advisory panels," reports the *New York Times* in July, "so that they do not fall under the public meeting rules of the Advisory Committee Act." Under the direction of the White House the agencies of the executive branch evade the public accountability provisions of the Administrative Procedure Act. New regulations are issued as "guidelines" so that the public need not be notified. Existing regulations are altered by internal memorandums.

On June 6 the *Washington Post* runs a story under the headline "Administration Attempting to Stem Information Flow to Trickle." This is only the beginning, however, for the President is determined to redress the balance between, in his words, "the media's right to know and the government's right to confidentiality."

This latter "right" is a figment of the official imagination: in America the governed have rights, not the government. But one reason the Administration is determined to uphold it becomes clear on July 8 when a legal analysis of the gravest importance begins circulating in the House Committee on Energy and Commerce. Prepared for the committee by the

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American Law Division of the Library of Congress, it describes a far-reaching seizure of power carried out by the President on February 17 when he signed Executive Order 12291. That order, says the report, "sets up a framework for [presidential] management of the rule-making process that is undeniably unprecedented in scope and substance," one that "does not appear to draw its authority from any specific congressional enactment." It "provides no explicit safeguards to protect the integrity of the process or the interest of the public against secret, undisclosed, and unreviewable contacts . . . the Order, on its face, deprives participants of essential elements of fair treatment required by due process." Most important, the order threatens to make "cost-benefit principles," imposed and manipulated by the White House, supreme over the statutory mission given by Congress to the executive agencies of the government—in violation of the doctrine of separation of powers. The warning falls into the public arena as noiselessly as a feather.

The Administration's most ambitious efforts to censor and suppress lie in the future, but even in mid-1981 it begins to choke off various sources of objectionable opinions.

Cuba is one such source. On July 10 the secretary of the Treasury notifies 30,000 subscribers of the Communist Party weekly *Granma*, which was impounded by Treasury agents in May, that "it will be necessary for you to obtain a specific import license from this office" in order to "import" Cuban periodicals in the future. The maximum penalty for subscribing without a license is ten years in prison and a $10,000 fine under the Trading With the Enemy Act of 1917; this act has never before been applied to periodicals, owing to the longstanding national "habit" of distinguishing printed matter from merchandise. By treating Cuban periodicals like Cuban cigars the Administration claims control over a hitherto free activity—until it is stopped by a First Amendment lawsuit brought by the ACLU. This is not the last time, however, that the Administration will try to use commercial regulations to suppress non-commercial activity.

Political refugees from friendly tyrannies are another source of objectionable opinions: they know too much about the regimes they fled. After seeing its February white paper on El Salvador, which presented "evidence" that the Salvadoran guerrillas were being heavily armed by Cuba and the Soviet Union, exposed as a pack of lies, the Administration begins to deport Salvadorans en masse. In August, the tortured corpse of one deportee turns up by a Salvadoran roadside.

To the Administration, however, the most dangerous source of objectionable opinions are its own documents. On October 15 the White House submits legislation to Congress that would keep these documents out of the public's hands by "reforming" the Freedom of Information Act into oblivion. Politically, this is the Administration's first truly perilous moment, for the act is no ordinary piece of legislation. It has behind it the entire weight and authority of the democratic tradition in America: the sovereignty of the people, the accountability of government, the old republican distrust of official secrecy and bureaucratic caprice. "The Freedom of Information Act is a blessing for those who value a check on Government snooping," William Safire, the conservative columnist for the *Times*, wrote in May when the White House, testing the waters, first indicated its hostility to the law. "Individuals can now find out what the FBI file says about them. Even better, individuals can force the Federal bureaucracy to disgorge rulings made without public scrutiny, and documents more politically embarrassing than secret."

Yet one "improvement" in the Administration's Freedom of Information Improvement Act of 1981 would put out of the public's reach precisely those documents that give the governed their "check on government snooping." Another "improvement" would make it difficult to discover how the agencies of the executive branch are enforcing the health, safety, and environmental laws that the White House is bent on subjecting to cost-benefit analysis. A third improvement would make it dauntingly expensive for the act to be used by those who inform the public—scholars, writers, newspaper reporters, public-interest organizations—the very users that, under the unimproved act, pay little or nothing.

"Freedom of information is not cost-free. It is not an absolute good," Jonathan C. Rose, an assistant attorney general in charge of abridging the freedom of information, would say a year later. But the Administration's cant about thrift rings false. "If the Freedom of Information Act is rescinded or crippled," says Kurt Vonnegut at a symposium on the FOIA, "the American people will have been treated as spies for a foreign enemy." An Administration which prates about getting the government off the backs of the people has revealed its real ambition: to get the people off the back of the government.

On October 14 that ambition could scarcely be plainer, as the President invokes "executive privilege" to withhold from Congress thirty-one documents, many of them unsigned memorandums, prepared by junior officials in the Department of Interior. In the most sweeping assertion of executive secrecy in our history, the President declares that all information that is "part of the executive branch deliberative process" lies beyond the oversight of Congress. President Reagan, who invents his own constitution as he goes along, has expanded the confidentiality of the Oval Office to cloak the entire executive branch. In the space of twenty-four hours he has proposed to cut off the government not only from the people, but from their elected representatives as well.

By October 15 Congress has every reason to ask—and loudly—on what meat doth this our Caesar feed. But Congress asks nothing. The opposition leaders are silent; "liberals" are as mute as "conservatives." The elected representatives of the people apparently prefer to deal privately with the White House rather than awaken the sleeping electorate. Quietly, Congress will preserve the Freedom of Information Act, and quietly it will challenge "executive privilege"; but the Administration's assault on accountability it will not make known to the people.*

On December 4 the President signs an executive order authorizing the CIA for the first time to collect "foreign intelligence" in the United States by surreptitiously questioning the citizenry. It also authorizes the CIA to employ the entire local police force of the country in this undercover questioning, which can take place in a barroom, a barbershop, or the aisle of a K-Mart—as if the U.S. government needed to monitor the unguarded conversations of private citizens to keep itself informed about foreign countries. Getting the government off the backs of the people is the very last thing this Administration wants.

II. 1982

On January 7, at the annual meeting of the American Association for the Advancement of Science in Washington, the Administration opens an assault on the old, slack habits of scientific freedom. The "hemorrhage of the country's technology" overseas is so severe, says Admiral Bobby Inman, deputy director of central intelligence, that the government must step in to "control" the public dissemination of private research. If the nation's scientists do not submit voluntarily to such censorship, Admiral Inman warns the assembled audience, a "tidal wave" of public outrage "could well cause the federal government to overreact" against the liberties of science. Anger and indignation sweep the meeting. What the government wants "is clearly more compatible with a dictatorship than a democ-

*The Administration's FOIA bill never came to a vote. Other legislation incorporating many of the Administration's proposals passed in the Senate, but stalled in the House. In late 1981, the House Committee on Energy and Commerce cited Interior Secretary James Watt for contempt; the documents at issue were subsequently turned over.

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racy," says Peter Denning, a computer scientist from Purdue University, in a sharp rebuttal to Inman. The Administration mistakes the very source of the "hemorrhage," reports the March issue of the *Bulletin of the Atomic Scientists*. *Commerce* is what transfers technology abroad, according to a 1979 study made by the Pentagon itself, and commerce is what the 1979 Export Administration Act was designed to control.

To all arguments against censorship, however, the Administration is deaf. As Lawrence J. Brady, an assistant secretary of commerce, tells the press in March, the government is determined to combat "a strong belief in the academic community that they have an inherent right . . . to conduct research . . . free of government review and oversight." Accordingly, the Commerce Department informs universities across the country that any faculty member who lectures on advanced technology to even a single foreign student may be considered a "U.S. exporter" under the 1979 law and fined $100,000 for exporting technical data without a government license. At a scientific conference in August, 100 optical engineers are forced to withdraw their research papers at the last minute when government agents warn them that they may violate export control regulations. Once again, an Administration which regards the lawful regulation of commerce as unwarranted oppression uses commercial regulations to suppress non-commercial activity. Yet about the transfer of technology overseas the Administration evidently cares little. Due to its slack enforcement of the *real* export control laws, California's Silicon Valley, in the words of an FBI official, is "as leaky as a sieve."

The pretexts are shifted around like the three shells in the shell game—efficiency, thrift, and national security—but the aim is always the same: to give the White House the power to withhold from the American people whatever the President thinks it best for the people not to know.

On February 4 the President shows Congress the final draft of an executive order on "classified information." The order betrays an appetite for secrecy so wanton that the White House declines to send a representative to defend it at a congressional hearing. Under the order, a bureaucracy which already withholds from the public about 16 million documents each year is instructed to resolve all doubts about secrecy in favor of public ignorance. The order creates a new category of technical data ("vulnerabilities or capabilities of systems, installations, projects, or plans relating to the national security") so vast and so vague that it enables the government for the first time to classify private technical research—thereby giving the White House another way to clamp down on the campus and the laboratory and the Freedom of Information Act. The new category has the additional advantage of greatly thickening the wall of secrecy surrounding the Administration's wasteful, fraud-ridden military buildup.

The new secrecy order treats history itself as a menace to national security. The systematic declassification of documents, begun by President Eisenhower in 1953, is brought to a virtual halt, and its unprecedented antithesis—reclassification—is introduced in its place. Under the new order government officials can reach into the public domain and re-conceal what is already public. After high-ranking officials use classified information to present their version of events, the government can now deny that information to others. "We are encouraging the distortion of history," says Anna K. Nelson, representing the American Historical Association at the March 10 hearings. "The knowledge that documents and records are equally available to all has kept many a participant an honest observer. This provision has no place in a representative democracy."

The one-day hearing makes no public stir. But the White House is still anxious to preserve its "conservative" reputation. At a meeting of the National Newspaper Association on March 14, Ed Meese blames the draft order on "overzealous bureaucrats"; but the President signs it just the same. On April 1, armed with their new authority to suppress private research, Pentagon officials telephone the technical journal *Spectrum* and order an editor to start shredding a manuscript about high-tech Army weapons systems "immediately."

The White House in 1982 is steadily consolidating its new legislative powers. Under Executive Order 12291, which elevates cost-benefit principles over acts of Congress, a new mode of lawmaking is being set up before our unseeing eyes. Under this new system, Congress continues to enact legislation after years of study and deliberation. And it continues to delegate to the appropriate agency the authority to issue regulations carrying out the aims of each law. But after that, a few dozen clerks in the White House budget office virtually dictate the promulgation of any new regulations, thereby nullifying acts of Congress that the President considers too costly. "The result is a return, to some extent, to autocratic government," says Kenneth Culp Davis, one of the country's leading experts on administrative law, writing in the April issue of the *Tulane Law Review*.

And what is the purpose of inserting autocracy into the American republic? To "reduce the burdens of existing and future regulations," says the White House, but that is all it dares say in public. Like the arms buildup, like domestic snooping, this "good," too, thrives best out of sight of the electorate. Under the direction of the budget office the Nuclear Regulatory Commission in June suspends some of its most important safety regulations without the knowledge of the millions of people who live near nuclear power plants. Under the control of the White House the Environmental Protection Agency turns into a massive conspiracy against the environmental protection laws. The *Times*, reporting on the 1983 congressional testimony of John E. Daniel, the second-ranking official at the EPA, notes that the budget office "tried to dictate regulations to the agency, threatened reprisals, urged that cost factors be built into health rules when the law prohibited them and showed proposed rules changes to officials of the industries being regulated before the changes were available to the public." With the White House acting as influence-peddler—exactly what the American Law Division's report on Executive Order 12291 had warned of a year earlier—a field report on dioxin contamination is altered to delete a sentence reading: "Dow's discharge represents the major source, if not the only source, of TCDD contamination" in Saginaw Bay, Michigan. EPA field officials are ordered not to submit a new report until Dow "endorsed" it.

These are public benefactions so desperately in need of public inattention that when a congressional subcommittee subpoenas EPA documents on October 21, the President is compelled once again to invoke his personal constitution. On November 30 he declares that "the Constitutional doctrine of separation of powers" obliges him to withhold from Congress the documentary evidence of the agency's efforts to give America "cost-effective" toxic waste dumps. The "dissemination of such documents outside the Executive Branch," says the President, "would impair my solemn responsibility to enforce the law."

Under White House control the Department of Labor nullifies the occupational safety laws by cutting down on inspections, reducing fines, weakening the old rules, and delaying the enactment of needed new ones. The department also quietly undermines a law ensuring fair employment opportunities for Vietnam veterans by suspending key regulations without public notice or comment. According to the department it is "unnecessary and contrary to the public interest" to let the American people know how their President treats the veterans of a war he is trying to glorify.

In June the Department of Health and Human Services proposes that all changes in rules affecting the aged, the poor, the young, and the disabled henceforth be promulgated without public notice or comment. A cost-benefit analysis has persuaded the department that the "delay" caused by public participation in the rule-making process "outweigh[s] the benefits of receiving public comment." Alas for democracy, it cannot make the poor run on time.

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A few weeks before making its secrecy proposal the department had direct experience of the utter incompatibility of democracy and cost-benefit analysis. In May it tried unsuccessfully to save nearly $1 billion by gutting a program that provides preventive medical checkups to 2 million poor children. When this came to public notice, the shysters of "cost-effectiveness" had a hard time explaining why an ounce of prevention was no longer worth a pound of cure, this being the well-known result of a cost-benefit analysis made by humanity at large and not readily rescinded except in the dark. What an enemy of the "good" is common humanity!

As long as a free people can bring the executive to court, however, presidential power is under constraint, for the courts do not yet recognize the new legislative system. In July, Federal District Judge Harold Greene stops the Department of Labor from nullifying two laws it considers too costly to enforce. "It is not for the Secretary of Labor or his subordinates to make that judgment," wrote Judge Greene. "Under our constitutional system, policy decisions are not made by Government administrators; they are made by the Congress." What an enemy of the "good" is the old Constitution!

To free arbitrary power from the constraints of the courts, the Administration tries to cut off the courts from the people. To prevent the citizenry from enforcing the civil rights laws themselves, the Administration will try in 1983 (in vain) to amend those provisions that allow people to sue the government in order to compel it to enforce those laws. To make it financially difficult for the public-spirited to uphold the law against lawless bureaucracy the Administration will also try in 1983, again in vain, to curtail government payment of fees to lawyers who vindicate the law. To weaken the "habit" of judicial review the Administration rails at the federal courts for what Attorney General William French Smith calls "constitutionally dubious and unwise intrusions into the legislative domain"—the domain which the White House itself has lawlessly invaded. To put the old, the young, the poor, and the disabled beyond the protection of the courts the Department of Health and Human Services announces in June that in the future the internal rules it issues to administer its programs will not create any rights or benefits that are "enforceable" in court.*

To deprive the poor of their legal rights, the White House asks Congress in November to abolish the Legal Services Corporation, which provides the poor with counsel to help them protect their rights in court. When Congress refuses, the White House installs its own agents at the corporation. In late November they unfurl their handiwork: pettifogging rules (later dropped) that make it almost impossible for Legal Services lawyers to sue on behalf of large groups of people, the single most efficient weapon in vindicating the legal rights of the poor. And what is the "cost-effectiveness" of compelling the victims of official injustice to sue for their rights one at a time? The inestimable "benefit" of liberating lawless power from the constraints of the law.

III. 1983

On January 24 the budget office proposes a change in its Circular A-122—"Cost Principles for Nonprofit Organizations." What is proposed are new accounting rules for the thousands of private organizations that receive federal grants to carry out government functions in lieu of an extended bureaucracy. The new rules say, in effect, that all such organizations—from the Girl Scouts and the Izaak Walton League to the Association for Retarded Citizens—must forfeit federal funds if they speak out on public affairs.

Although a final regulation was never published, this proposal, as well as the one stipulating that the department's rules be promulgated in secret, remains on the agenda

The new rules "would inhibit the free flow of information between these parties and all levels of government," says an angry Chamber of Commerce. "Operated in tandem, the scope and inherent vagueness of the terms 'political advocacy' and 'unallowable costs' can easily become a giant pincers for the stifling of the free and unfettered exercise of First Amendment rights," says the National Association of Manufacturers, which finds itself puzzled at the spectacle of the White House discouraging "citizen involvement in the political process." Representatives of both organizations testify on March 1 before the one forum left in Washington for a republican opposition to arbitrary power: the House Government Operations Committee, under the chairmanship of Jack Brooks of Texas.

Frank Horton of New York, the senior Republican on the committee, cannot hide his anger or his shame. "We are talking about what a citizen can do with his own money on time not paid for by the Government. . . . [The revision] says that if he receives any money through an award based on cost, he cannot express an opinion on public matters and still be compensated. Mr. Chairman, this is positively outrageous. I cannot believe that this could possibly be the intent of the Administration, and yet the language is painfully clear."

Two weeks after issuing its proposed revision of A-122 (which will be only slightly modified before being adopted in April 1984), the President signs an executive order banning "any organization that seeks to influence . . . the determination of public policy" from participating in the federal government's lucrative on-the-job charity drives. A month later, the White House calls for the elimination of postal subsidies for the blind, libraries, schools, and other nonprofit organizations.

Why does the White House wish to silence so many thousands of public-spirited people who have firsthand knowledge of the effects of its policies? The question answers itself: so that the American people cannot judge for themselves the costs and benefits of those policies, and so cannot hold the Administration accountable. That is why the Administration stops funding the publication of the *Survey of Income and Program Participation*, which assesses the effects of its welfare policies; stops publishing the *Annual Survey of Child Nutrition* and the *Annual Housing Survey*; stops publishing several bulletins on occupational health hazards; stops issuing warnings about newly discovered toxics; withholds health care data from local officials; and eliminates or reduces "at least 50 major statistical programs," the Government Operations Committee reports, on such matters as nursing homes, medical care expenditures, monthly department store sales, and labor turnover.

According to Administration spokesmen, the "free market" will attend to these things, so the government need not inform the electorate about them. But how can the American people judge the merits of the "free market" if they are kept in ignorance of its effects? This question, too, answers itself. The market is not for the American people to judge. Although it is the highest good of all, the market, too, apparently thrives best in darkness.

On a radio program devoted to "Defunding Anti-Family Organizations," Michael Horowitz, general counsel of the budget office and mastermind of the A-122 revision, describes the kind of Americans the White House favors: "Americans who live in real-world communities, have real-world jobs, real-world concerns, who are not political in character."

Under Justice Department guidelines issued on March 7, Americans who are "political in character" are put within easy reach of police surveillance. In addition to permitting FBI agents to infiltrate political organizations in the cause of "domestic security," the new guidelines allow the Bureau to collect "publicly available information" on any American it chooses to monitor for any reason whatever. Thanks to an Administration which pretends to oppose official oppression, any citizen who emerges from "real-world" obscurity now falls within the purview of, and possibly into the files of, the federal police power.

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On March 11 the White House attempts to do for national security affairs what A-122 was meant to do for domestic affairs: stop up the mouths of those who know too much. Under the President's National Security Decision Directive 84, all government employees with access to "sensitive compartmentalized information" must sign contracts which subject them to an extraordinary system of official censorship. If they wish to publish a book, an article, or even submit a letter to the editor containing "any information" related to "intelligence"—a category vast enough to take in most of the domain of national security—they must first show it to the government for review, and, if need be, alteration, not only while in office but for the rest of their lives.*

The White House does not give a clear-cut justification for this system of lifetime censorship, possibly because there is none. The Administration's statement accompanying the directive describes it as both a harmless effort to give government policy "a greater consistency" and an urgent effort to prevent the unauthorized disclosure of important state secrets. The press briefing at the Justice Department borders on the theater of the absurd.

"How many employees are you talking about here?" a reporter asks an official.

"SCI access is given out only to a handful of employees."

"Hundreds, thousands?"

"It would probably be classified."

"Can you provide one or two examples of concrete damage to national security" from unauthorized disclosures?

No, he cannot: "When we officially confirm information that has been disclosed in this manner, it compounds the damage."

The truth comes out later and the truth is devastating. The "handful" is 128,000 officials. And, according to the State Department, the total number of damaging "leaks" conveyed through the writings of government officials during the preceding five years is *none*, not one.

"Well, I just can't believe it," says Lucas A. Powe Jr., a professor of law at the University of Texas, in testimony before a Government Operations subcommittee. "It is as if in coming up with the proposal the Administration weighed censorship in the balance as a positive good instead of a presumptively unconstitutional evil."

That their highest officials might be the enemies of their freedom Americans find hard to believe, but such is the case. On a pretext so false its falsity cries out to heaven, the White House is determined to censor the writings of the only class of citizens who can effectively challenge a president in affairs of state—all those retired State and Defense Department officials whose character and patriotism cannot be impugned and whose judgments command attention even when they run counter to a president's. The Administration is apparently bent on turning the White House into the unopposable voice of Authority.

On February 24 a prizewinning Canadian film about the horrors of nuclear war is labeled "political propaganda" by the Justice Department and placed under the restrictions of the Foreign Agents Registration Act of 1938. The name of every organization and individual to whom the film is distributed must be filed with the government. On March 3 the State Department denies a visa to Salvador Allende's widow, who had been invited to address church groups in San Francisco. It is "prejudicial to United States interests," says the department, to let a few Americans hear, perhaps, that the present Chilean regime is a tyranny.

On April 1 the Department of Energy introduces a new kind of official secret. According to the department's proposed regulations, which were later modified, a vast mass of published books, articles, and reports must henceforth be concealed from the public if they could possibly contribute to "nuclear terrorism." Any library that lets such "unclassified controlled nuclear information" fall into unauthorized hands could be fined up to $100,000 for failing to help the government achieve what Stanford University, in a stinging rejoinder, calls "the futile and repugnant object of making known and unclassified information secret."*

On May 25 the President fires three members of the six-person Civil Rights Commission—something no other president has ever done—for daring to monitor the Administration's non-enforcement of the civil rights laws. At a single stroke the commission's statutory independence is destroyed, but the White House has little patience for contrary voices. Americans have a right to speak out about their "concerns," says the President at a press conference in mid-June, "but let us always remember, with that privilege goes a responsibility to be right."

On September 12 the White House takes another step toward centralizing control of government information. The budget office proposes that all government agencies must consider that "information is not a free good but a resource of substantial economic value and should be treated as such." In light of this, they must submit to the White House clear proof that any information they make public passes the supreme test of "cost-benefit analysis."** Half in shock, half in anguish, the American Library Association asks how such an analysis can properly be made. "What is the dollar benefit of an informed citizenry?"

"You can't let your people know" what the government is doing, the President explains at an October 19 press conference, "without letting the wrong people know—those who are in opposition to what you're doing." (On October 20 the Senate votes 56 to 34 against lifetime censorship for government officials.) Reporters are so inured to the President's artless press conference remarks that nobody asks him why the people's right to know chiefly benefits "the wrong people."

The meaning of the President's remarks becomes clear on October 25, when U.S. forces invade the island of Grenada and the American press is barred from the scene at gunpoint, forced to huddle on a nearby island, and compelled to transmit to the public only official lies and evasions. This wanton act of government censorship reveals "a certain mind-set" among the nation's leaders, *Time* angrily observes: "the notion that events can be shaped by their presentation, that truth should be a controlled substance." Indeed so, but this flaunting of censorship reveals something more than a "mind-set": it reveals a determination to habituate a free people to official news and to regarding a free press as the national enemy. "It seems as though the reporters are always against us. They're always seeking to report something that's going to screw things up," says Secretary of State George Shultz, "pandering," writes Safire on December 18, "to the most dangerous I-Am-the-State instincts of his boss."

And who is "us," Secretary Shultz is asked. "Our side militarily—in other words, all of America."

IV. January–October 1984

In early January the Administration makes its first crude attempt to revive seditious libel—the ancient crime of speaking ill of the government. On January 3 Justice Department officials obtain a court order barring a publisher from printing a legal opinion of a Colorado judge because the department thinks it is "slanderous" to three of its lawyers. Three weeks later the sear of notoriety forces the U.S. Court of Appeals in Denver to recollect what country it is in, but America has had its first inkling of

*On February 17, 1984, the President orders the censorship provisions of NSDD-84 "held in abeyance," but does not revoke them.

**The final regulations, passed in April 1985, allow the DOE to restrict access to such information only if it is contained in material acquired by a library after that date.

***Although formal guidelines were never issued, this has become the Administration's de facto policy.

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a future in which the executive may punish with prior restraint the sin of slandering the state.

In January, too, the Administration experiments with new ways to deter government officials from disclosing classified information to the public. "Leaks are consensual crimes," says Acting Assistant Attorney General Richard Willard. Willard shows Senate aides the draft of unprecedented legislation that would authorize the federal government to punish with crushing financial penalties any person with access to classified information—more than 4 million people—who divulges the most trivial fact concealed within the bloated empire of national security.*

The Administration takes a parallel step against leaks in late January, when two Air Force investigators approach Professor Jeffrey Richelson of American University an hour before he is to deliver a technical paper on arms control verification to an academic audience in Los Angeles. They warn Richelson that if he delivers his paper, he could be prosecuted under the 1917 Espionage Act.** On February 3 the *Washington Post* reports that FBI agents have warned two former National Security Agency officials that their research into the downing of the Korean Air Lines jet "technically violated" the Espionage Act.

The word "technically" betrays the Administration's intention. It seeks to turn a law aimed at the transfer of vital secrets to a foreign power with the intent to harm the country into an instrument for prosecuting those who transfer information to the public with the intent to help the country. The great advantage of this law over other methods of stopping leaks, notes a confidential White House memorandum circulated in 1982, is that it "could also be used to prosecute a journalist who knowingly receives and publishes classified documents or information."

Behind the President's "leakomania," as Safire calls it, lies the force of a very practical necessity. Ordinary means of concealment can no longer hide the scandalous truth about the Administration's trillion-dollar military buildup; it is a colossal squandering of the public wealth. The established secrecy rules are good enough to silence time-servers, but they cannot prevent men of honor from supplying Congress, the press, and the public with the sordid evidence of wanton waste—the evidence that "the vast majority of money we put into major weapons systems is pure waste and inefficiency," according to Senator Charles E. Grassley, a conservative Iowa Republican; the evidence that "we are not buying airplanes, we are buying the contractors' costs," according to A. Ernest Fitzgerald, the Air Force official who gave "whistle-blowing" a good name; the evidence that the entire weapons buildup "had nothing to do with a strategy, nothing to do with a program of what we needed for defense," according to Richard A. Stubbing, who served in the budget office as deputy chief of national security during the first years of the buildup.

To help it conceal this hideous engine of waste from the American people, Congress has quietly handed the Department of Defense extensive new secrecy powers. Slipped into the voluminous folds of the Omnibus Defense Authorization Act of 1984 is a provision that gives the Pentagon statutory authority "to withhold from public disclosure any technical data with military or space application" that could not be released to a foreigner without obtaining an export license. After all, why should Americans have a right to know any more than foreigners? We are a thousand times more dangerous than foreigners. This *congressional* assault on accountable government gives the executive the authority to conceal the entire domain of national defense from the American people. But the Pentagon waits until after the election to exercise its new powers.

Secrecy rules are one thing; enforcing them is another. Hence the importance the Administration places on expanding the Espionage Act.

On October 1 the Administration takes the next step toward the act's expansion when it arrests a civilian Navy official for selling three classified satellite photographs of a Soviet aircraft carrier under construction to a venerable British military magazine. There is no question of disclosing information damaging to our national security. The Defense Department releases satellite photographs whenever it suits the Administration's purposes. Nor is there anything surreptitious about the sale: the arrested official, Samuel Loring Morison, is an editor of *Jane's Fighting Ships*, and the photographs were duly published in August. The only question is whether the Administration can find a judge willing to rule that the Espionage Act is in fact an official secrets act under which no one has been convicted in sixty-seven years.

V. November 1984–November 1985

The President's great popular victory in November does not reconcile the Administration to the habits of freedom and popular government. It merely gives the President and his faction greater power to besiege and subvert them.

On November 20 the Defense Department exercises its new statutory power to conceal itself from the country. It issues a directive stating that every Pentagon official must henceforth withhold from the public all "technical data," including any pertaining to "contractor performance evaluation"—fraud—and "results of test and evaluation of... military hardware"—waste—if such data "are likely to be disseminated outside the Department of Defense." In other words, if the American people want to know about something, then, for that very reason, it must be kept from their knowledge. That is the plain English of the regulations. The maximum penalty for enlightening the country is ten years' imprisonment and a $100,000 fine for violating the export control laws, now distorted beyond recognition.

The great Administration engine for squandering the public wealth, the machine which generates crushing budget deficits, which in turn serve as a permanent force for reducing "social spending," has at last become what it so desperately needs to be: a single, all-embracing secret of state. Wanton waste, under heavy concealment, will enforce needless sacrifice, and the sovereignty of a free people will be crushed under a fabricated necessity. Social programs will be abolished, public benefits reduced, social services left to decay; and a blinded electorate will no more understand why their country has grown so impoverished than a savage can understand why the sun rolls around in the heavens.

Also in the aftermath of the election the Administration reveals what the President means by "the responsibility to be right." It will try to make falsehood a federal crime. A writer named Antoni Gronowicz has published a book about Pope John Paul II, *God's Broker*, containing extensive interviews with the pontiff which the Vatican says are fictitious. This is gross falsehood—the pope says so—and this the White House is determined to punish. An Administration which thinks it is oppressive to prevent corporations from poisoning the air thinks it is the government's duty to prevent an author from misleading a few readers. The Justice Department seeks a grand jury investigation in Philadelphia, hoping to have Gronowicz indicted, not precisely for publishing a book containing falsehoods but for violating the mail fraud statutes.*

In late November the Administration finds a still more potent way to

*The White House never formally proposed this legislation, in large part because the details of Willard's draft were reported in the press, generating widespread public opposition.

**Richelson delivered his paper anyway. He later provided the Justice Department with evidence that it was based on published information, and a decision was made not to prosecute.

*A grand jury was convened, and ordered Gronowicz to turn over his notes. He refused, and has asked the Supreme Court to overturn lower court rulings ordering that he do so.

Continued

curtail the freedom of the press in America. The CIA files a complaint with the Federal Communications Commission against the American Broadcasting Company that could result in the loss of its broadcast licenses for airing a false charge, later retracted, against the agency. Since the CIA's unprecedented suit has the backing of the White House, the FCC proves obliging. Even though it eventually rules against the CIA, the FCC declares that any agency of the government henceforth has the right to file such a complaint against a broadcaster (under the Fairness Doctrine) if it feels it has been unfairly abused on the airwaves. Thus has the FCC reinvented seditious libel. By bureaucratic fiat, it is now an offense punishable by the threat of extinction for any broadcaster to treat the executive branch unfairly—in the judgment of the executive branch.

As long as Americans still cherish a free press, however, the Administration cannot successfully subjugate the news media. Accordingly, the Administration renews its effort to turn the people against their own newspapers. Another flaunted drama of censorship provides the instrument. On December 17 the Defense Department calls in the press to announce that the scheduled January 23 flight of the space shuttle *Discovery* will be treated as a military secret of the gravest kind. The public learns that Secretary of Defense Caspar Weinberger has personally asked the Associated Press, NBC News, and *Aviation Week & Space Technology* to suppress their stories about the shuttle mission in the interests of "national security"—and that the three organizations have dutifully complied. The public learns, too, that even "speculation" about the purpose of the flight is forbidden and will be punished by a full-out investigation of the offender—a truly extraordinary threat.

This sudden, officious announcement stuns the Washington press corps. There is simply no warrant for such elaborate secrecy. The military purpose of the shuttle flight has been publicly available information for months. To kill a news story merely because the government orders it would set a "dangerous precedent," warns John Chancellor on the *NBC Nightly News*. True enough, but the Administration evidently wants something more than that servile precedent. Its insolent warning against "speculation" is a goad to defiance, "an enticement for people to go after what the mission was about and then to publish what they found out," as former Defense Secretary James R. Schlesinger tells the press.

Taking up the gauntlet, the *Washington Post* refuses to keep secret what is not a secret and publishes a story about the shuttle flight based on information from available sources. Secretary Weinberger denounces the paper for daring to "violate requests" from the Pentagon. Disobedience to a government decree, he says, "can only give aid and comfort to the enemy." This is more than mere calumny; it is the precise wording of the constitutional definition of treason, and it suggests a motive for the shuttle affair. What the Administration has done is stage a little morality play before the eyes of the country, a corrupting drama in which the servility of the press appears in the bright garb of patriotism and the freedom of the press in the black hues of treason.

Some weeks later the Administration stages a second act of the vicious play when the *Times* publishes a secondhand story by Leslie Gelb against the wishes of the State Department. The department's Bureau of Politico-Military Affairs orders Gelb ostracized and ostentatiously denounces him for "willingly, willfully, and knowingly" publishing information "harmful and damaging to the country." That the information has been previously published is irrelevant, the department explains. "The Secretary of Defense and Secretary of State and National Security Adviser were against printing it," and this alone makes it treasonable conduct in the new tyrannized republic. As Floyd Abrams, the famed constitutional lawyer, observes, the Administration is "attacking the legitimacy of the press, not its performance."

Under the Administration's powerful assault the press grows timid. The Morison case passes through various preliminary stages but the public hears almost nothing about it. Tyranny is not "news." That is the new rule of American journalism. The truth is, the press is too frightened to write about what frightens it. It cowers in dread of being called "too powerful." For the myth of media power, which the media never contested in their salad days, is now being used by the enemies of liberty to incite the people against a free press.

On January 4, without the slightest public notice, the White House issues an executive order that concentrates still greater legislative power in the hands of its budget office. Under Executive Order 12498 the White House gives itself the formal power not only to impose cost-benefit analysis but to review, control, approve, or suppress any agency activity "that may influence, anticipate, or could lead to the commencement of rule-making proceedings at a later date." Regardless of the laws they are supposed to implement, the executive agencies of government can now do virtually nothing the White House disapproves of. For the first time in American history a president has the formal power to turn acts of Congress into mere husks for secret White House legislation. Under the new executive order the president also has the unprecedented power to bar any executive agency from even studying anything the White House prefers to leave unstudied. No official information that might allow the American people to question the wisdom of a president may be collected without that president's permission—which will be given or withheld in secret. Under this new dispensation the old, decentralized executive branch stands on the verge of extinction. The traditional bulwark against presidential despotism has been reduced to silence and servility.

On March 12 a federal judge in Baltimore, deciding a motion in the Morison case, rules that the Espionage Act applies to unauthorized disclosures of classified information to the press. According to Judge Joseph H. Young, "the danger to the United States is just as great when this information is released to the press as when it is released to an agent of a foreign government." For decades it was plain to Congress and the courts that the vital secrets of 1917 bear little resemblance to the half-billion "classified" documents concealed by the modern security establishment. For decades it was evident to everybody that informing the American people is different from informing a foreign government, that the wish to enlighten the country is different from the intent to harm it. But this Administration believes that an enlightened citizenry is a menace to the state. Thanks to Judge Young's ruling, patriotic officials may no longer menace the great engine of Pentagon waste. Morison himself faces up to forty years in prison for putting three harmless photographs into a well-known magazine.

Imagine a faction that would throw honorable men into prison so that it could impoverish the public treasury with impunity and bend a sovereign people to its will, not just this year and the next, but long after it has fallen from power. Imagine a venerable republic, the hope of the world, where the habits of freedom are besieged, where self-government is assailed, where the vigilant are blinded, the well informed gagged, the press hounded, the courts weakened, the government exalted, the electorate degraded, the Constitution mocked, and laws reduced to a sham so that, in the fullness of time, corporate enterprise may regain the paltry commercial freedom to endanger the well-being of the populace. Imagine a base-hearted political establishment, "liberal" as well as "conservative," Democratic as well as Republican, watching with silent, protective approval this lunatic assault on popular government. Imagine a soft-spoken demagogue, faithful to nothing except his own faction, being given a free hand to turn Americans into the enemies of their own ancient liberties. Imagine this and it becomes apparent at last how a once-great republic can be despoiled in broad daylight before the unseeing eyes of its friends. ■