

HOUSE OF REPRESENTATIVES

HEARINGS

BEFORE THE COMMITTEE

on

STANDARDS OF OFFICIAL CONDUCT

HEARINGS ON HOUSE RESOLUTION 1042

Wednesday, September 15, 1975

Washington, D. C.

Official Reporters to Committees

C O N T E N T S

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5	of the Village Voice	
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8	Attorney	
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1 HEARINGS ON HOUSE RESOLUTION 1042

2 Mills

3 Wednesday, September 15, 1976

4
5 House of Representatives,6 Committee on Standards of
7 Official Conduct,

8 Washington, D. C.

9 The committee met, pursuant to recess, at 10:00 a.m.
10 in Room 2360, Rayburn House Office Building, the Honorable
11 John J. Flynt, Jr. (chairman of the committee) presiding.

12 Present: Representatives Flynt, Price, eague, Hebert,
13 Foley, Bennett, Spence, Quillen, Hutchinson, Quie, Mitchell,
14 and Cochran.

15 Also present: John M. Swanner, Staff Director;
16 John Marshall, Legal Counsel; David Bowers, Investigator;
17 Harvey Harkness, Associate Counsel; Jay Jaffe, Staff Member;
18 Andrew Whalen, Staff Member; Miss Jan Loughrey, Committee
19 Staff.

20
21 Mr. Flynt. The committee will come to order.

22 The Staff Director will call the roll.

23 Mr. Swanner. Mr. Flynt.

24 Mr. Flynt. Here.

25 Mr. Swanner. Mr. Spence.

Mr. Spence. Here.

1 Mr. Swanner. Mr. Price.

2 (No response.)

3 Mr. Swanner. Mr. Quillen.

4 Mr. Quillen. Here.

5 Mr. Swanner. Mr. Teague.

6 Mr. Teague. Here.

7 Mr. Swanner. Mr. Hutchinson.

8 Mr. Hutchinson. Here.

9 Mr. Swanner. Mr. Hebert.

10 (No response.)

11 Mr. Swanner. Mr. Quie.

12 (No response.)

13 Mr. Swanner. Mr. Foley.

14 Mr. Foley. Present.

15 Mr. Swanner. Mr. Mitchell.

16 Mr. Mitchell. Here.

17 Mr. Swanner. Mr. Bennett.

18 Mr. Bennett. Here.

19 Mr. Swanner. Mr. Cochran.

20 Mr. Cochran. Here.

21 Mr. Swanner. Mr. Chairman, nine Members answered

22 present, three Members absent, not voting.

23 Mr. Flynt. Nine members having responded to their

24 names when the roll was called, a quorum is present.

25 At the beginning of the hearing on this subject, the

1 Chair made an opening statement, a copy of which has been
2 made available to all witnesses who have appeared before
3 this committee during these hearings.

4 The Chair is not going to again read the opening statement
5 in its entirety. But the Chair is now going to read certain
6 portions of the opening statement, and now proceeds to do so.

7 In recent months, the Congress of the United States
8 has sought to take a more active role in the conduct of this
9 nation's foreign policy, and its concomitant intelligence
10 operations:

11 In furtherance of these efforts, the House of Representa-
12 tives established a Select Committee on Intelligence to conduct
13 an inquiry into the organization, operations, and oversight
14 of the intelligence community of the United States Government.

15 Section 2 and Section 6 of House Resolution 591 required
16 that Select Committee to establish and implement such rules
17 and procedure as it deemed necessary to prevent the unauthorized
18 disclosure outside the Select Committee of "any information
19 relating to the activities of the Central Intelligence Agency,
20 or any other department or agency of the federal government
21 engaged in intelligence activities obtained by the
22 Select Committee during the course of its study and
23 investigation." And to prevent "the disclosure outside the
24 Select Committee of any information which would adversely
25 affect the intelligence activities of the Central Intelligence

1 Agency in foreign countries, or the intelligence activities
2 in foreign countries of any other department or agency
3 of the federal government."

4 The House of Representatives, on February 19, 1976,
5 adopted House Resolution 1042, which authorized and directed
6 this committee to inquire into the circumstances surrounding
7 the publication of the the text and of any part of the report
8 of the Select Committee on Intelligence, and to report back
9 to the House its findings and recommendations thereon.

10 The House of Representatives has the authority, indeed
11 the duty, to investigate possible violations of its resolutions,
12 and protective orders, by those subject to its jurisdiction
13 in order to protect the integrity of the legislative process.

14 These hearings are being held for the purpose of inquiring
15 into, as fully as possible, the circumstances surrounding the
16 publication of the text and of any part of the report of
17 the Select Committee on Intelligence, and reporting back to
18 the House its findings and recommendations.

19 The Congressional power in question concerns the internal
20 processes of Congress moving within its legislative command.
21 It involves the utilization of the Committee on Standards of
22 Official Conduct, to secure testimony and evidence needed
23 to enable the House to investigate and exercise legislative
24 functions, properly belonging to the House of Representatives
25 under the United States Constitution.

1 Committee Counsel will proceed.

2 Mr. Marshall. Call as the first witness Mr. Clay

3 S. Felker.

4 TESTIMONY OF CLAY S. FELKER, ACCOMPANIED BY THEODORE
5 W. KHEEL, ATTORNEY

6 Mr. Flynt. Mr. Fleker, would you remain standing and
7 let me administer the oath? Do you solemnly swear that the
8 testimony you will give before this committee in the matters
9 now under investigation will be the truth, the whole truth,
10 and nothing but the truth, so help you God?

11 Mr. Felker. I do.

12 Mr. Flynt. Be seated.

13 Mr. Marshall. Mr. Felker, would you state your name and
14 address for the record, please?

15 Mr. Felker. Clay S. Felker, 755 Second Avenue, New York
16 City.

17 Mr. Marshall. You are appearing here with counsel?

18 Mr. Felker. Yes, I am.

19 Mr. Marshall. Counsel, you may identify yourself.

20 Mr. Kheel. My name is Theodore W. Kheel of New York.

21 I am counsel generally for the New York Company which is
22 the owner of New York and the Village Voice, and I am here
23 representing Mr. Felker, as well as Mr. Zalaznick and Mr.
24 Latham.

25 Mr. Marshall. Mr. Felker, you are here pursuant to a

1 subpoena duces tecum which was served upon you prior to
2 this hearing.

3 Mr. Felker. That is right.

4 Mr. Marshall At the time that the subpoena was served
5 upon you, you received copies of House Resolutions 1042 and
6 1054, authorizing this investigation; a copy of the Rules
7 of the House of Representatives and the Rules of this
8 Committee; a copy of the Investigative Procedures which were
9 adopted by this committee; and a copy of the Chairman's
10 opening statement for these hearings; is that correct?

11 Mr. Felker. Yes.

12 Mr. Marshall. In the event your evidence or testimony
13 may involve material from an executive session of the House
14 Select Committee on Intelligence, or information which is
15 classified or information which may tend to defame, degrade
16 or incriminate any person, would you please advise this
17 committee so that it may take appropriate action under the
18 Rules of the House of Representatives?

19 Mr. Felker. Yes.

20 Mr. Marshall. The subpoena duces tecum served upon you
21 prior to the hearing demanded that at this hearing you produce
22 certain papers, including any and all copies or drafts of the
23 report prepared by the House Select Committee on Intelligence
24 pursuant to House Resolution 591. Do you have any of those
25 papers with you to produce at this hearing?

1 Mr. Felker. No, we have no papers.

2 Mr. Marshall. Your statement is you have no papers in
3 your custody, control, or possession to produce?

4 Mr. Felker. That is right.

5 Mr. Marshall. Do you have a statement which you wish to
6 file or make to this committee?

7 Mr. Felker. Yes, I have a very brief statement.

8 Mr. Marshall. You may proceed.

9 Mr. Felker. Last February a draft report of the Select
10 Committee on Intelligence of the House of Representatives
11 was published in two successive issues of the Village Voice.
12 We three individuals, I, as the Editor in Chief and Publisher
13 of the Village Voice, and two Senior Editors of New York
14 Magazine, a sister publication, were responsible for deciding
15 to print and for preparing for publication the material
16 published in the Village Voice. Our role and that of our
17 publication began only after the report became available
18 for publication. We did not then and we do not now think that
19 discovering the source of the report would add to public
20 understanding of its contents and we therefore make no
21 effort to identify the source. We do not know the source. That
22 being said, we wish to emphasize our support for the position
23 taken by Dan Schorr. We believe he acted responsibly as a
24 journalist and a citizen in making the text of the draft
25 report available for publication, and we believe that he will

1 act in the highest traditions of our profession and of
2 the First Amendment itself by refusing to disclose to this
3 committee or to any other governmental body the identity of his
4 source. We would do the same today if we knew the identity
5 of the source just as we would have refused to have disclosed
6 the identity of our source, Dan Schorr, himself, had he not
7 made it public. As Dan Schorr at considerable personal risk
8 defends the journalistic and constitutional principles at
9 take today, we honor him, and we believe he deserves the honor
10 and thanks of our nation.

11 Mr. Kheel. Mr. Marshall, may I say that that statement is
12 also submitted in behalf of Mr. Zalaznick and Mr. Latham.

13 Mr. Marshall. It will be so received.

14 Mr. Felker, what is your position with the newspaper named
15 the Village Voice?

16 Mr. Felker. I am the Editor in Chief and the Publisher
17 of the Village Voice.

18 Mr. Marshall. Did you hold that position with the
19 Village Voice when the editions of February 16 and
20 February 23, 1976, were published?

21 Mr. Felker. I did.

22 Mr. Marshall. Now, the February 16 and 23 editions of
23 the Village Voice printed a part of the text of the report
24 prepared by the House Select Committee on Intelligence. Your
25 opening statement said that Mr. Schorr made the text of that

1 report available to the Village Voice for publication
2 on that date, is that right?

3 Mr. Felker. That is right.

4 Mr. Marshall. When did Mr. Schorr first contact you concern-
5 ing the report?

6 Mr. Felker. Mr. Schorr never contacted me. A representa-
7 tive of the Reporters Committee on Freedom of the Press
8 contacted me, and said that the report was available for
9 publication in the Village Voice, or the report was
10 available for publication in any of our publications, and
11 was I interested. And I said that I was. And subsequently
12 that report was made available.

13 Mr. Marshall. When was that contact by the representative
14 of the Reporters Committee for Freedom of the Press?

15 Mr. Felker. It was on a Wednesday night that I first
16 heard about it, prior to publication the following week
17 on Wednesday. And the report came into our hands on mid-day
18 Friday.

19 Mr. Marshall. Was the representative of the Reporters
20 Committee who contacted you a member of that committee, or
21 was it someone you understood to be acting on behalf of that
22 committee?

23 Mr. Felker. He was someone who made it very plain
24 in the first sentence that he spoke to me that he was
25 acting as a representative of that committee.

1 Mr. Marshall. Who was that person?

2 Mr. Felker. Peter Rufo.

3 Mr. Marshall. Mr. Tufo is an attorney?

4 Mr. Felker. He is a New York Attorney, yes.

5 Mr. Marshall. Now, who first received the text
6 of the report on behalf of the Village Voice, that is the
7 physical document?

8 Mr. Felker. My assistant, Susan Parker.

9 Mr. Marshall. Is it correct that Mrs. Parker came
10 to Washington to pick up that document from Mr. Schorr?

11 Mr. Felker. Yes.

12 Mr. Marshall. All right. And the document was delivered
13 to Mrs. Parker on February 6, 1976, is that correct?

14 Mr. Felker. Yes.

15 Mr. Marshall. Now, during the time that the Village
16 Voice had the document, did you deal directly with Mr.
17 Schorr concerning the publication, or did someone on your
18 staff of the newspaper, or the newspaper staff handle those
19 responsibilities?

20 Mr. Felker. No one at any time had any contact with
21 Mr. Schorr prior to publication of this document.

22 Mr. Marshall. At the time you were contacted by Mr.
23 Tufo, did somebody else handle the negotiations
24 with Mr. Schorr about delivery of the document?

25 Mr. Felker. I do not know who was in contact with Mr.

1 Schorr, but we were not.

2 Mr. Marshall. Now, do you have any knowledge whatsoever
3 how or from whom Mr. Schorr obtained the copy of the
4 report he made available to the Village Voice for
5 publication?

6 Mr. Felker. None whatsoever.

7 Mr. Marshall. Did Mr. Schorr ever communicate to you or
8 to anyone else to your knowledge how or from whom he obtained
9 the report?

10 Mr. Felker. Never.

11 Mr. Marshall. Did you or anyone else to your knowledge
12 ask Mr. Schorr from whom he obtained the report or how
13 he obtained the report?

14 Mr. Felker. No.

15 Mr. Marshall. Do you know of anyone other than Mr.
16 Schorr himself who may have knowledge about how or from whom
17 he obtained the report?

18 Mr. Felker. No.

19 Mr. Marshall. After Mr. Schorr made the text of the
20 report available to the Village Voice, did your staff
21 or anyone acting on behalf of the Village Voice make copies
22 of that document Mr. Schorr delivered?

23 Mr. Felker. Yes, we made two or three copies.

24 Mr. Marshall. Do you know how many copies precisely?

25 Mr. Felker. Not exactly certain. It is either two or

1 three.

2 Mr. Marshall. And where are those copies now?

3 Mr. Felker. They have been thrown away.

4 Mr. Marshall. Do you know that based on your personal
5 knowledge, or have you simply been informed that by someone
6 else?

7 Mr. Felker. I am reasonably certain that they have
8 been thrown away.

9 Mr. Marshall. To whom were those copies delivered
10 at the time copies were made of the document Mr. Schorr
11 supplied?

12 Mr. Felker. Well, one was delivered to me, one was
13 delivered to Mr. Zalaznick, and one to Mr. Latham.

14 Mr. Marshall. Did you personally destroy the copy that
15 was delivered to you?

16 Mr. Felker. After I read it, I threw it away, I put
17 it in my wastebasket and threw it away.

18 Mr. Marshall. So it went out with the garbage?

19 Mr. Felker. That is right.

20 Mr. Marshall. When you read the copy of the report
21 which was supplied to you, did the report have any markings
22 and handwriting on the margin which were xeroxed markings
23 at the time?

24 Mr. Felker. I really cannot recall whether it did
25 or not. I was reading the report very rapidly, and to

1 the best of my knowledge, I cannot recall any markings.

2 Mr. Marshall. Did any pages appear to be missing?

3 Mr. Felker. Yes, there were at least one page and perhaps
4 several -- although I was just skimming the report to
5 establish certain kinds of information, and I was not aware
6 of how many pages precisely were missing.

7 Mr. Marshall. Did the copy of the report which you read
8 have footnotes in the text?

9 Mr. Felker. Yes.

10 Mr. Marshall. Were these footnotes published?

11 Mr. Felker. Some were and some weren't.

12 Mr. Marshall. In the Village Voice at the time of
13 publication, there was a statement that some of the footnotes
14 had been trimmed because of space problems in publication.
15 Is that statement correct, sir?

16 Mr. Felker. Yes.

17 Mr. Marshall. Who made the decision about trimming
18 certain portions of the report?

19 Mr. Felker. These -- this was an editorial decision
20 reached by the editors involved in the editing of this
21 document.

22 Mr. Marshall. This was a joint committee type
23 decision?

24 Mr. Felker. It was a decision that was made by the editors
25 of the magazine and the newspaper.

1 Mr. Marshall. When you say the magazine, do you mean
2 the New York Magazine?

3 Mr. Felker. Yes.

4 Mr. Marshall. And the editors of the Village Voice?

5 Mr. Felker. Yes.

6 Mr. Marshall. Now, did the Village Voice pay any money
7 to any person, firm or corporation in return for publishing
8 the report in the editions of the Village Voice for February
9 16 and February 23, 1976?

10 Mr. Felker. No.

11 Mr. Marshall. Were there any discussions with any
12 persons, firm or corporation about payment of money?

13 Mr. Felker. There was no discussion about the payment
14 of money for this report.

15 Mr. Marshall. Did you have any discussions with
16 Mr. Schorr concerning the payment of money for the report?

17 Mr. Felker. I never talked to Mr. Schorr.

18 Mr. Marshall. To your knowledge, did anyone acting on
19 behalf of the Village Voice or the New York Magazine have
20 any discussions with Mr. Schorr about the payment of
21 money for the report?

22 Mr. Felker. No one acting on the part of our organization
23 had any discussions of any nature at any time with Mr. Schorr.

24 Mr. Marshall. There have been certain statements in the
25 Press that financial arrangements were made with the

1 Reporters Committee for Freedom of the Press in return
2 for the Village Voice being given access to the report
3 and being given the ability to publish the report. Are those
4 statements incorrect to your knowledge?

5 Mr. Felker. They are incorrect.

6 Mr. Marshall. Did the Village Voice or New York Magazine,
7 or anyone acting on behalf of those publications, or those
8 legal entities, have any negotiations at all with the
9 Reporters Committee for Freedom of the Press about making a
10 money payment to the Reporters Committee in return for access
11 and publication of the report?

12 Mr. Felker. There were no negotiations per se.
13 There was a discussion, a request, that we consider making
14 a contribution to the Reporters Committee. However, the request
15 was not made contingent upon the publication of the report.
16 The report was made available to us, no strings attached.

17 Mr. Marshall. Who made the request that the Village
18 Voice consider making a contribution or payment to the
19 Reporters Committee for Freedom of the Press?

20 Mr. Felker. Mr. Tufo.

21 Mr. Marshall. Did you understand him to be acting
22 on behalf of Mr. Schorr at that time?

23 Mr. Felker. He was acting on the part of the Reporters
24 Committee.

25 Mr. Marshall. Is it your testimony that Mr. Schorr

1 supplied the report to the Village Voice, but that the
2 Reporters Committee, without any relationship to that report
3 being made available, then sort of out of the blue made
4 a request for contributions to your magazine?

5 Mr. Felker. I would imagine that the Reporters Committee
6 in order to carry on its work, is probably always looking
7 for money.

8 Mr. Marshall. But is it your testimony that the
9 Reporters Committee had no reasonable relationship to the
10 report being made available at the time that it made the
11 request for a contribution?

12 Mr. Felker. I do not know what the relationship was.
13 It had nothing to do with the publishing of this report.

14 Mr. Marshall. Did you have any information that making the
15 report available to the Village Voice and the request
16 from the Reporters Committee had any connection whatsoever?

17 Mr. Felker. I did not feel there was any connection.

18 Mr. Marshall. The two were totally unrelated in
19 your judgment?

20 Mr. Felker. In my judgment, they were unrelated.

21 The report was made available to us, no strings
22 attached.

23 Mr. Marshall. Were you the person that talked directly
24 with Mr. Tufo concerning the Reporters Committee's request?

25 Mr. Felker. Yes.

1 Mr. Marshall. During those conversations, did Mr. Tufo
2 at any time mention to you that his request was because of
3 Mr. Schorr's making the report available to you?

4 Mr. Felker. No.

5 Mr. Marshall. That subject was never discussed?

6 Mr. Felker. The subject of -- that we were discussing,
7 had to do with whether we would be interested in publishing
8 the report. After that was discussed and settled, we
9 began to talk about the possibility of a contribution on the
10 part of our company.

11 Mr. Marshall. The two matters were then related in time.
12 You first discussed having the report being made available
13 for publication, and then you and Mr. Tufo discussed the
14 contribution to be made to the Reporters Committee, is that
15 correct?

16 Mr. Felker. One was not contingent upon the other.

17 Mr. Marshall. That was not my question, sir. I am
18 saying insofar as point of time is concerned, you first
19 made whatever arrangements were made in connection with the
20 publication of the report and getting access to it, and you then
21 dealt with Mr. Tufo on the subject of making a contribution
22 to the Reporters Committee, is that your testimony?

23 Mr. Felker. It took place within the same framework of
24 time, yes.

25 Mr. Marshall. And you understood the two to be related

1 somewhat, did you not?

2 Mr. Felker. No, I didn't understand the two to be related.

3 Mr. Marshall. Those are all the questions I have at

4 this time, Mr. Chairman.

5 Mr. Flynt. Mr. Price.

6 Mr. Price. No questions.

7 Mr. Flynt. Mr. Spence.

8 Mr. Spence. No questions.

9 Mr. Flynt. Mr. Teague.

10 Mr. Teague. No questions.

11 Mr. Flynt. Mr. Hutchinson.

12 Mr. Hutchinson. No questions.

13 Mr. Flynt. Mr. Hebert?

14 Mr. Hebert. No questions.

15 Mr. Flynt. Mr. Quie.

16 Mr. Quie. No questions.

17 Mr. Flynt. Mr. Foley.

18 Mr. Foley. No questions.

19 Mr. Flynt. Mr. Mitchell?

20 Mr. Mitchell. No questions.

21 Mr. Flynt. Mr. Bennett.

22 Mr. Bennett. No questions.

23 Mr. Flynt. Mr. Cochran.

24 Mr. Cochran. Mr. Chairman, I have one question for

25 the witness.

1 Mr. Felker, at the time the Village Voice actually
2 published the report, were you aware that the House of
3 Representatives had voted by a substantial margin to refrain
4 from permitting publication of that document?

5 Mr. Felker. Yes.

6 Mr. Cochran. I have no further questions, Mr. Chairman.

7 Mr. Flynt. Counsel?

8 The witness may step down.

9 Will Committee Counsel call the next witness.

10 Mr. Marshall. Call Mr. Aaron Latham to the witness
11 stand.

12 TESTIMONY OF AARON LATHAM, ACCOMPANIED BY

13 THEODORE W. KHEEL, ATTORNEY

14 Mr. Flynt. Mr. Latham, would you raise your right hand
15 please? You do solemnly swear that the testimony you will
16 give before this committee in the matters now under considera-
17 tion will be the truth, the whole truth, and nothing but
18 the truth, so help you God?

19 Mr. Latham. I do.

20 Mr. Flynt. Please be seated.

21 Mr. Marshall. Mr. Latham, would you state your name
22 and address for the record, please?

23 Mr. Latham. Aaron Latham.

24 Mr. Marshall. Where do you live, sir?

25 Mr. Latham. 223 East 72nd Street, New York City.

1 Mr. Marshall. Mr. Latham, you are appearing here with
2 counsel?

3 Mr. Latham. I am.

4 Mr. Marshall. Counsel, you may identify yourself
5 for the record.

6 Mr. Kheel. Theodore W. Kheel. My affiliations
7 have previously been entered in the record.

8 Mr. Marshall. Thank you.

9 Mr. Latham, you are here pursuant to a subpoena duces
10 tecum which has been served upon you prior to your appearance
11 today?

12 Mr. Latham. That is correct.

13 Mr. Marshall. At the time the subpoena was served upon
14 you, you also received copies of House Resolution 1042 and
15 1054, copies of the Rules of the House of Representatives,
16 and the Rules of this Committee, a copy of the Investigative
17 Procedures which were adopted by this committee, and a copy
18 of the Chairman's Opening Statement for these hearings,
19 is that correct?

20 Mr. Latham. That is correct.

21 Mr. Marshall. In the event that your testimony or
22 evidence may involve material from an executive session of
23 the House Select Committee on Intelligence or information
24 which is classified, or information which may tend to defame,
25 degrade or incriminate any person, would you please advise
this committee so that it may take appropriation action under

1 the Rules of the House of Representatives?

2 Mr. Latham. I will.

3 Mr. Marshall. The subpoena duces tecum served upon
4 you prior to this hearing demands that you produce at this
5 hearing certain papers, including any and all copies or drafts
6 of the report prepared by the House Select Committee on
7 Intelligence pursuant to House Resolution 591. Do you have
8 those papers with you?

9 Mr. Latham. I haven't brought anything. I don't have
10 anything that I thought was covered by the subpoena.

11 Mr. Marshall. It is your statement, then, that there
12 were no papers in your custody, control or possession which
13 were covered by the subpoena?

14 Mr. Latham. Well, I have no copies of the Pike
15 Committee Report in my possession.

16 Mr. Marshall. Do you have a statement that you wish
17 to make or file with the committee at this time?

18 Mr. Latham. Well, I would like to say just a few words.

19 I think that it tends to have a chilling effect upon
20 journalists to be compelled to come before a Congressional
21 committee. I believe that no matter how benign the questions,
22 these questions tend to erode the First Amendment. And I
23 believe that any intimidation of reporters, intentional
24 or unintentional, tends to compromise what the First Amendment
25 sought to protect. Therefore, I feel that I shouldn't have

1 been compelled to come here, or that Daniel Schorr should not
2 have been compelled to compelled to come here.

3 That is all I have to say.

4 Mr. Marshall. Mr. Latham, where are you presently
5 employed?

6 Mr. Latham. At New York Magazine.

7 Mr. Marshall. And could you give us a description
8 of your duties with the Magazine?

9 Mr. Latham. Well, my official title is Senior Editor.
10 What that really means is that I cover Washington for
11 New York Magazine.

12 Mr. Marshall. Mr. Latham, were you employed in any
13 capacity by the Village Voice when the February 16 and
14 February 23, 1976, editions of that paper were published?

15 Mr. Latham. Well, this is a tiny bit complicated. I
16 am employed by New York Magazine. New York Magazine
17 owns a controlling interest in the Village Voice. And I
18 was assigned to write the introduction to the Pike Committee
19 papers. However, I have never been on the payroll of the
20 Village Voice.

21 Mr. Marshall. Now, when the text of the report was
22 published in the February 16 and February 23, 1976, editions
23 of the Voice, is it your testimony that you wrote the intro-
24 duction to that text?

25 Mr. Latham. That is correct.

1 Mr. Marshall. Did you have anything else to do with
2 the publication of the report in those editions of the Village
3 Voice?

4 Mr. Latham. I was the one to xerox the report.

5 Mr. Marshall. All right.

6 How many copies did you make?

7 Mr. Latham. I believe that I xeroxed three copies
8 of the report. And we were trying to keep this terribly secret
9 that we had the report within our company. And so everybody
10 formed a line behind me at the xerox machine, and I told everyone
11 I was xeroxing a copy of a novel that I had written.

12 Mr. Marshall. I see.

13 After making three copies, you then had a total of
14 four copies in your possession?

15 Mr. Latham. That is my memory, right.

16 Mr. Marshall. All right. Now, to whom did you deliver
17 those copies?

18 Mr. Latham. I believe that one went to Shelley Zalaznick--
19 no, two went to Shelley Zalaznick, one went to Clay Felker,
20 and I took one.

21 Mr. Marshall. Where is your copy of the report, that
22 is the copy you took?

23 Mr. Latham. After we published the report, we decided
24 that we should return the report to Daniel Schorr, who had
25 given it to us in the first place. I contacted his lawyer's
office. They said they would receive it. And I carried it

1 ver to Mr. Califano's office, and delivered it back to
2 Mr. Schorr in that manner.

3 Mr. Marshall. On what date was the report delivered
4 back to Mr. Schorr?

5 Mr. Latham. Well, it was shortly after we published
6 it, but I do not know exactly when.

7 Mr. Marshall. When you say "shortly after we published
8 it," do you mean at the time the February 16 edition was
9 made public and published?

10 Mr. Latham. We published it on two successive weeks.
11 It was after we had completed publishing both weeks, that
12 I returned my copy to Daniel Schorr's lawyer.

13 Mr. Marshall. Now that leaves three copies to account
14 for.

15 Do you know what happened to Mr. Felker's copy?

16 Mr. Latham. Well, he has told me that he threw it
17 away.

18 Mr. Marshall. What about Mr. Zalaznick's two copies?

19 Mr. Latham. He has told me that he threw those away.

20 Mr. Marshall. Now, prior to the time you wrote
21 the introduction to the piece that appeared in the February
22 16 and February 23rd editions of the Village Voice, did you
23 have any contact with Mr. Schorr?

24 Mr. Latham. I did not have any contact with Mr. Schorr
25 having to do with the publication of the report.

1 Mr. Marshall. Did you have any contact with Mr. Schorr
2 dealing with the subject matter of the piece that you were
3 going to write an introduction to?

4 Mr. Latham. No, I didn't .

5 Mr. Marshall. Your contacts were totally unrelated
6 to that subject?

7 Mr. Latham. Right. I mean just to make it clear,
8 I hadn't -- I hadn't talked to him for about a year before
9 we got the copy of the report.

10 Mr. Marshall. Now, do you have any knowledge whatsoever
11 how or from whom Mr. Schorr got the copy of the report
12 he made available to the Village Voice for publication?

13 Mr. Latham. Well, I have some trouble personally answering
14 questions about sources at all. We have said in our opening
15 statement that we do not know who Mr. Schorr's source
16 was. And I don't know who Mr. Schorr's source was. To the
17 broader question of any information whatsoever, I would
18 respectfully decline to answer.

19 Mr. Marshall. On what grounds?

20 Mr. Latham. The First Amendment protection of sources.

21 Mr. Flynt. Mr. Latham, at this time I must advise
22 you that this committee is acting pursuant to the authority
23 vested in it by Resolutions 1042 and 1054 of the House
24 of Representatives, 94th Congress.

25 Copies of those resolutions and the opening statement of

1 the Chairman of this committee setting out the legislative
2 purposes of these hearings were served upon you prior to your
3 appearance as a witness here today.

4 The subject of these hearings is an inquiry into
5 the circumstances surrounding the publication in the Village
6 Voice of the text and of any part of the report of the
7 House Select Committee on Intelligence so that this committee
8 can report back to the House its findings and recommendations
9 thereon.

10 The question put to you is pertinent to the subject under
11 inquiry in that the identity of the person from whom the text
12 and any part of the report were obtained and the method by
13 which the text and any part of that report were obtained
14 constitute evidence of the circumstances surrounding publication
15 of the text and any part of that report.

16 Your answer to the question put to you is necessary
17 for this committee to carry out the mandate of the House of
18 Representatives.

19 If you continue to refuse to answer the question,
20 your refusal will be deemed by this committee to constitute
21 a willful failure to answer a question pertinent to the
22 subject under inquiry and will subject you to prosecution
23 and punishment by fine or imprisonment or both under Title
24 II of the United States Code, Sections 192, 193 and 194.

25 Your refusal to answer will also subject you to prosecution

1 and punishment for contempt of the House of Representatives.

2 Accordingly, you are hereby advised that your objection
3 to the question and your grounds for refusing to answer
4 the question are hereby overruled.

5 As Chairman of this committee, I hereby demand and
6 direct that you answer the question put to you.

7 Mr. Kheel. Mr. Chairman, if I may, the witness
8 has testified under oath that he does not know who the
9 source was. I am a little at a loss to know what is the
10 question that you say he has refused to answer bearing on this
11 subject.

12 Mr. Marshall. If I may respond, Mr. Chairman.

13 Mr. Flynt. Counsel for the committee will respond.

14 Mr. Marshall. The question put to the witness asked
15 for a response as to whether he had any knowledge of who Mr.
16 Schorr's source was. As I recall his response, it was that
17 he did not personally know, but that he was unwilling to
18 provide this committee with any knowledge he might have of
19 the source. And it is that question which the witness is being
20 asked to answer at this time.

21 Mr. Kheel. Do you understand that to be the question?

22 Mr. Latham. Well, I would hate to pretend to know
23 something that I don't. And I do not know who Mr. Schorr's
24 source is. But as to the question of do I have any knowledge
25 whatsoever, I respectfully decline to answer.

1 Mr. Marshall. Let me inquire of the witness -- did
2 you understand the statement made by the Chairman --

3 Mr. Latham. I did.

4 Mr. Marshall. -- as to the possible consequences of your
5 refusal to answer?

6 Mr. Latham. Yes, sir.

7 Mr. Marshall. And do you still persist in that refusal?

8 Mr. Latham. Yes, sir.

9 Mr. Flynt. Committee Counsel will now put the next
10 question to the witness.

11 Mr. Marshall. Going back to the copies that you said
12 that you made of the report when it was delivered to the
13 Village Voice, did those copies have any handwritten markings
14 on any page at the time you made the xerox copy?

15 Mr. Latham. Well, what I took home and read was
16 a xerox of a xerox of a xerox, so it was impossible to
17 tell what generation the marks were. However, there were
18 some marks on the report.

19 Mr. Marshall. Were they markings which appeared in
20 the margin of the report as though someone had made notes at the
21 time the report was being read?

22 Mr. Latham. There were a few such markings.

23 Mr. Marshall. Were they in handwriting?

24 Mr. Latham. Well, I remember there were markings
25 on the manuscript.

1 Mr. Marshall. What I am trying to ascertain, Mr.
2 Latham, is the nature of those markings, if you can recall.

3 Mr. Latham. It was almost virtually a clean copy.
4 It seems to me that there may have been one or two words written
5 in the margin.

6 Mr. Marshall. Do you remember what those words were?

7 Mr. Latham. No, I don't.

8 Mr. Marshall. Were any lines of the report underlined
9 in pencil or pen or other marking that you recall?

10 Mr. Latham. As I recall there were some underlinings.

11 Mr. Marshall. Were any pages of the report missing
12 as they appeared to you at the time you xeroxed the
13 report?

14 Mr. Latham. As we stated when we published the report,
15 there were -- I believe we stated there were two pages missing
16 and we put a bracket in what we published, saying there is
17 a page missing here.

18 Mr. Marshall. Do you recall what pages those were?

19 Mr. Latham. I remember one page was the beginning
20 of the whole section on whether we did or did not betray the
21 Kurds in their rebellion in Iraq. The other page I don't
22 remember at all.

23 Mr. Marshall. Were the references made in the Village
24 Voice at the time the report was published correct insofar
25 as they referred to the pages that were missing?

1 Mr. Latham. They were correct.

2 Mr. Marshall. Now, did the copy of the report that you
3 xeroxed have any footnotes on it?

4 Mr. Latham. It did.

5 Mr. Marshall. As I understand the earlier testimony,
6 some of those footnotes were published and others were not,
7 is that correct?

8 Mr. Latham. That is correct.

9 Mr. Marshall. Now, did you take part in any discussions
10 about making a money payment to anyone in return for
11 the Village Voice having the report made available to it?

12 Mr. Latham. I did not.

13 Mr. Marshall. Those are all the question I have
14 at this time, Mr. Chairman.

15 Mr. Flynt. Mr. Price.

16 Mr. Price. No questions.

17 Mr. Flynt. Mr. Spence?

18 Mr. Spence. No questions.

19 Mr. Flynt. Mr. Teague?

20 Mr. Teague. No questions.

21 Mr. Flynt. Mr. Quillen?

22 Mr. Quillen. Thank you, Mr. Chairman.

23 Mr. Latham, I believe you stated that you had had
24 no contact whatsoever with Mr. Schorr.

25 Mr. Latham. I hadn't had any contact with Mr.

1 Schorr for perhaps a year before we acquired this report.

2 That is correct.

3 Mr. Quillen. Did anyone from the New York Magazine
4 or the Village Voice have any contact with Mr. Schorr in
5 regard to the report before it was published or after?

6 Mr. Latham. I believe -- although I had nothing to do with
7 it -- that a few days after we published, there was some
8 contact. After we published the report.

9 Mr. Quillen. What was that contact, Mr. Latham?

10 Mr. Latham. Well, I am not your best witness on this,
11 but I believe Dan Schorr had the courtesy to call Clay
12 Felker and read him a statement in which Dan Schorr admitted
13 that he had been our source for the report.

14 Mr. Quillen. I believe the report was picked up from
15 Mr. Schorr's home here in Washington, D. C.

16 Mr. Latham. Right.

17 Mr. Quillen. By a secretary to Mr. Felker?

18 Mr. Latham. Right.

19 Mr. Quillen. If no contact had been made with Mr.
20 Schorr prior to that, how did the Village Voice or
21 the New York Magazine know where that report was?

22 Mr. Latham. Through -- well, again I had nothing to do
23 with these negotiations, but my understanding is that
24 it was through the intermediary who arranged for us to
25 acquire the report.

Mr. Quillen. Who was that intermediary?

1 Mr. Latham. Well, as has been published several times,
2 it was the lawyer Peter Tufo.

3 Mr. Quillen. I beg your pardon?

4 Mr. Latham. I say as has been reported in the press,
5 the negotiator -- or the person who supplied the report to
6 us, or contacted us, was Peter Tufo, the New York lawyer.

7 Mr. Quillen. You know to your personal knowledge
8 that he made the contact with Mr. Schorr and set up the delivery
9 time, and someone dispatched a secretary to Washington D. C.
10 to pick up something they didn't know what it was?

11 Mr. Latham. Of my own personal knowledge, I don't know
12 any of that.

13 Mr. Quillen. The copy of the report that you had was
14 returned to Mr. Schorr?

15 Mr. Latham. It was returned to the law offices of
16 Joseph Califano, his attorney.

17 Mr. Quillen. Was that the copy that was picked up in
18 Washington, D. C., to your knowledge?

19 Mr. Latham. Well, this is speculation, but I believe
20 that it was a copy of the copy that we picked up in
21 Washington,

22 Mr. Quillen. When you wrote your introduction, did you
23 know that the House of Representatives had acted by tremendous
24 majority vote not to release that report?

25 Mr. Latham. Well, I knew that a third of the Congress

1 had voted to release it. But also I made a note of the
2 fact that the Congress had voted not to release the report in
3 the introduction itself.

4 Mr. Quillen. Because it contained classified and secret
5 material? Did you know that, Mr. Latham?

6 Mr. Latham. All I knew was that the House had voted
7 not to release the report.

8 Mr. Quillen. Did you know that, Mr. Latham?

9 Mr. Latham. I knew the House had voted not to release the
10 report until the President had sanitized it.

11 Mr. Quillen. Did you read the colloquy in the Congressional
12 Record where it was pointed out that it did in fact contain
13 secret and classified information?

14 Mr. Latham. Well, I didn't read the colloquy in the
15 Record. However, in anything that you publish, there is
16 a certain balancing and a certain trade-off. And we thought
17 we were doing the country a service by publishing this report,
18 which -- we thought Congress had done the service in compiling
19 the report.

20 Mr. Quillen. What country do you think that you provided
21 a service for in publishing the report?

22 Mr. Latham. I believe the United States of America.
23 We showed that we could investigate our own wrong-doing.

24 Mr. Quillen. In other words, irrespective of the action
25 of the Congress of the United States, you, in writing your

1 introductory remarks, and as the Senior Editor, felt that
2 you had the authority and the ability to go beyond the dictation
3 of the Congress, and that you knew more about what was good
4 for the United States of America than 435 Members elected by
5 the people?

6 Mr. Latham. I believe that that is why the First
7 Amendment was written, to give the Press that authority.
8 And I did feel that we were doing the country a service,
9 and again that the committee, the Pike Committee, had done
10 the country a service in bringing to light some of the seamier
11 details of espionage work and trying to make sure it doesn't
12 happen again.

13 Mr. Quillen. Mr. Chairman, I will not prolong this.
14 But I am compelled to say that the security of my country
15 means more than anything else that I can remember at this
16 point. We only have one country, and when that country is
17 gone, we have something else. Newspapers come and go. But
18 our country remains forever. And a free press helped
19 maintain that freedom, and helps maintain the insurance that
20 our country will go on forever. But I am appalled that
21 someone would take in their own hands the determination, against
22 the will of Congress, that certain material, materials
23 were not classified or secret. And I think that it is just
24 unbelievable to me here this morning that we would have that
25 attitude reflected by great publications in this country.

1 Thank you, Mr. Chairman.

2 Mr. Flynt. Mr. Hebert.

3 Mr. Hebert. No questions.

4 Mr. Flynt. Mr. Hutchinson.

5 Mr. Hutchinson. No questions.

6 Mr. Flynt. Mr. Foley.

7 Mr. Foley. No questions.

8 Mr. Flynt. Mr. Quie?

9 Mr. Quie. No questions.

10 Mr. Flynt. Mr. Bennett?

11 Mr. Bennett. Well, I am not quite sure that I understood

12 the question and the answer which gave rise to the discussion.

13 I am not sure whether or not you are saying that you don't

14 have any knowlege or opinion, or that you won't express

15 what that knowledge or opinion is. So I would like to

16 ask you, to clarify it -- maybe it is already in the record--

17 do you have any opinion or knowledge as to who may have

18 given the material to Mr. Schorr?

19 Mr. Latham. Well, I don't know who gave the material

20 to Mr. Schorr. And as to whether I have any opinion, I

21 decline to answer.

22 Mr. Bennett. No further questions.

23 Mr. Flynt. Mr. Bennett, would you suspend?

24 Mr. Latham, I must at this time --

25 Mr. Mitchell. Mr. Chairman -- I'm sorry.

1 Mr. Flynt. Mr. Latham, I must at this time advise you
2 that this committee is acting pursuant to the authority
3 vested in it by House Resolutions 1042 and 1054 of the
4 House of Representatives, 94th Congress.

5 Copies of those resolutions and the opening statement
6 of the Chairman of this committee setting out the legislative
7 purposes of these hearings were served upon you prior to
8 your appearance as a witness here today.

9 The subject of these hearings is an inquiry into the
10 circumstances surrounding the publication in the Village Voice
11 of the text and of any part of the report of the House Select
12 Committee on Intelligence so that this committee can report
13 back to the House its findings and recommendations thereon.

14 The question put to you is pertinent to the subject
15 under inquiry, in that it would be evidence as to the source
16 from which the unauthorized publication took place, the source
17 from which Mr. Schorr obtained it. And that this constitutes
18 evidence of the circumstances surrounding publication of the
19 text and any part of that report. Your answer to the question
20 put to you is necessary for this committee to carry out the
21 mandate of the House of Representatives.

22 If you continue to refuse to answer the question,
23 your refusal will be deemed by this committee to constitute
24 a willful failure to answer a question pertinent to the
25 subject under inquiry, and will subject you to prosecution

1 and punishment by a fine or imprisonment or both, under
2 Title II of the United States Code, Sections 192, 193, and
3 194.

4 Your refusal to answer will also subject you to prosecution
5 and punishment for contempt of the United States House
6 of Representatives.

7 Accordingly, you are hereby advised that your objection
8 to the question and your grounds for refusing to answer the
9 question are hereby overruled.

10 As Chairman of this committee, I hereby demand and direct
11 that you answer the question put to you.

12 Mr. Latham. I respectfully decline to answer.

13 Mr. Kheel. Mr. Chairman, may I state for the record
14 again that the witness has said under oath that he has no
15 knowledge -- that he does not know who the source is, and that
16 the question, does he have any knowledge, calls for speculation
17 at best, and that the record should so indicate.

18 Mr. Bennett. I think counsel used the word "opinion."
19 You said "knowledge."

20 Mr. Kheel. I believe Mr. Marshall said that the questio
21 was did he have any knowledge.

22 Mr. Bennett. On that question he replied that he had
23 no knowledge, and he said he did not want to express his
24 opinion. And in your summary, you used the word "knowledge."

25 Mr. Kheel. Thank you very much. And I say that that

1 is speculation.

2 Mr. Marshall. So that the record may be clear--
3 is it Mr. Latham's position that under oath he has no
4 knowledge of the circumstances under which Mr. Schorr obtained
5 the report, and he is making that statement under oath?

6 Mr. Kheel. He has stated under oath that he had no
7 knowledge of who the source is.

8 Mr. Marshall. Let me ask him if he will reaffirm that
9 statement under oath, because it may be we can clear up simply
10 a matter of semantics here.

11 Mr. Kheel. Yes, I think that would be well to do.

12 Mr. Latham. Well, I do not know who the source is, and
13 I decline to express any opinion or to say whether I have
14 any knowledge whatsoever, which is the question put to me.

15 Mr. Marshall. You understand that the question that was
16 put to you earlier, by me, asked not for your opinion, but
17 whether you had any knowledge concerning the source, Mr.
18 Schorr's source. Did you understand that question?

19 Mr. Latham. Well, I believe I do, and I would like to
20 stand on my answer.

21 Mr. Marshall. All right.

22 And you understand, in standing on your answer, and on
23 those grounds, that the Chairman has instructed you as to conse-
24 quences of that position? Do you understand, sir?

25 Mr. Latham. That is correct.

1 Mr. Marshall. I think the record is now clear, Mr.
2 Chairman.

3 Mr. Flynt. Mr. Bennett.

4 Mr. Bennett. I think his answer to my question was clear.
5 The only thing I was trying to clarify, I think counsel
6 just by a slip of the tongue put the word "knowledge" in
7 when it should have been "opinion," because he went on to
8 explain it as if he was talking about opinion. I think the
9 record is clear.

10 Mr. Marshall. Mr. Bennett, so that the record will be
11 clear, my intent was to ask the question concerning knowledge
12 and not opinion.

13 Mr. Kheel. Mr. Marshall, knowledge of what?

14 Mr. Marshall. Knowledge of the circumstances surrounding
15 Mr. Schorr's obtaining of the Select Committee's report.
16 Any knowledge relating to those circumstances including knowledge
17 of the source.

18 Mr. Kheel. Well, he has no knowledge of the source.
19 He doesn't know who the source is.

20 Mr. Marshall. If the witness will state that he has
21 no knowledge of the source, then I think that will make the
22 record clear. But so far we have had your statement and not
23 the witness' statement to that effect.

24 Mr. Kheel. I thought that is what the witness said.

25 Mr. Marshall. All he has to do is simply state, "I have

1 no knowledge of the source," and I think the record will
2 be clear, and we can go on to something else.

3 Mr. Latham. I would like to stand on my previous
4 answer.

5 Mr. Marshall. Then you understand the consequences
6 of your standing on your previous answer?

7 Mr. Latham. That is correct.

8 Mr. Marshall. And you understand the Chair has directed
9 you to answer the question?

10 Mr. Latham. I do.

11 Mr. Marshall. All right. I think we may go on.

12 Mr. Flynt. Mr. Mitchell.

13 Mr. Mitchell. Thank you, Mr. Chairman.

14 Mr. Latham, one of the responsibilities of our committee
15 is to make recommendations to the House on how to prevent
16 such an occurrence from happening again.

17 I want to assure you that I also have great respect
18 for the First Amendment, and I do not want to do anything to
19 erode the First Amendment. And I am sympathetic with your
20 job, the public's right to know, and all the news that is
21 fit to print. But would you agree, Mr. Latham, that our
22 nation has secrets that must be kept?

23 Mr. Latham. I agree that our nation has secrets that
24 must be kept.

25 Mr. Mitchell. Would you agree also that the Congress

1 of the United States must have an intelligence oversight
2 capability?

3 Mr. Latham. I am very much in favor of the Congress
4 having that capability.

5 Mr. Mitchell. And to do that, the Congress of the United
6 States has to be able to keep secrets. I think you can follow
7 that logic.

8 Mr. Latham. I believe the Congress has to be able to
9 keep secrets.

10 Mr. Mitchell. Were you aware -- we learned this in our
11 testimony, and I do not know that it came out before the report
12 was published -- but were you aware of the fact that the
13 CIA classified that report as containing something like 25
14 percent top secret -- 25 percent classified information?

15 Mr. Latham. I wasn't aware of that information.

16 Mr. Mitchell. You didn't feel that the report contained
17 any top secret information?

18 Mr. Mitchell. Well, I felt that the committee who
19 prepared the report had been willing to and wanted to release
20 the report.

21 I also realized that the committee had done its work from
22 sanitized documents supplied by the agency. So it first
23 went through the sanitizing process of the documents,
24 sanitized, and then turned over to the committee. Then the
25 committee sanitized this information before it put it in
the report. I was also aware that there were not names of

1 any station chiefs, no names of any agents. And I felt
2 that since it had gone through that many screenings,
3 and the committee had voted, that we were not subjecting the
4 United States to any immediate danger, and that in the balancing
5 process that you go through in deciding to publish or
6 whether not to publish -- by the way, I did not make the
7 decision whether to publish. I recommended that we publish.
8 But I thought that a part of protecting the nation is the
9 nation should stand for something, and a part of what the
10 nation stands for is cleaning up its own mistakes. And I felt
11 this was in that tradition.

12 Mr. Mitchell. If you had known that the CIA had
13 classified 25 percent of this document, hypothetical
14 situation -- 25 percent of this document as top secret, would
15 you have reported it anyway? Would you have participated
16 in the publishing?

17 Mr. Latham. That is a hypothetical question. However,
18 I know that those classifications are sometimes used to cover
19 mistakes, and that one person's top secret is another person's
20 normal, every-day news.

21 Mr. Mitchell. You were aware also, Mr. Latham, that
22 the President of the United States had requested that the report
23 not be published until such time as it could be sanitized
24 properly?

25 Mr. Latham. I was aware of that. But as I stated

1 in the introduction -- I actually quoted from the committee's
2 own report, that once documents are subjected to being sanitized
3 by the Executive Branch, they often come out with whole pages
4 blank, and pages with only one sentence on them. And I
5 didn't feel that the President had the exclusive right to
6 decide --

7 Mr. Mitchell. I didn't get the last sentence.

8 Mr. Latham. I didn't feel the President had the exclusive
9 right to decide whether this report should be published.

10 Mr. Mitchell. It wasn't exclusive. The House of Repre-
11 sentatives also voted two to one not to have it published.

12 Mr. Latham. But the committee itself that prepared the
13 report voted to publish it.

14 Mr. Mitchell. I have no further questions, Mr. Chairman.

15 Mr. Flynt. Mr. Cochran?

16 Mr. Cochran. I have no questions.

17 Mr. Flynt. Committee Counsel?

18 Mr. Marshall. Mr. Latham, I have one more question.

19 Who or what is the basis for your information that
20 sanitized documents were supplied to the Select Committee
21 in connection with their preparation of the report?

22 Mr. Latham. The report itself. It gives a long
23 explanation of the frustrations of dealing with sanitized
24 documents supplied by the Central Intelligence Agency.

25 Mr. Marshall. So that your opinion that the report

1 dealt with or came from documents which were sanitized
2 was exclusively an opinion based upon what you read
3 in the report, is that right?

4 Mr. Latham. That is correct.

5 Mr. Flynt. Mr. Spence.

6 Mr. Spence. Mr. Latham, I have been interested in
7 your responses. Are you an authority on intelligence matters?

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1 Mr. Latham. Having covered the Intelligence Committee
2 for New York Magazine I would not say I am a supporter.

3 Mr. Spence. Do you think you in all honesty have some
4 qualifications to decide for yourself and everyone who might
5 read your publication whether or not something you are printing
6 would be harmful to the national security of this country?

7 Mr. Latham. I believe that the First Amendment gives me
8 the authority to make that decision. I didn't make the
9 decision, I only recommended. It was up to other people to
10 finally make the decision.

11 Mr. Spence. What about someone else, say, who is not in
12 your position, but an individual, nonetheless, would he have
13 an equal right to determine for himself and the public before
14 the whole world something that could be harmful to national
15 security?

16 Mr. Latham. I believe that the First Amendment gives
17 the press the right to make the decision what to publish.

18 Mr. Spence. You said earlier that you thought this
19 country had to have some secrets.

20 Mr. Latham. I believe it does.

21 Mr. Spence. It's necessary to have secrets.

22 Mr. Latham. I believe it does.

23 Mr. Spence. Now you are saying any one person can
24 determine for himself what is secret or should be held secret
25 and what should not?

1 Mr. Latham. I am saying that the --

2 Mr. Spence. THat is not consistent.

3 Mr. Latham. I am saying under the First Amendment the
4 press is allowed to make the decision whether to publish or
5 not to publish.

6 Mr. Kheel. Mr. Chairman, for the record, on behalf of
7 the New York Magazine, the New York Company, the Village Voice
8 and all of the people I represent today, that I don't want to
9 sound sanctimonious about this, but we consider ourselves to
10 loyal Americans and we are concerned about the security of the
11 United States.

12 We are also journalists and publishers and editors with
13 the responsibility to provide the public with information it
14 is entitled to know, and that decisions were made in pursuance
15 of that responsibility.

16 Mr. Spence. Mr. Chairman, I think the witness should
17 answer the question and not his counsel.

18 Mr. Kheel. If I may -- I am practically finished -- and
19 I would like this in the record. It is our position that these
20 decisions were made on balance, taking all of the factors into
21 account which we believe should be taken into account in the
22 discharge of our First Amendment rights and obligations.

23 Thank you.

24 Mr. Flynt. Any other questions?

25 Mr. Spence. No, sir.

1 Mr. Flynt. Mr. Latham, you may step down.

2 Committee Counsel will call the next witness.

3 Mr. Marshall. Mr. Sheldon Zalaznick.

4 Mr. Flynt. Mr. Zalaznick, would you remain standing
5 and raise your right hand while I administer the oath?

6 Do you solemnly swear that the testimony you will give
7 before this committee in the matters now under consideration
8 will be the truth, the whole truth, and nothing but the truth,
9 so help you God?

10 Mr. Zalaznick. I do.

11 Mr. Flynt. You may be seated.

12 Mr. Marshall. Mr. Zalaznick, would you state your name
13 and address for the record?

14 TESTIMONY OF SHELDON ZALAZNICK, ACCOMPANIED BY
15 THEODORE W. KHEEL, ATTORNEY

16 Mr. Zalaznick. Sheldon Zalaznick, 458 West 2463, Bronx,
17 New York.

18 Mr. Marshall. You are appearing here with counsel?

19 Mr. Zalaznick. Yes, sir.

20 Mr. Marshall. For the record, counsel, will you introduce
21 yourself?

22 Mr. Kheel. Theodore W. Kheel.

23 Mr. Marshall. Mr. Zalaznick, you are here pursuant to
24 a subpoena duces tecum which was served on you prior to this
25 hearing; is that correct?

1 Mr. Zalaznick. That is correct.

2 Mr. Marshall. At the time the subpoena was served upon
3 you you were also served with copies of House Resolution 1042
4 and 1054, the Rules of HOuse of Representatives and the rules
5 of this committee, a copy of the investigative procedure which
6 has been adopted by this committee and a copy of the Chairman's
7 opening statement. Is that correct, sir?

8 Mr. Zalaznick. Correct.

9 Mr. Marshall. In the event your testimony or evidence
10 may involve material from an executive session, Select
11 Committee on Intelligence or information which is classified
12 or information which may tend to defame, degrade or incriminate
13 any person, would you please advise this committee so that it
14 may take appropriate action under the Rules of the House of
15 Representatives?

16 Mr. Zalaznick. I will, sir.

17 Mr. Marshall. Now, the subpoena duces tecum served upon
18 you prior to the appearance demanded that you produce certain
19 papers at this hearing, including any and all copies of, or
20 drafts of the report prepared by the House Select Committee
21 on Intelligence pursuant to House Resolution 591.

22 Do you have those papers with you?

23 Mr. Zalaznick. I have no such papers, sir.

24 Mr. Marshall. All right, you had no such papers in your
25 custody, possession or control at the time of the service of

1 the subpoena?

2 Mr. Zalaznick. That is correct.

3 Mr. Marshall. Do you have a statement which you wish to
4 make to this committee, sir?

5 Mr. Zalaznick. I believe my beliefs are covered by
6 the statement made by Mr. Felker and the statement made by
7 Mr. Latham.

8 I would only add that personally I have no objection in
9 principle to the purposes of this committee. I am profoundly
10 concerned with the committee compelling journalists to assist
11 them in these purposes.

12 Mr. Marshall. Mr. Zalaznick, where are you presently
13 employed?

14 Mr. Zalaznick. I have just left New York Magazine. As it
15 happens, I am now the managing editor of Forbes Magazine.

16 Mr. Marshall. At the time you were with New York Magazine,
17 what were your duties?

18 Mr. Zalaznick. I was the senior editorial director of
19 New York Magazine.

20 Mr. Marshall. Did your duties require you to perform
21 any duties as well for the Village Voice?

22 Mr. Zalaznick. Not in the ordinary course of business.

23 Mr. Marshall. Were you employed by the Village Voice
24 when the editions of February 16 and February 23 were published
25 by the Village Voice?

1 Mr. Zalaznick. No, sir.

2 Mr. Marshall. Did you have anything to do in connection
3 with the publication of the text of the report in those
4 editions?

5 Mr. Zalaznick. Yes, sir.

6 Mr. Marshall. What were your responsibilities in that
7 regard, if you can tell us generally?

8 Mr. Zalaznick. Quite simply, once the decision had been
9 made to publish the Pike Report, I was the editor in charge
10 of the process of getting it into print.

11 Mr. Marshall. Now, in connection with the discharging
12 of those responsibilities, did you obtain two copies of the
13 report which Mr. Schorr supplied to the Village Voice from
14 Mr. Latham?

15 Mr. Zalaznick. Did you say two copies, sir?

16 Mr. Marshall. Yes, sir.

17 Mr. Zalaznick. Well, we received a copy of the report,
18 and my best recollection is I know that Aaron Latham made
19 additional copies, and my best recollection is we made three
20 additional copies, making a total of four.

21 Mr. Marshall. How many copies did you receive?

22 Mr. Zalaznick. I kept two.

23 Mr. Marshall. All right, sir. Now, where are those
24 copies now?

25 Mr. Zalaznick. They were thrown out.

1 Mr. Marshall. When you say they were thrown out, did you
2 throw them out?

3 Mr. Zalaznick. I threw my two copies out.

4 Mr. Marshall. Did you put them in the garbage or burn
5 them or what did you do with your copies?

6 Mr. Zalaznick. Well, as it happened, I burned them in my
7 back yard.

8 Mr. Marshall. And in your charcoal grill?

9 Mr. Zalaznick. Yes.

10 Mr. Marshall. You weren't cooking anything else at the
11 time, were you?

12 Mr. Zalaznick. It was cold, nothing else was going on.

13 Mr. Marshall. After the two copies were delivered to you,
14 what did you do with them?

15 Mr. Zalaznick. I and a small group of New York Magazine
16 personnel went to a type setting house which New York Magazine
17 ordinarily uses in its normal business.

18 Mr. Marshall. Sterling Graphic Arts.

19 Mr. Zalaznick. Correct.

20 Mr. Marshall. All right, sir, and what did you do there?

21 Mr. Zalaznick. We did normal editorial things of
22 preparing the material for publication. We got it going.

23 Mr. Marshall. All right. Now, did you take the two
24 copies back from Sterling Graphic Arts after you had completed
25 your work there?

1 Mr. Zalaznick. Yes, sir.

2 Mr. Marshall. And then did you return them to your office
3 or did you take them directly home at that point?

4 Mr. Zalaznick. As it happens, once the movement, the
5 project was, as we say, closed, I took everything and I stopped
6 in at the office and then went promptly home with it.

7 Mr. Marshall. Did you have any communications with Mr.
8 Schorr or any connection with carrying out your responsibilities
9 on behalf of the Village Voice?

10 Mr. Zalaznick. No, sir.

11 Mr. Marshall. With regard to the copies that were supplied
12 to you, did any pages appear to be missing?

13 Mr. Zalaznick. Yes, sir.

14 Mr. Marshall. Was the description of those pages appearing
15 to be missing accurate insofar as it appeared in the Village
16 Voice?

17 Mr. Zalaznick. Yes, sir.

18 Mr. Marshall. Were any pages illegible?

19 Mr. Zalaznick. A few of the pages, and I couldn't be
20 certain, but it was in the magnitude of two or three rather
21 than twenty or thirty, a very few of the pages were in that
22 runny, ripply, the way you sometimes get when a Xerox is
23 catching, a reproducing machine is catching.

24 There were a few pages that were difficult to read, not
25 impossible.

1 Mr. Marshall. Were there any marks on the copy of the
2 report that you received at the time you received it?

3 Mr. Zalaznick. Yes, sir.

4 Mr. Marshall. Could you describe what those marks were?

5 Mr. Zalaznick. A few underlines, and a kind of random
6 mark or two in a margin.

7 Mr. Marshall. Do you recall what those random marks or
8 two in the margin were?

9 Mr. Zalaznick. No, sir.

10 Mr. Marshall. Were they words or --

11 Mr. Zalaznick. No, sir.

12 Mr. Marshall. Symbols?

13 Mr. Zalaznick. To the best of my recollection, it was
14 just a kind of vertical mark in a margin.

15 Mr. Marshall. As though a particular part of the report
16 was being referenced for later attention?

17 Mr. Zalaznick. I can't say, sir.

18 Mr. Marshall. Did the report have footnotes at the time
19 you received the copy?

20 Mr. Zalaznick. Yes, sir.

21 Mr. Marshall. Now, were any changes made in the text
22 prior to publication?

23 Mr. Zalaznick. Changes in the text?

24 Mr. Marshall. Yes, sir.

25 Mr. Zalaznick. None that I can recall.

1 Mr. Marshall. All right. So it's your testimony that
2 whatever was given to the Village Voice by Mr. Schorr, subject
3 to the earlier testimony about footnotes, and so forth, was
4 what the Village Voice published; is that right?

5 Mr. Zalaznick. That is correct.

6 Mr. Marshall. Now, do you have any knowledge whatsoever
7 how or from whom Mr. Schorr got the report he made available
8 to the Village Voice for publication?

9 Mr. Zalaznick. No, sir.

10 Mr. Marshall. Did you or anyone else, to your knowledge,
11 ask Mr. Schorr how he obtained that information?

12 Mr. Zalaznick. I did not.

13 Mr. Marshall. To your knowledge did anyone else?

14 Mr. Zalaznick. No, sir.

15 Mr. Marshall. All right. Do you know of anyone else
16 other than Mr. Schorr who may have knowledge about how or
17 from whom Mr. Schorr obtained the report?

18 Mr. Zalaznick. No, sir, I do not.

19 Mr. Marshall. Did you take part in any discussions about
20 the Village Voice making a money payment to anyone in return
21 for the report being made available to the Village Voice for
22 publication?

23 Mr. Zalaznick. I dealt with nobody.

24 Mr. Marshall. So, you have no knowledge on the subject
25 of any financial payment made by the Village Voice to the

1 reporter on the committee for Freedom of the Press?

2 Mr. Zalaznick. That is correct.

3 Mr. Marshall. That is all of the questions I have, Mr.
4 Chairman.

5 Mr. Flynt. Mr. Zalaznick, is it your testimony that as
6 the editor in charge of preparing this material for publication
7 that you made no additions, no deletions, and no alterations
8 of any kind to the text which you received, other than foot-
9 notes?

10 Mr. Zalaznick. No, sir. That would not be correct. There
11 was, for example, in the discussion of the Secretary of State's
12 conduct of American foreign policy with respect to the Kurds,
13 the report, as I recall, did not specify that the country that
14 figured at some point in the negotiations and the strategy
15 was Iran.

16 It was common knowledge that the country was, in fact,
17 Iran, and so, for example, as part of the normal editing
18 process, where the report had referred to a foreign government,
19 we put the word "Iran" in, in a correct, grammatical context,
20 but I hope we were conscientious about signalling that editing
21 change in the conventional way with brackets, which is a
22 conventional signal to a reader that an editor has intervened.

23 Mr. Flynt. The reason I ask the question, and I want you
24 to understand the reason, I understood you to tell counsel in
25 response to a similar question that there were no changes made.

1 Mr. Zalaznick. Well, I am sorry for having appeared to
2 mislead the committee.

3 Mr. Flynt. Mr. Price?

4 Mr. Price. No questions.

5 Mr. Flynt. Mr. Spence?

6 Mr. Spence. No questions.

7 Mr. Flynt. Mr. Teague?

8 Mr. Teague. Mr. Zalaznick, when we say the press, what
9 are we talking about, who is the press?

10 Mr. Zalaznick. I suppose those people who hold themselves
11 out to be the press.

12 Mr. Teague. Anybody who writes, for example, members
13 of Congress, most of them write newsletters. Are we members
14 of the press?

15 Mr. Zalaznick. Apart from certain advantages and the
16 franking privilege, sir, I don't know what would distinguish
17 you from the press.

18 Mr. Teague. Well, does the news media try in any way to
19 define?

20 Mr. Zalaznick. I am sorry, sir, I didn't hear.

21 Mr. Teague. Does the news media have any standards or
22 do they have a definition that covers the press?

23 Mr. Zalaznick. Sir, I think it's the American public that
24 finally decides who is and who is not the press to the extent
25 that they accept or reject this or that publication.

1 Mr. Teague. I have a young lady that writes newsletters
2 for me. Is she a member of the press?

3 Mr. Zalaznick. I would think she would be more properly
4 characterized as a member of the public relations establish-
5 ment.

6 Mr. Teague. Are you saying PR firms are not press?

7 Mr. Zalaznick. Not in my judgment, no. They are para-
8 press or ancillary to, but not the press itself.

9 Mr. Teague. That is all, Mr. Chairman.

10 Mr. Flynt. Mr. Quillen?

11 Mr. Quillen. Thank you, Mr. Chairman.

12 When you took these two copies of the report to your
13 back yard, were they hot enough to grill your steaks?

14 Mr. Zalaznick. It was February, I believe, Mr.
15 Congressman, and there was nothing going on besides burning
16 the papers.

17 Mr. Quillen. Did you burn every sheet?

18 Mr. Zalaznick. Yes, sir.

19 Mr. Quillen. Were you satisfied with that operation?

20 Mr. Zalaznick. I don't mean to be uncooperative, Mr.
21 Congressman, I don't know what the point of that is.

22 Mr. Quillen. The point is that in burning and destroying
23 the report you were convinced in your own mind that it contained
24 secret and classified information.

25 Mr. Zalaznick. That is not the case at all, sir.

1 Mr. Quillen. Others testified that they threw them in
2 the trash barrel. Then why did you take them home and burn
3 them?

4 Mr. Zalaznick. It seems crazy at the time, sir, but it
5 did occur to us that just such an inquiry as we are now present
6 at might get going, and it seems prudent to do what we possibly
7 could to avoid ever inadvertently compromising the integrity
8 of anybody's sources.

9 Burning seems to me better than a wastebasket.

10 Mr. Quillen. You took it on yourself as one of the
11 editors to tighten the restrictions, even over and above that
12 performed by your publisher and editor?

13 Mr. Zalaznick. Yes.

14 Mr. Quillen. Were you saying that he did wrong when he
15 did what he did?

16 Mr. Zalaznick. No, sir.

17 Mr. Quillen. You just got through saying that you did the
18 right thing.

19 Mr. Zalaznick. There were several courses, several roads
20 one might take with it for the same objective, sir. One is
21 as good as another, as it turned out.

22 Mr. Quillen. I think a moment ago you made a little
23 mockery out of freedom of the press. I hope you were not really
24 serious in your remarks.

25 Mr. Zalaznick. I was not, sir.

1 Mr. Quillen. We all believe in freedom of the press. I
2 was a publisher for a newspaper at age nineteen, started another
3 one at age twenty-two and I likewise believe in the freedom of
4 the press, but somehow I don't think one should hide behind
5 the First Amendment as they do sometimes behind a smoke-screen.

6 I think it's a very serious situation. We have publications
7 in this country that would take it upon themselves to publish
8 secret and classified material believing that they have more
9 knowledge than 435 Members of Congress, or the will of the
10 people of this Nation, and I think it's a very serious matter
11 and something we should not make light of.

12 That is all, Mr. Chairman.

13 Mr. Flynt. Mr. Hebert?

14 Mr. Hebert. Thank you, Mr. Chairman.

15 I had not intended to ask my questions, but the development
16 of the colloquy compels me to make these remarks or these
17 observations at this time.

18 I think my position is well known on this particular
19 subject matter. I will not ask any newspaper man under any
20 circumstances, under any condition to reveal his source, period.

21 I will not do it.

22 Now, starting from there, however, I do intend to question
23 the activity of an individual who does gain information, and
24 how he handles it.

25 Now, the previous witness, Mr. Latham I think his name

1 was, he had an opportunity to say something on a flat statement,
2 he elected to subject himself to contempt proceedings. Why
3 he did that I don't know.

4 Then, the attorney for him, in encouraging and embracing
5 the First Amendment with its obligations, now, I am just
6 wondering, his witness, his client says the First Amendment
7 gives the newspaperman the right to tear up the Constitution,
8 laws meaning nothing, and that is the right under the First
9 Amendment to publish any and everything, you know, and you are
10 the sole judge of it.

11 This is what concerns me.

12 Mr. Kheel. Sir, I don't believe that is a correct
13 statement of our position. We think that as journalists and
14 as editors and as publishers we have a responsibility to weigh
15 the information that comes to our attention and to decide
16 whether or not in a particular instance it should be published,
17 and that in this instance, on balance, taking into account
18 all of the circumstances, the decision was made to publish the
19 report.

20 We are ever mindful of the security problems of the
21 United States, we are lawful Americans, and we are concerned
22 about protecting the United States as much as anyone else is.

23 Mr. Hebert. I could buy what you said, you repeated
24 what you said, but left off one sentence, and that is the
25 confirming the First Amendment with its obligations.

1 Mr. Kheel. Right.

2 Mr. Hebert. Now, in effect, but your client didn't say
3 that, your client says the First Amendment gives him the right
4 to do what he damn pleases. Now that is what he said. I
5 didn't say it.

6 Now, look at that Supreme Court Building over there,
7 which I don't agree with very much. But they have a big sign
8 up here, "This is a Government of laws and Government of men."

9 Mr. Kheel. That is --

10 Mr. Hebert. Wait now --

11 Mr. Kheel. Excuse me.

12 Mr. Hebert. If anybody is so naive and so foolish to
13 think we live under a Government of laws today, they better
14 have their heads examined, and this is the kind of expressions
15 that concern me.

16 If you don't like the law, violate it. That is what we
17 are confronted with.

18 Now, what you have expressed and I, by what you say, the
19 First Amendment with obligations, because if, you know the
20 canons of the American press, they set up their rights and I
21 agree with their rights, but the greater those rights, the
22 greater responsibility to be very, very careful of how they
23 protect those rights, and that is what concerns me, and
24 that is all I want to say now.

25 Mr. Kheel. . . We are equally concerned now.

1 Mr. Flynt. Mr. Hutchinson?

2 Mr. Hutchinson. No questions.

3 Mr. Kheel. It is a legal question as to the extent of
4 the First Amendment rights.

5 Mr. Flynt. Mr. Foley?

6 Mr. Kheel. I personally recognize limitations on First
7 Amendment rights. At present the Supreme Court is divided on
8 these, on the extent to which the rights, what rights go, and
9 for the purposes of this proceeding it is our position that
10 whatever may be the ultimate extent of the rights of journalists
11 under the First Amendment that we made a decision on balance
12 that was the right decision in the interest of the First Amend-
13 ment and the people of this country.

14 Mr. Flynt. Mr. Foley?

15 Mr. Foley. Mr. Chairman, I had no intention to ask any
16 questions, or particularly to make any statement.

17 I want to make a very brief statement in view of some of
18 the other comments by committee Members.

19 I do not believe that today's proceedings will assist
20 the committee in developing any useful information with respect
21 to its responsibility under H.R. 1042 or 1054, in addition,
22 more seriously, the subpoena of these witnesses raises delicate
23 Constitutional policy questions which I regret have been raised.

24 I want to reaffirm my concern that the subpoenas have
25 been issued, and that the questions that the committee is

1 placing today before these witnesses have been asked. I
2 disagree with that decision respectfully, and I regret it.

3 Mr. Flynt. Mr. Quie?

4 Mr. Quie. No questions.

5 Mr. Flynt. Mr. Bennett?

6 Mr. Bennett. No questions.

7 Mr. Flynt. Mr. Mitchell?

8 Mr. Mitchell. No questions.

9 Mr. Flynt. Mr. Cochran?

10 Mr. Cochran. No questions, Mr. Chairman.

11 Mr. Kheel. Mr. Chairman, may I say one thing further
12 and that is that I hope the record is clear that there was no
13 payment made, and indeed, there was no discussion of any
14 payment for the report. There was a discussion of a possible
15 contribution.

16 Mr. Marshall. It is not appropriate at this time for
17 you to argue your case.

18 Mr. Kheel. I am not arguing it.

19 Mr. Marshall. You may make any point you wish to make
20 to protect the rights of your clients.

21 Mr. Kheel. I want to make sure the record is clear. Sir,
22 I believe you would want to make sure the record was clear on
23 this subject and I am merely inquiring whether it is.

24 Mr. Flynt. Counsel, the record will speak for itself.

25 Mr. Bennett. Mr. Chairman?

1 Mr. Flynt. Mr. Bennett?

2 Mr. Bennett. I am not quite sure that I understood about
3 whether a contribution was made. Was there any contribution?

4 Mr. Kheel. There was no contribution made. Thank you.

5 Mr. Flynt. You may step down.

6 Mr. Zalaznick. Thank you.

7 Mr. Flynt. Committee Counsel will call the next witness.

8 Mr. Marshall. Mr. Daniel Schorr to the witness stand.

9 Mr. Flynt. Mr. Schorr, would you remain standing and
10 raise your right hand and be sworn?

11 You do solemnly swear that the testimony you will give to
12 this committee in the matter now under consideration will be
13 the truth, the whole truth and nothing but the truth, so help
14 you God?

15 Mr. Schorr. I do.

16 Mr. Flynt. You may be seated.

17 Mr. Marshall. Mr. Schorr, would you state your full name
18 and address, please?

19 TESTIMONY OF DANIEL SCHORR, ACCOMPANIED BY JOSEPH A.
CALIFANO, JR. ATTORNEY

20 Mr. Schorr. My name is Daniel Schorr; my address is
21 313 Woodley Road, Northwest, Washington, D. C.

22 Mr. Marshall. You are appearing here with counsel?

23 Mr. Schorr. Yes, sir.

24 Mr. Marshall. Counsel, you may identify yourself for
25

1 the record.

2 Mr. Califano. I am Joseph A. Califano, Jr. I am a
3 Washington attorney, member of the bar in Washington, D. C.

4 Mr. Marshall. Mr. Schorr, you are here pursuant to a
5 subpoena duces tecum which was served upon you earlier.

6 Mr. Schorr. Yes, sir.

7 Mr. Marshall. At the time the subpoena was served upon
8 you you were also served with copies of House Resolutions 1042
9 and 1054, a copy of the Rules of the House of Representatives
10 and the rules of this committee, a copy of the investigative
11 procedures adopted by this committee and a copy of the
12 Chairman's opening statement to these hearings; is that not
13 correct, sir?

14 Mr. Schorr. That's correct.

15 Mr. Marshall. In the event that your testimony or evidence
16 may involve material from an executive session of the Select
17 Committee on Intelligence of the House of Representatives,
18 information which is classified, or information which may tend
19 to defame, degrade or incriminate any person, would you please
20 bring that to the attention of this committee in a timely way,
21 so that it may take appropriate action under the rules of
22 the House of Representatives?

23 Mr. Schorr. Understood.

24 Mr. Marshall. Do you have a statement to make for the
25 committee?

1 Mr. Schorr. I do.

2 Mr. Marshall. You may proceed to make that statement.

3 Mr. Schorr. Mr. Chairman, I appear before this committee
4 today under protest, in response to a subpoena whose issuance
5 I deeply deplore.

6 I had hoped that this committee, which has already learned
7 a great deal about Congressional procedures for handling
8 intelligence information, could have completed these hearings
9 without crossing that Constitutional Great Divide which separates
10 the roles of the Congress and the press.

11 Whatever happens hereafter at this hearing, it is my belief
12 that your subpoena, commanding the appearance of a reporter to
13 discuss his journalistic activities, its effect can only be
14 to establish an atmosphere of intimidation for the press.

15 Now, this subpoena requires me to produce all records,
16 papers, documents, correspondence, et cetera, and this is not
17 inclusive, "which relate in any way" to the subject of your
18 inquiry. It's a broad statement, and I have tried to interpret
19 it, and I will divide the material in my possession into four
20 general categories.

21 Firstly, many of the records in my possession are material
22 in the public domain, such as speeches that I have made, news-
23 paper articles and I guess copies of Village Voice containing
24 the report of the House Intelligence Committee.

25 To the extent that these public materials are not already

1 available to the committee and are desired by the committee,
2 I am willing to provide them.

3 Secondly, since the publication of the report in the
4 Village Voice I have received several thousand letters and
5 telegrams. If the committee feels a need for such correspondence
6 I should like first to seek the permission of the persons
7 involved out of respect for their privacy.

8 Thirdly, I have notes taken during the coverage of the
9 House Intelligence Investigation and I have draft scripts that
10 were written in preparation for broadcasts.

11 Now, because of the internal news decision-making and
12 the editing process, some of those scripts vary from what I
13 actually did broadcast, and in fact, others were not broadcast
14 at all.

15 All of this work product I must respectfully decline to
16 submit, I believe that it falls under the category of
17 reporters' notes, protected by the First Amendment. I take
18 now the same position that Dr. Frank Stanton, who was then
19 President of CBS, Incorporated, took in 1971.

20 He refused to comply with the House Commerce Committee
21 subpoena demanding the scripts and the so-called out-takes of
22 interviews filmed in preparation for the CBS television
23 documentary, "The Selling of the Pentagon."

24 His position and mine today is that the internal process
25 of preparing news for publication or for broadcast cannot be

1 subjected to the compulsory process of subpoena without
2 subverting the purposes of the First Amendment.

3 Now fourthly, the subpoena specifically demands "all
4 drafts and copies of the report of the Select Committee on
5 Intelligence which were in existence prior to January 29, 1976."

6 I cannot comply with that demand. The examination of the
7 document could conceivably help to lead to discovery of the
8 source, and as must now be manifest, if it has not been manifest
9 before, I consider it a matter of professional conscience as
10 well as a Constitutional right not to assist you in discovering
11 that source.

12 Now, this also means, obviously, and we may as well say
13 it now, that I shall not respond to direct questioning about
14 confidential sources, for in some forty years of practicing
15 journalism I have never yielded to a demand for a disclosure
16 of a source that I had promised to protect, and I cannot do
17 so now.

18 At the appropriate time, Mr. Chairman, Mr. Califano is
19 ready to explain why, given the circumstances of this case, my
20 role in the publication of the report, and my right to withhold
21 the source, indeed, protected by the Constitution.

22 But let me add that even if our legal position were not
23 as strong as I believe it is, I could still not tell you my
24 source, because for me this is a personal matter, and almost
25 a visceral matter.

1 Mr. Chairman and Members of the committee, we all build
2 our lives around certain principles, and without those
3 principles our careers simply lose their meaning.

4 For some of us, doctors, lawyers, clergymen, and yes,
5 journalists, it is an article of faith that we must keep
6 confidential those matters entrusted to us only because of the
7 assurance that they would remain confidential.

8 Now, for a journalists, the most crucial kind of
9 confidence is the identity of a source of information. To
10 betray a confidential source would mean to dry up many future
11 sources for many future reporters.

12 The reporter and the news organization would be the
13 immediate losers, but I would submit to you that the ultimate
14 losers would be the American people and their free institutions.

15 And if you will permit me one last personal word, without
16 all of this Constitutional argument, I would like to go beyond
17 all of this. To betray a source would be for me to betray
18 myself, my career, and my life, and to say that I refuse to
19 do it isn't quite saying it right.

20 I cannot do it.

21 That concludes my statement.

22 Mr. Marshall. Mr. Schorr, with regard to the first two
23 categories of documents which you have described in response
24 to the subpoena duces tecum, that is the speeches, newspaper
25 articles and public materials and letters and telegrams that

1 you stated you have received, appropriate arrangements will be
2 made and have been made with your counsel to handle the
3 production of those documents; is that correct, Mr. Califano?

4 Mr. Califano. Yes, Mr. Marshall. I would divide those
5 two items. With respect to the first item, the speeches, the
6 articles that are in the public domain, yes, we can make
7 arrangements to provide those.

8 With respect to the correspondence, I would simply note,
9 as Mr. Schorr noted in his opening statement, that there are
10 rights of privacy involved, as you know, from individuals
11 writing letters. There are thousands of letters involved that
12 came to Mr. Schorr after publication, and if the committee
13 wants these, those people would have to be contacted before
14 we would be free to turn them over to the committee.

15 Mr. Marshall. Now, with regard to the third category,
16 that is notes taken during coverage of the House Select
17 Committee and scripts, as well as the copies of the report of
18 the House Select Committee on Intelligence prepared pursuant
19 to House Resolution 591, on behalf of the committee I now
20 direct that you produce all copies and drafts of the report
21 prepared pursuant to House Resolution 591 in your possession,
22 custody or control.

23 Mr. Schorr. Sir, I must respectfully decline to do so
24 for the reasons stated, that I believe that they are a work
25 product, protected by the First Amendment in the first place,

1 and secondly and more importantly, could conceivably assist
2 you in ascertaining the source.

3 Mr. Marshall. So the record will also be clear, I am
4 making an additional demand, solely related to the report of
5 the Select Committee prepared pursuant to House Resolution 591,
6 and am directing on behalf of the committee that you produce
7 those copies of that report in your possession, and that you
8 produce them at this time.

9 Mr. Schorr. My answer remains the same.

10 Mr. Califano. Mr. Marshall, may I just briefly note
11 that there are two types of documents involved here, as you
12 have noted.

13 With respect to one item, memoranda, internal reporters'
14 notes, out-takes, if you will, may I cite to the Chair, may
15 I ask of the Chair if he is going to direct the witness
16 to answer, direct separately because with respect to notes
17 and out-takes there is a precedent in the House of Representa-
18 tives.

19 That precedent was when Dr. Frank Stanton testified and
20 refused to provide similar material. The House voted at that
21 time 226 to 181 not to cite Dr. Stanton for contempt for
22 refusing to provide that material.

23 Mr. Flynt. I have carefully studied the legal memorandum,
24 Mr. Califano, which you have filed with the committee.

25 I must at this time advise the witness that this committee

1 is acting pursuant to the authority vested in it by Resolutions
2 1042 and 1054 of the House of Representatives, 94th Congress.

3 Copies of those resolutions and the opening statement of
4 the Chairman of this committee setting out the legislative
5 purpose of these hearings were served upon you prior to your
6 appearance as a witness here today.

7 The subject of these hearings is an inquiry into the
8 circumstances surrounding the publication in the Village Voice
9 of the text and of any part of the report of the House Select
10 Committee on Intelligence, so that this committee can report
11 back to the House its findings and recommendations thereon.

12 The papers described in the subpoena duces tecum, including
13 any and all copies or drafts of the report prepared by the
14 House Select Committee on Intelligence, pursuant to House
15 Resolution 591, are pertinent to the subject under inquiry
16 in that these papers may identify or lead to the identification
17 of the person from whom the text and any part of that report
18 were obtained.

19 This report of the House Select Committee on Intelligence,
20 pursuant to House Resolution 591, is further pertinent to
21 the subject under inquiry, in that it may constitute evidence
22 or lead to evidence as to the method by which the text and
23 any part of the text of that report were obtained.

24 These matters are part of the circumstances surrounding
25 the publication of the text and any part of the report of the

1 House Select Committee on Intelligence. Production of the
2 copy of this report is necessary to carry out the mandate of
3 the House of Representatives.

4 If you continue to refuse your copy of this report,
5 notwithstanding the fact that you have been duly served with a
6 subpoena duces tecum, your refusal will be deemed by this
7 committee to constitute a willful refusal to produce your
8 copy of this report upon a matter pertinent to the subject
9 under inquiry, and will subject you to prosecution and punishment
10 by a fine or imprisonment or both, under Title 2 of the United
11 States Code, Sections 192, 193 and 194.

12 Your refusal to produce your copy of this report will
13 also subject you to prosecution and punishment for contempt
14 of the House of Representatives.

15 Accordingly, you are hereby advised that I overrule your
16 refusal to produce your copy of this report described in the
17 subpoena duces tecum, served upon you, including your refusal
18 to produce any and all copies of the drafts of the report
19 prepared by the House Select Committee on Intelligence pursuant
20 to House Resolution 591.

21 As Chairman of this committee, I hereby demand and direct
22 that you produce your copy of this report.

23 Mr. Schorr. Mr. Chairman, for the reasons stated, that
24 I cannot engage in a venture aimed at ascertaining the source,
25 I must repeat that I respectfully decline to provide any copies

1 of the report.

2 Mr. Flynt. Counsel, you may proceed to your next
3 witness.

4 Mr. Marshall. Mr. Schorr, did you obtain a copy of the
5 text or any part of the report prepared by the House Select
6 Committee on Intelligence of the 94th Congress pursuant to
7 House Resolution 591?

8 Mr. Schorr. I am sorry, I didn't get the question.

9 Mr. Marshall. The question is did you obtain a copy of
10 the text or any part of the report prepared by the House Select
11 Committee on Intelligence pursuant to House Resolution 591?

12 Mr. Schorr. Did I obtain a copy of the report?

13 Mr. Marshall. Yes.

14 Mr. Schorr. I did.

15 Mr. Marshall. All right. This committee has received
16 testimony under oath from Congressman James V. Stanton that
17 approximately one week after that report was published in the
18 Village Voice Congressman Stanton talked with you in the
19 Speaker's lobby of the House of Representatives.

20 I have supplied counsel, our counsel, with a copy of
21 Mr. Stanton's testimony in public sessions of this hearing.

22 At that conversation, Congressman Stanton testified that
23 you told him that you obtained a copy of the text of the
24 report from the Central Intelligence Agency, and that you also
25 said, "Of course, I would deny that if anyone asked me."

1 Did you make those statements to Congressman Stanton?

2 Mr. Schorr. Mr. Marshall, I have never discussed with
3 anyone the source from which I obtained the report other than
4 two privileged persons.

5 Mr. Marshall. Did you have that conversation with
6 Congressman Stanton?

7 Mr. Schorr. I have never discussed with anyone anything
8 relating to the source of that report other than two privileged
9 persons.

10 Mr. Marshall. Do you mean by that response that your
11 answer is no, you did not have conversation?

12 Mr. Schorr. I think --

13 Mr. Marshall. With Mr. Stanton?

14 Mr. Schorr. My response must speak for itself.

15 Mr. Marshall. Who were the two privileged persons that
16 you discussed the report with?

17 Mr. Schorr. My counsel, Mr. Califano and my wife.

18 Mr. Marshall. Mr. Schorr, is it your statement to this
19 committee that you will not answer further the question that
20 I have asked you with regard to the conversation with Congress-
21 man Stanton approximately one week after the report was
22 published in the Village Voice, that conversation having taken
23 place in the Speaker's lobby of the House of Representatives?

24 Mr. Schorr. I think my reply given before is adequate.

25 Mr. Marshall. You will not answer further as to whether

1 that conversation did or did not take place?

2 Mr. Schorr. That is correct.

3 Mr. Marshall. Did you have any conversation with
4 Congressman Stanton with regard to where you obtained the
5 report?

6 Mr. Schorr. I decline to discuss my conversations with
7 any persons pursuant to my news gathering activities.

8 Mr. Califano. Mr. Chairman, may I briefly make an state-
9 ment to the source point.

10 Mr. Marshall. On the legal position?

11 Mr. Califano. Yes.

12 Mr. Marshall. In other words, you wish to present your
13 legal position to the committee?

14 Mr. Califano. Briefly.

15 Mr. Flynt. You may proceed, Mr. Califano.

16 Mr. Califano. Mr. Chairman, it is our position in the
17 papers we have filed with this committee and which we have
18 requested by made a part of the record of this committee,
19 that Mr. Schorr has an absolute, complete right in these
20 proceedings not to reveal the identity of a source, that that
21 is protected by the First Amendment.

22 It is our position that his actions in making available
23 that report for publication in the newspaper are protected by
24 the First Amendment.

25 The First Amendment protects not only the publication of

1 information, but by necessity the gathering of news. The
2 Supreme Court of the United States has recognized that by
3 saying that without protection for news gathering the First
4 Amendment would be eviscerated.

5 The Department of Justice has recognized that principle
6 by setting forth guidelines under which it will not proceed
7 to subpoena reporters for their confidential sources.

8 In the context of this hearing, at the time the public
9 record indicates Mr. Schorr received the report, namely,
10 sometime subsequent to the time the House Select Committee
11 on Intelligence voted by a bipartisan 9 to 4 majority to
12 release the report and make it public, and prior to the time
13 of the House Resolution, the suppression resolution, no rule,
14 regulation or term of employment of the House of Representatives
15 or that committee was or could have been violated by any
16 source, whether that source is in the Executive Branch, the
17 Legislative Branch, a Member of Congress, a staffer or an
18 independent citizen, and no rule or regulation could have been
19 violated by Mr. Schorr in receiving that report.

20 The House Resolution designed to suppress publication of
21 the report was not directed at Daniel Schorr, it was by its
22 specific terms directed at the Select Committee on Intelligence.

23 That resolution said: "Resolved that the Select Committee
24 on Intelligence shall not release any report."
25

1 In those circumstances we believe that the identify of
2 Mr. Schorr's source is not relevant to this investigation,
3 and that the identity of Mr. Schorr's source is protected by
4 the First Amendment.

5 I would note that it is difficult to draw the line, it's
6 easy to know that Mr. Schorr under those circumstances should
7 not answer the question, "Who is your source?" At what point
8 prior to that the line is to be drawn is difficult. And we
9 can spend the entire morning and afternoon in a game of
10 Twenty Questions, asking Mr. Schorr did he speak to A, or did
11 he speak to B, or did he speak to C, and we can spend the
12 morning in a cat and mouse game trying to catch Mr. Schorr
13 in some question in which he will answer this committee,
14 where, at some point later the court would say that might
15 have constituted waiver of his right to protect his source.

16 I respectfully submit to this committee that the values
17 at stake are too precious to play Twenty Questions with, that
18 the values at stake are too fundamental to our system of
19 Government to play cat and mouse with.

20 Mr. Schorr's position is clear, I would urge this
21 committee to ask him directly the central question that it
22 has asked virtually every witness that has appeared before
23 this committee, the question to which it devoted nine or ten
24 hours yesterday in hearings, and set the issue, because he
25 holds his belief as firmly as Members of the House of

1 Representatives hold their belief.

2 He respects, as I do, the beliefs of the Members of the
3 House of Representatives, and I have a long and personal
4 association with many Members of this House, including the
5 Chairman of this committee.

6 I understand how you feel, I think Mr. Schorr understands
7 how you feel.

8 We ask that you recognize what is at stake here is not
9 a game. What is at stake here for Mr. Schorr is the core of
10 his entire belief, what is at stake here for this country is
11 the belief of those practitioners of the First Amendment as
12 to what is at the core of enabling them to practice it, and
13 I ask that you get directly to the question, ask Mr. Schorr
14 the question, and let us face up to this issue beyond that.

15 Mr. Chairman, I would close simply by asking that also
16 part of this record include my letter to you and the response
17 of counsel Marshall, my letter requesting that this committee
18 identify what, if anything, in the committee report that the
19 majority of the Select Committee thought should be made public
20 and is now considered to be classified, or rather is now
21 considered to be information that would harm the national
22 security, and this committee's reponse indicating that it would
23 not identify such information because to do so would in some
24 way damage the national security.

25 Thank you, Mr. Chairman.

1 Mr. Flynt. Thank you. Without objection, the letter from
2 Mr. Califano and the response of the Chairman of this committee
3 will be made a part of the record.

4 (The letters follow:)

5 COMMITTEE INSERT:
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1 Mr. Marshall. Mr. Califano, to respond directly to your
2 comments, this committee does not feel that it is engaged in
3 a cat and mouse game with Mr. Schorr, nor does this committee
4 intend to ask Mr. Schorr twenty questions.

5 As you yourself have acknowledged, the First Amendment
6 rights which may be in question here, may be rights which are
7 in unchartered waters and at times the line may be difficult
8 to draw.

9 Nevertheless, the line may be drawn, and it is appropriate
10 that we make a record here which will allow whoever must draw
11 that line to draw it as carefully as it can be drawn, so that
12 not only the rights of the public to know, and the duty, if
13 there is one, of the press to publish may be protected, but
14 also so that the responsibilities and duties of this committee
15 and the House of Representatives, the Congress and this entire
16 Government can be carried out.

17 Now, I am going to question Mr. Schorr in some detail
18 concerning the source. No one desires to trip him up. With
19 able counsel such as yourself I am confident that will not
20 happen. But this committee does intend to pursue such questions
21 as will lead it to carry out the mandate put upon it by the
22 House of Representatives.

23 Now, this committee has received testimony from Congressman
24 James V. Stanton, a copy of which I supplied to you before this
25 hearing so you would have a full record from which to make

1 whatever position you wished to make.

2 That testimony from Congressman Stanton was that Mr.
3 Schorr, approximately one week after the report had been
4 published in the Village Voice, talked with Mr. Stanton, and
5 that at that time Mr. Stanton said that Mr. Schorr reported to
6 him that Mr. Schorr obtained a copy of the report from the
7 Central Intelligence Agency.

8 At that time Mr. Schorr also said, according to Mr.
9 Stanton's testimony, that Mr. Schorr would, "of course, deny
10 that if anyone asked me."

11 Now, in an effort for this committee to carry out its
12 responsibilities, I am going to ask the Chair to tell and tell
13 the Chairman that I insist on an answer to my question concerning
14 that conversation as to whether it ever took place. And will
15 you answer, Mr. Schorr, or do you refuse to answer that
16 question further?

17 Mr. Schorr. I refuse to answer any questions furtner in
18 those terms.

19 Mr. Flynt. Mr. Califano, I have listened carefully to
20 your oral statement and your oral argument. I have also
21 carefully studied the written legal memorandum which you filed
22 with this committee.

23 I must at this time advise the witness that this committee
24 is acting pursuant to the authority vested in it by House
25 Resolutions 1042 and 1054 of the House of Representatives,

1 94th Congress.

2 Copies of those resolutions and the opening statement of
3 the chairman of this committee setting out the legislative
4 purposes of these hearings were served upon you prior to your
5 appearance as a witness here today.

6 The subject of these hearings is an inquiry into the
7 circumstances surrounding the publication in the Village Voice
8 of the text and of any part of the report of the House Select
9 Committee on Intelligence so that this committee can report
10 back to the House its findings and recommendations thereon.

11 The question put to you is pertinent to the subject under
12 inquiry in that the identity of the person from whom the text
13 and any part of the report were obtained and the method by
14 which the text and any part of that report were obtained
15 constitute evidence of the circumstances surrounding publi-
16 cation of the text and any part of that report.

17 Your answer to the question put to you is necessary for
18 this committee to carry out the mandate of the House of
19 Representatives.

20 If you continue to refuse to answer the question, your
21 refusal will be deemed by this committee to constitute a
22 willful failure to answer a question pertinent to the subject
23 under inquiry and will subject you to prosecution and punishment
24 by fine or imprisonment or both under Title 2 of the United
25 States Code, Sections 192, 193, and 194.

1 Your refusal to answer will also subject you to prosecution
2 and punishment for contempt of the House of Representatives.

3 Accordingly, you are hereby advised that your objection
4 to the question and your grounds for refusing to answer the
5 question are hereby overruled.

6 As Chairman of this committee, I hereby demand and direct
7 that you answer the question put to you.

8 Mr. Schorr. Mr. Chairman, I am not sure that the answer I
9 have given is really unresponsive. I have said to you that I
10 recall no conversation with any person other than the two
11 mentioned in which I discussed my source.

12 Mr. Flynt. The question was did you have such a con-
13 versation with Representative James V. Stanton? That question
14 is very clear.

15 Your answer does not appear to be responsive to the
16 question. You are therefore, again, directed to answer the
17 question.

18 Mr. Schorr. I find it sufficiently responsive, and I
19 find that I cannot answer it in precisely the terms that you
20 put it, because I have no intention of starting down a list of
21 people to whom I may or may not have spoken, and that would
22 be the head of the list, I assume.

23 Mr. Flynt. And you refuse to answer the question?

24 Mr. Schorr. In the terms in which it is now stated, I
25 refuse, although I consider my answer sufficiently responsive.

1 Mr. Flynt. Counsel will proceed.

2 Mr. Marshall. Mr. Schorr, from whom did you obtain the
3 copy of the report of the Select Committee on Intelligence,
4 that report being prepared pursuant to House Resolution 591?

5 Mr. Schorr. Counsel, I respectfully decline to answer
6 that question on the grounds that I feel that my right to with-
7 hold the source is protected by the First Amendment and
8 absolutely essential to the functioning of a free press in
9 this country.

10 Mr. Flynt. I must at this time advise the witness that
11 this committee is acting pursuant to the authority vested in
12 it by Resolutions 1042 and 1054 of the House of Representatives,
13 94th Congress.

14 Copies of those resolutions and the opening statement of
15 the Chairman of this committee setting out the legislative
16 purposes of these hearings were served upon you prior to your
17 appearance as a witness here today.

18 The subject of these hearings is an inquiry into the
19 circumstances surrounding the publication in the Village Voice
20 of the text and of any part of the report of the House Select
21 Committee on Intelligence so that this committee can report
22 back to the House its findings and recommendations thereon.

23 The question put to you is pertinent to the subject under
24 inquiry in that the identity of the person from whom the text
25 and any part of the report were obtained and the method by

1 which the text and any part of that report were obtained
2 constitute evidence of the circumstances surrounding publi-
3 cation of the text and any part of that report.

4 Your answer to the question put to you is necessary for
5 this committee to carry out the mandate of the House of
6 Representatives.

7 If you continue to refuse to answer the question, your
8 refusal will be deemed by this committee to constitute a
9 willful failure to answer a question pertinent to the subject
10 under inquiry and will subject you to prosecution and punish-
11 ment by fine or imprisonment or both under Title 2 of the
12 United States Code, Sections 192, 193, and 194.

13 Your refusal to answer will also subject you to prose-
14 cution and punishment for contempt of the House of Represen-
15 tatives.

16 Accordingly, you are hereby advised that your objection
17 to the question and your grounds for refusing to answer the
18 question are hereby overruled.

19 As Chairman of this committee, I hereby demand and direct
20 that you answer the question put to you.

21 Mr. Schorr. Mr. Chairman, as a matter of deep professional
22 conscience, and fully convinced that I am protected by the
23 First Amendment to the Constitution, I decline to answer that
24 question.

25 Mr. Flynt. Counsel will proceed.

1 Mr. Marshall. Mr. Schorr, did you obtain a copy of the
2 report prepared by the House Select Committee on Intelligence
3 from a member, officer, agent, employee or a staff member
4 of the House of Representatives?

5 Mr. Schorr. For the reasons stated, and I won't bore
6 you by repeating them, I decline to answer that question.

7 Mr. Marshall. You understand, so you may fully be
8 aware of the consequences of your refusal to answer, that the
9 Chairman must, upon your refusal, state to you those conditions.

10 Mr. Chairman, I insist on an answer to the question and
11 I would ask you that you read.

12 Mr. Califano. Counsel, I would also like to state for
13 the record that our memorandum, I assume, is a part of the
14 record, our memorandum of law and that the arguments in that
15 memorandum apply to all of these questions as part of the
16 reason why Mr. Schorr is not responding, so we don't have to
17 repeat that every time.

18 Mr. Marshall. We understand your urging those reasons
19 on behalf of Mr. Schorr.

20 Mr. Flynt. Mr. Califano, I will state again, I listened
21 carefully to your oral argument, and I have carefully studied
22 the legal memorandum which you filed with this committee.

23 I must at this time advise the witness that this committee
24 is acting pursuant to the authority vested in it by House
25 Resolutions 1042 and 1054 of the House of Representatives,

1 94th Congress.

2 Copies of those resolutions and the opening statement of
3 the Chairman of this committee setting out the legislative
4 purposes of these hearings were served upon you prior to your
5 appearance as a witness here today.

6 The subject of these hearings is an inquiry into the
7 circumstances surrounding the publication in the Village Voice
8 of the text and of any part of the report of the House Select
9 Committee on Intelligence so that this committee can report
10 back to the House its findings and recommendations thereon.

11 The question put to you is pertinent to the subject under
12 inquiry in that the identity of the person from whom the text
13 and any part of the report were obtained and the method by
14 which the text and any part of that report were obtained
15 constitute evidence of the circumstances surrounding publi-
16 cation of the text and any part of that report.

17 Your answer to the question put to you is necessary for
18 this committee to carry out the mandate of the House of
19 Representatives.

20 If you continue to refuse to answer the question, your
21 refusal will be deemed by this committee to constitute a
22 willful failure to answer a question pertinent to the subject
23 under inquiry and will subject you to prosecution and punish-
24 ment by fine or imprisonment or both under Title 2 of the
25 United States Code, Sections 192, 193, and 194.

1 Your refusal to answer will also subject you to prose-
2 cution and punishment for contempt of the House of Represent-
3 tatives.

4 Accordingly, you are hereby advised that your objection
5 to the question and your grounds for refusing to answer the
6 question are hereby overruled.

7 As Chairman of this committee, I hereby demand and direct
8 that you answer the question put to you.

9 Mr. Schorr. Mr. Chairman, as a matter of professional
10 conscience, I am convinced that the First Amendment of the
11 Constitution was written precisely to guarantee that I would
12 not have to provide that source and to protect the free press
13 I respectfully decline to answer.

14 Mr. Flynt. Counsel will proceed.

15 Mr. Marshall. Mr. Schorr, did you obtain a copy of the
16 report of the House Select Committee on Intelligence prepared
17 pursuant to House Resolution 591 from a member or a staff
18 employee of the House Select Committee on Intelligence?

19 Mr. Schorr. As a matter of conscience, and in invoking
20 my First Amendment protection, I respectfully decline to reply
21 to that question.

22 Mr. Flynt. I must at this time advise the witness that
23 this committee is acting pursuant to the authority vested in it
24 by House Resolutions 1042 and 1054 of the House of Representa-
25 tives, 94th Congress.

1 Copies of those resolutions and the opening statement of
2 the Chairman of this committee setting out the legislative
3 purposes of these hearings were served upon you prior to your
4 appearance as a witness here today.

5 The subject of these hearings is an inquiry into the
6 circumstances surrounding the publication in the Village Voice
7 of the text and of any part of the report of the House Select
8 Committee on Intelligence so that this committee can report
9 back to the House its findings and recommendations thereon.

10 The question put to you is pertinent to the subject under
11 inquiry in that the identity of the person from whom the text
12 and any part of the report were obtained and the method by
13 which the text and any part of that report were obtained
14 constitute evidence of the circumstances surrounding publica-
15 tion of the text and any part of that report.

16 Your answer to the question put to you is necessary for
17 this committee to carry out the mandate of the House of
18 Representatives.

19 If you continue to refuse to answer the question, your
20 refusal will be deemed by this committee to constitute a
21 willful failure to answer a question pertinent to the subject
22 under inquiry and will subject you to prosecution and punish-
23 ment by fine or imprisonment or both under Title 2 of the
24 United States Code, Sections, 192, 193, and 194.

25 Your refusal to answer will also subject you to prose-
cution and punishment for contempt of the House of

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Representatives.

Accordingly, you are hereby advised that your objection to the question and your grounds for refusing to answer the question are hereby overruled.

As Chairman of this committee, I hereby demand and direct that you answer the question put to you.

Mills fls.
12 noon

1 Mr. Schorr. Mr. Chairman, for the Constitutional and
2 reasons of personal conscience heretofore stated, I must
3 continue to decline to reply to that question.

4 Mr. Flynt. Counsel will proceed.

5 Mr. Marshall. Mr. Schorr, did you obtain the copy of
6 the report prepared by the House Select Committee on Intelli-
7 gence pursuant to House Resolution 591 from any person
8 or agency employed in the Executive Branch of the United States
9 Government?

10 Mr. Schorr. Mr. Counsel, as a matter of personal conscience
11 and relying on my First Amendment protection, I also decline
12 to reply to that question.

13 Mr. Flynt. I must advise zhe witness that this
14 committee is acting pursuant to the authority vested in it
15 by Resolution 1041 and 1054 of the House of Representatives,
16 94th Congress. Copies of those resolutions and the opening
17 szatement of the Chairman of this committee setting out
18 the legislative purposes of these hearings were served
19 upon you prior to your appearance as a witness here today.
20 The subject of these hearings is an inquiry into the
21 circumstances surrounding the publication in the Village Voice
22 of the text and of any part of the report of the House Select
23 Committee on Intelligence, so that this committee can report
24 back to the House its findings and recommendations thereon.

25 The question put to you is pertinent to the subject

1 under inquiry, in that the identity of the person from
2 whom the text and any part of that report were obtained and
3 the method by which the text or any part of that report were
4 obtained constitute evidence of the circumstances surrounding
5 publication of the text and any part of that report. Your
6 answer to the question put to you is necessary for this
7 committee to carry out the mandate of the House of Representa-
8 tives. If you continue to refuse to answer the question,
9 your refusal will be deemed by this committee to constitute
10 a willful failure to answer a question pertinent to the
11 subject under inquiry, and will subject you to prosecution
12 and punishment by a fine or imprisonment or both, under Title
13 II of the United States Code, Sections 192, 193 and 194.

14 Your refusal to answer will also subject you to
15 prosecution and punishment for contempt of the House of
16 Representatives. Accordingly, you are hereby advised that
17 your objection to the question and your grounds for refusing
18 to answer the question are hereby overruled.

19 As Chairman of this committee, I hereby demand and direct
20 that you answer the question put to you.

21 Mr. Schorr. Mr. Chairman, for the personal reasons and
22 on the Constitutional grounds stated, I must continue to
23 decline to reply to that question.

24 Mr. Flynt. Counsel will proceed.

25 Mr. Marshall. Mr. Schorr, on what date did you obtain

1 the copy of the report prepared by the House Select Committee
2 on Intelligence pursuant to House Resolution 591?

3 Mr. Schorr. For Constitutional reasons, or on Constitutional
4 ground, and for personal reasons, because it is not my intention
5 to provide you with any information which could possibly
6 help you to ascertain the source, I respectfully decline
7 to reply to that question.

8 Mr. Flynt. I must at this time advise the witness that
9 this committee is acting pursuant to the authority vested
10 in it by House Resolution 1042 and 1054 of the House of
11 Representatives, 94th Congress. Copies of those resolutions
12 and the opening statement of the Chairman of this committee
13 setting out the legislative purposes of these hearings were
14 served upon you prior to your appearance as a witness here
15 today.

16 The subject of these hearings is an inquiry into the
17 circumstances surrounding the publication in the Village Voice
18 of the text and of any part of the report of the House Select
19 Committee on Intelligence so that this committee can report
20 back to the House its findings and recommendations thereon.
21 The question put to you is pertinent to the subject under
22 inquiry in that the identity of the persons from whom the
23 text and any part of that report were obtained and the
24 methods by which the text and any part of that report
25 were obtained constitute evidence of the circumstances

1 surrounding publication of the text and any part of that
2 report.

3 Your answer to the question put to you is necessary
4 for this committee to carry out the mandate of the House of
5 Representatives.

6 If you continue to refuse to answer the question, your
7 refusal will be deemed by this committee to constitute a
8 willful failure to answer a question pertinent to the subject
9 under inquiry, and will subject you to prosecution and punish-
10 ment by a fine or imprisonment or both, under Title II of the
11 United States Code Sections 192, 193 and 194.

12 Your refusal to answer will also subject you to prosecution
13 and punishment for contempt of the House of Representatives.

14 Accordingly, you are hereby advised that your objection
15 to the question and your grounds for refusing to answer the
16 question are hereby overruled.

17 As Chairman of this committee, I hereby demand and
18 direct that you answer the question put to you.

19 Mr. Schorr. Sir, on the grounds and for the reasons
20 stated, I must continue to decline.

21 Mr. Flynt. Counsel will proceed.

22 Mr. Marshall. Mr. Schorr, did you show the copy of the
23 report which you obtained on public television over CBS
24 News on January 28, 1976?

25 Mr. Schorr. That is readily apparent to the entire

1 country.

2 Mr. Marshall. I take it your answer is yes?

3 Mr. Schorr. Yes.

4 Mr. Marshall. Did you exhibit it on public television
5 on any other dates other than January 28, 1976?

6 Mr. Schorr. I believe I did.

7 Mr. Marshall. Could you tell us what those dates were,
8 sir?

9 Mr. Schorr. I am relying on memory. The first date
10 was January the 25th. I think again on the morning of January
11 26. And perhaps one or two times between the 26th and the
12 28th.

13 Mr. Marshall. Did you exhibit a copy of the report on
14 public television, either on CBS or any other network, at any
15 time after January 28, 1976?

16 Mr. Schorr. I frankly don't remember.

17 Mr. Marshall. When you obtained a copy of the report,
18 that you testified to, did you make additional copies
19 from the copy you got?

20 Mr. Schorr. I did.

21 Mr. Marshall. Where are those copies now?

22 Mr. Schorr. In my possession.

23 Mr. Marshall. How many copies did you make of
24 the original copy you received?

25 Mr. Schorr. How many did I make?

1 Mr. Marshall. Yes.

2 Mr. Schorr. How many are in my possession?

3 Mr. Marshall. Yes.

4 Mr. Schorr. There are four.

5 Mr. Marshall. Those are two separate questions. How
6 many copies did you make, and of those copies, how many are
7 in your possession.

8 Mr. Schorr. Answering the second question first, there
9 are four copies in my possession. With respect to the first
10 question, as to how many copies I made, I must respectfully
11 decline to answer because I cannot answer that question
12 without entering into the internal editorial process of pre-
13 paring news for dissemination which I believe is protected
14 by the First Amendment. That is to say, that I could not answer
15 that question by telling you something about the internal
16 news workings which I believe are protected by the First
17 Amendment.

18 Mr. Flynt. With regard to the question which you
19 just refused to answer, I must at this time advise the witness
20 that this committee is acting pursuant to the authority
21 vested in it by House Resolution 1042 and 1054 of the House
22 of Representatives, United States Congress.

23 Copies of those resolutions and the opening statement
24 of the Chairman of this committee setting out the legislative
25 purposes of these hearings was served upon you prior to your

1 appearance as a witness here today. The subject of these
2 hearings is an inquiry into the circumstances surrounding
3 the publication in the Village Voice of the text and any
4 part of the report of the House Select Committee on Intelligence,
5 so that this committee can report back to the House its
6 findings and recommendations thereon.

7 The question put to you is pertinent to the subject
8 under inquiry in that the identity of the person from whom
9 the text and any part of that report were obtained, and the
10 method by which the text and any part of that report were
11 obtained constitute evidence of the circumstances surrounding
12 publication of the text and any part of that report.

13 Your answer to the question put to you is necessary
14 for this committee to carry out the mandate of the House
15 of Representatives. If you continue to refuse to answer
16 the question, your refusal will be deemed by this committee
17 to constitute a willful failure to answer a question pertinent
18 to the subject under inquiry, and will subject you to prose-
19 cution and punishment by a fine or imprisonment or both under
20 Title II of the United States Code, Sections 192, 193, and
21 194.

22 Your refusal to answer that part of the question which
23 you have refused to answer will also subject you to prosecution
24 and punishment for contempt of the House of Representatives.

25 Accordingly, you are hereby advised that your objection

1 to that part of the question which you refuse to answer,
2 and your grounds for refusing to answer that part of the question
3 are hereby overruled.

4 As Chairman of this committee, I hereby demand and
5 direct that you answer that part of the question put to you
6 which you have not previously answered.

7 Mr. Schorr. Mr. Chairman, I continue to decline. And
8 just so that it is fully understood why I decline, let me
9 say that it is my firm belief that there is a process which
10 goes on in news organizations in which people must be
11 able to speak freely to each other, make arrangements and
12 decisions and hold consultations. And that entire process
13 is protected by the First Amendment. Because if it were
14 known that it would be possible in retrospect for a Congressional
15 committee or any governmental body to look back over the
16 shoulders of those who were engaged in preparing news for
17 dissemination, the effect would be chilling. And therefore,
18 I cannot go into the internal process by which news is
19 prepared.

20 Mr. Flynt. Do you continue to refuse to answer that
21 part of the question which you have heretofore refused to
22 answer?

23 Mr. Schorr. I do, Mr. Chairman, just as Dr. Stanton
24 declined to provide out-takes.

25 Mr. Flynt. Counsel will proceed.

1 Mr. Marshall. Did you deliver one of the copies that
2 you made to a newspaper, the Village Voice, for publication
3 in its February 16th and February 23rd, 1976, editions of
4 that newspaper?

5 Mr. Schorr. The strict answer to that would be no,
6 I did not deliver it. But if I understand the purpose of your
7 question, I arranged to have it delivered, yes.

8 Mr. Marshall. Was that copy of the report picked up
9 from your home here in Washington and delivered to the
10 Village Voice?

11 Mr. Schorr. You have had testimony to that effect,
12 and that testimony is correct.

13 Mr. Flynt. I couldn't hear you.

14 Mr. Schorr. You have had testimony to that effect,
15 and that testimony is accurate.

16 Mr. Marshall. Is accurate? All right.

17 And that pickup of your copy of the report was made
18 on February 6, 1976, is that correct?

19 Mr. Schorr. If that was a Friday, the answer is yes.

20 Mr. Marshall. Now, at the time you made arrangements
21 for the Village Voice to obtain the copy of the report,
22 had you discussed with the Village Voice whether it, in fact,
23 was going to publish the report?

24 Mr. Schorr. I did not.

25 Mr. Marshall. Did you ever have any discussions with

1 the Village Voice about publication of the report?

2 Mr. Schorr. I did not.

3 Mr. Marshall. Is it your testimony you were simply
4 making the report available to the Village Voice for the
5 Village Voice to do with it what it would?

6 Mr. Schorr. Well, I didn't in fact even make the copy
7 available as far as I knew to the Village Voice.

8 Mr. Marshall. To whom did you think you were making
9 the copy available at the time the person arrived to
10 pick it up from your home in Washington, D. C.?

11 Mr. Schorr. I thought I was making it available to Mr.
12 Felker for publication in one of three ways: Either in the
13 Village Voice, or in New York Magazine, or in some third
14 way, as a separate tract or pamphlet.

15 Mr. Marshall. Well, is my understanding correct, then,
16 that there was no question about whether Mr. Felker would publish
17 the report? The only question in your mind at that time was
18 what the vehicle for publication would be.

19 Mr. Schorr. And the time, yes.

20 Mr. Marshall. All right.

21 Was that to be Felker's choice, or were you to participate
22 in that decision?

23 Mr. Schorr. I'm sorry.

24 Mr. Marshall. Was the decision as to the vehicle
25 for publication to be Mr. Felkers' sole choice, or were you

1 to participate in that decision?

2 Mr. Schorr. I had no part in that process.

3 Mr. Marshall. Now, at the time you made the report
4 available to Mr. Felker, in the manner in which you have
5 testified to, did you know that the House of Representatives
6 had voted by resolution on January 29, 1976, not to release
7 the report to the public until certain conditions were met?

8 Mr. Schorr. I knew that the House had voted to direct
9 the Select Committee not to release the report.

10 Mr. Marshall. And were you also aware that the House
11 did not receive the Select Committee's copy of the report
12 until January 30, 1976?

13 Mr. Schorr. I accept that. I didn't know that.

14 Mr. Marshall. Was the text of the report printed in the
15 February 16th and February 23rd, 1976 editions of the
16 Village Voice the same as it appeared to you as the text of the
17 copy of the report you made available to Mr. Felker?

18 Mr. Schorr. To avoid possible error, let me say that
19 I have never made a line-by-line examination. But it appears
20 to me that in substance it was the same.

21 Mr. Marshall. Was the copy that you made available
22 to Mr. Felker and subsequently published in the Village
23 Voice later returned to you?

24 Mr. Schorr. It was.

25 Mr. Marshall. And is that one of the copies you have

1 in your possession now that you refuse to produce under
2 subpoena duces tecum?

3 Mr. Schorr. It is.

4 Mr. Marshall. Now, Mr. Schorr, did you contact any
5 person, firm or corporation other than Mr. Felker about the
6 copy of the report that you were going to make available for
7 publication?

8 Mr. Schorr. Yes. Let me say in a general way that
9 my original intention and hope was that the report be published
10 in the form of a book, a paperback or other book, a paperback
11 because it could be done fastest. But I considered that to
12 be the most neutral way of bringing the contents of the report
13 available, making them available to the public. And in the
14 course of doing that I contacted several persons who I thought
15 might be able to make arrangements, or make inquiries of
16 book publishers to find out whether it could be published
17 as a book.

18 Mr. Marshall. And who were those persons that you
19 contacted?

20 Mr. Califano. Let me make one thing clear,
21 Mr. Counsel, so that this committee understands at least the
22 theory under which Mr. Schorr is testifying today, and why he
23 is testifying about what happened, if you will, with the
24 Village Voice publication and Mr. Felker.

25 Mr. Schorr was not a part in any way of the editorial

1 process that went on at the Village Voice, as he has
2 testified, and he is willing to testify with respect to any
3 contacts that were made of an outside nature, outside of his
4 ordinary employment in a sense, with CBS. He will not discuss
5 any activities that went on within CBS. As he has indicated
6 earlier they are part of an editorial process that he considers
7 to be privileged, a part of an editorial process that we have
8 argued is privileged, and part of an editorial process that
9 we believe the House ruled on in 1971 when they refused to
10 cite Dr. Stanton for contempt. So he will respond to your
11 question in line with those theories.

12 Mr. Marshall. Will you respond to my question, please?

13 Mr. Schorr. Yes.

14 I discussed it with -- I first asked -- I first asked
15 the Reporters Committee through the person of Fred Graham,
16 who is a trustee of the Reporters Committee.

17 Mr. Marshall. Mr. Schorr, I cannot quite hear you.
18 Would you speak more directly into the microphone?

19 Mr. Schorr. I'm sorry.

20 I haven't used microphones for a long time.

21 Mr. Marshall. I couldn't even hear that comment.

22 Mr. Schorr. The comment was I have not used microphones
23 for a long time.

24 The reply to your question is through the person of
25 Fred Graham, as trustee of the Reporters Committee, I discussed

1 with the Reporters Committee the idea that if the thing
2 was published as a book, and inevitably a publisher wished
3 to pay royalties for it, I was very anxious to avoid any
4 check arriving in my mail box because the one thing I was
5 clear about was I had to avoid any remuneration for this.
6 And therefore, I suggested that if royalties were offered,
7 I should like to say whatever proceeds you think should go
8 to me, I would prefer to go to a charity, in this case the
9 Reporters Committee for Freedom of the Press, because I thought
10 that was associated with the purpose of what I was doing.
11 So I talked to Fred Graham, who I understand had discussions
12 with others in the Reporters Committee for Freedom of the
13 Press. That resulted in my having telephone contact with Peter
14 Tufo, who was designated as a person, attorney, but who
15 apparently was knowledgeable of the publishing industry
16 in New York, and who undertook to see whether he could
17 find a publisher. I believe there were contacts made with
18 perhaps two publishers.

19 In addition, I talked to my own business adviser, because
20 he is in New York, and has been involved in publishing
21 arrangements before. His name is Richard Liebner, of the firm
22 of N. S. Bienstock, Inc.

23 That was basically it.

24 There were other discussions that came in the form of
25 mainly inquiries from some who had seen me show the thing

1 on television, to ask me whether I would be interested
2 in publishing it, and offering assistance in publishing it,
3 but they were just inquiries that never resulted in anything.

4 Mr. Marshall. Who were the two publishers that were
5 contacted as you understand it by Mr. Tufo?

6 Mr. Schorr. I believe they were Bantam and Dell Publishing
7 Companies.

8 Mr. Marshall. Did any of the persons who were contacted
9 by Mr. Tufo, insofar as you know, give any reason for refusing
10 to publish the report?

11 Mr. Schorr. It was represented to me by Mr. Tufo that
12 one of the problems was that an atmosphere prevailed in
13 Washington, generated by the CIA, perhaps, and by the Adminis-
14 tration, which consisted of a kind of backlash against investiga-
15 tion of the intelligence community and a spreading fear that
16 anything you now publish with regard to intelligence would kill
17 an agent in the way that the tragic murder of Richard Welch
18 took place in Athens. So that was a rather chilling atmosphere
19 in which I was told that publishers were very nervous
20 about public documents that concerned intelligence. I felt
21 they misunderstood. I knew that the document could not possibly
22 have that effect, because it mentioned no agents. But I was
23 given that as one of the reasons, a nervousness in the
24 publishing industry as a result of a kind of secrecy backlash
25 in Washington.

1 Mr. Marshall. Were there any other reasons which were
2 given to you for those parties refusing to take part in
3 publication of the report?

4 Mr. Schorr. None that I can recall.

5 Mr. Marshall. Now --

6 Mr. Flynt. The bells have sounded.

7 Three bells have sounded, indicating a quorum call is
8 in progress in the House presently. Accordingly, the committee
9 will stand in recess until 2:00 o'clock, at which time,
10 Mr. Schorr, you and Mr. Califano are requested to return.

11 Mr. Schorr. Thank you, sir.

12 Mr. Flynt. The committee stands in recess until 2:00
13 o'clock.

14 (Whereupon, at 12:30 o'clock p.m., the committee
15 was recessed to reconvene at 2:00 o'clock p.m., the same day.)
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AFTERNOON SESSION

1 Mr. Flynt. The committee will come to order.

2
3 The Chair would just like to state that the announced
4 recess was until two o'clock. I think perhaps everyone in
5 the hearing room is aware of the fact that quorum calls and
6 recorded votes frequently throw our schedules a little awry.

7 The slight delay in reconvening was unavoidable because
8 a recorded aye and nay vote was called shortly before two
9 o'clock.

10 A quorum is present for the purpose of taking testimony
11 and receiving evidence.

12 Counsel will proceed.

13 Mr. Marshall. Mr. Schorr --

14 Mr. Flynt. Let the record also show that the witness is
15 Mr. Daniel Schorr, and that, as before the recess, is
16 accompanied by his counsel, Mr. Joseph Califano.

17 Mr. Marshall. Mr. Schorr, I remind you that you are still
18 under oath. Would you respond for the record that you are aware
19 of that?

20 Mr. Schorr. I am aware of that.

21 Mr. Marshall. Mr. Schorr, when we recessed at the end
22 of the morning session we were discussing publishers who might
23 have been contacted concerning the report, and you had testified
24 concerning reasons that you were aware of as to why certain
25 publishers were unwilling to publish the report.

1 Was Mr. Clay Felker the only person who was willing to
2 publish the report, to your knowledge?

3 Mr. Schorr. It was so represented to me by Mr. Tufo.

4 Mr. Marshall. Did Mr. Tufo state any other persons who
5 had been contacted other than the persons you identified in
6 the morning session?

7 Mr. Schorr. Not that I can now recollect.

8 He made some general statement at one point that he had
9 canvassed the field, but those are the only two publishers
10 that I recall his mentioning specifically.

11 Mr. Marshall. The only two publishers?

12 Mr. Schorr. Dell and Bantam, yes, were the only two
13 whose names I recall his mentioning, although he gave general
14 indication that he had canvassed the field.

15 Mr. Marshall. When you say canvassed the field, did you
16 understand him to mean that he had looked at other persons
17 and attempted to get them to consider to publish the report?

18 Mr. Schorr. Yes, but I would not want my testimony to
19 indicate specifically that he had done something which I
20 am not sure he did. These conversations were brief and
21 general, and on the telephone with someone I had never met,
22 and I might have misinterpreted, but he did leave with me the
23 impression that whatever could be done to find a publisher
24 he had done. But as to names of specific publishers, I
25 recall mention of only two.

1 Mr. Marshall. Now, you heard Mr. Felker's testimony in
2 the morning session concerning financial arrangements which
3 were discussed between the Village Voice and the Reporters'
4 Committee for Freedom of the Press.

5 Mr. Schorr. I did.

6 Mr. Marshall. Did you take any part in the financial
7 discussions that were, that took place?

8 Mr. Schorr. No. On the contrary, at one point when Mr.
9 Tufo proposed to explain to me the financial discussions that
10 he was involved in I cut him short and said I have nothing to
11 do with your financial discussions, and I don't want to know
12 about them.

13 Mr. Marshall. Was it your idea that the payment to the
14 Reporters' Committee for Freedom of the Press was an appropriate
15 way for the Village Voice to express its appreciation for
16 receipt of the report?

17 Mr. Schorr. If you will amend Village Voice to say the
18 Felker enterprises, it was my hope that a contribution would
19 be made to the Reporters' Committee for Freedom of the Press.

20 Mr. Marshall. Did that idea originate with you?

21 Mr. Schorr. Yes, it did.

22 Mr. Marshall. And did you pass that idea along to Mr.
23 Tufo?

24 Mr. Schorr. Yes, I did. Well, I passed it along to
25 the Reporters' Committee, which then contacted Mr. Tufo

1 informing him of my desires, so that by the time I first
2 spoke to him he was aware of my wish.

3 Mr. Marshall. Is it your testimony than that once you
4 thought of the idea you went to the Reporters' Committee, who
5 then contacted Mr. Tufo?

6 Mr. Schorr. That is correct.

7 Mr. Marshall. Did the Reporters' Committee state to you
8 that it was willing to receive such a contribution?

9 Mr. Schorr. Mr. Graham represented to me that the available
10 trustees of the Reporters' Committee had been contacted by
11 telephone and were so willing, yes.

12 Mr. Marshall. At the time you contacted Mr. Graham for
13 the Reporters' Committee, did you advise Mr. Graham, the
14 circumstances surrounding your making the report available to
15 Mr. Felker?

16 Mr. Schorr. At the time that I contacted Mr. Graham,
17 Mr. Felker had not yet entered into the picture. This was at
18 an earlier stage when it was still unknown where it would be
19 published.

20 The arrangement was whoever published it, if the Reporters
21 Committee were willing to receive it, I would designate any
22 proceeds that anybody thought they would want to pay me,
23 especially since at an earlier stage I thought of writing an
24 introduction and doing some other editorial work myself, so
25 the original concept was that for the complete publication,

1 including my interpretation, and notation and introduction,
2 whatever proceeds might be considered as being due to me,
3 I didn't want to receive, because I didn't want any money; but
4 that was at a point where there was no specific place of
5 publication in mind.

6 Mr. Marshall. Now, with regard to your obtaining the
7 report from the original source that you have earlier refused
8 to identify, did you make any money payment to that source in
9 return for the report?

10 Mr. Schorr. My hesitation, Mr. Counsel, is only on the
11 grounds that I don't want to open up a series of questions
12 with regard to the source.

13 My inclination would be very happily to reply to that
14 question, and I am only troubled at this point about possible
15 waiver. Would it satisfy you if I were to say that no money
16 was ever discussed with anyone in connection with my receipt
17 of the report?

18 Mr. Marshall. If you are referring, responding to the
19 question I have asked, and you mean by that response that you
20 made no payment to the person from whom you received the
21 report, then that would be an answer.

22 Mr. Schorr. No money ever changed hands in any way in
23 any connection with the report. I couch it generally only;
24 not that I wish to be unresponsive to the question. I am rather
25 anxious to be responsive to that question, but I am only afraid

1 anything that would open the door to other questions about
2 the source.

3 Mr. Marshall. Would you agree with me that when you couched
4 your answer generally that it also refers to specifics?

5 Mr. Schorr. It seems to be a reasonable interpretation,
6 doesn't it?

7 Mr. Marshall. Would you agree with that?

8 Mr. Schorr. Certainly it's reasonable.

9 Mr. Marshall. I need an answer to the question, Mr.
10 Schorr.

11 Mr. Schorr. I agree with that. I am advised that.

12 Mr. Marshall. I have no further questions at this time.

13 Mr. Flynt. Mr. Teague?

14 Mr. Teague. No questions.

15 Mr. Flynt. Mr. Spence?

16 Mr. Spence. Yes, Mr. Chairman.

17 Mr. Schorr, in the Washington Star of September 3, 1976,
18 you were quoted as saying: "If I got it, others could have
19 gotten it. Perhaps the Soviet intelligence could have gotten
20 it. They have got to keep order in their own house." I suppose
21 you are speaking of the House of Representatives.

22 Did you say this to the reporter in the Washington Star?

23 Mr. Schorr. I did.

24 Mr. Spence. That is your problem, you see. We are
25 trying to keep order in our own house, and we have asked question

1 of people all over the place, and we haven't been able to get
2 the answers. And so there you are, and you have the answer, and
3 I can understand your position, but we have a problem too.

4 Mr. Schorr. Mr. Spence, may I address myself to your
5 problem?

6 Mr. Spence. Yes, sir, that is what I wanted to have you
7 do.

8 Mr. Schorr. I am not an absolutist on this question of
9 publication versus the sensitivity of keeping confidential
10 material confidential either by the Executive Branch of
11 Government or by the Legislative Branch of Government.

12 I do deeply appreciate your problem. I believe your
13 functioning as the House of Representatives and as a part of
14 Congress is to legislate and as part of legislating to get
15 information which occasionally is classified and confidential
16 and to be able to maintain enough security over that information
17 so that you can hope to get further information from the
18 Executive Branch.

19 It is not a problem that I am not unaware of.

20 But, my position and my deep feeling on the subject is
21 that as I suggested in this interview with the Evening Star,
22 that to the extent that you can, by policing your own house,
23 small "h", find out what went wrong, and then recommend
24 procedures for improvement of it, is a perfectly legitimate
25 and necessary function of a body of this Congress.

1 But when the point comes that you cross over and try
2 once the horse, or in this case, the report has left the
3 stable, to recapture it and chase the reporter and say either
4 give it back or tell us how you got it, then you cross that
5 very delicate, fragile, important line, that has to do with
6 what is your legitimate function, and what is our legitimate
7 function.

8 It seems to me you already know enough to know the
9 procedures left something to be desired.

10 Mr. Spence. Well, I do have a little problem too with the
11 fact, as I indicated earlier this morning to another witness,
12 that one person, no matter who that person might be, be he
13 or she a reporter or just a member of the public or member
14 of Congress, that one person could have enough knowledge to
15 be able to say if this publication will or will not harm
16 national security.

17 You see, at least we are selected by the people to look
18 out for them in national security, and then here's a person
19 who hadn't been elected by anybody, might have been hired by
20 somebody, but who doesn't have the authority to speak for
21 anybody else really.

22 Mr. Schorr. Mr. Spence, nine members of this body had
23 voted that that report would not harm national security and
24 these were nine members of thirteen that had worked with that
25 material, who had dealt with the CIA, made certain changes,

1 made certain deletions at their request, and had voted not
2 to make other deletions. It really wasn't a person, it was
3 a committee of this austere body.

4 Mr. Spence. And overwhelmingly we rejected too their
5 decision, and I might add that I put them in that same
6 category. I don't think they have the power or the authority
7 to do that. As a matter of fact, the House made it pretty
8 clear they didn't have.

9 Mr. Schorr. Would you forgive me if I didn't enter into
10 disputes with others in this House?

11 Mr. Spence. Yes, sir. You said in your statement, and
12 I can understand that, "I have never yielded to a demand for
13 the disclosure of a source that I had promised to protect."

14 Is this just something that you take a position on in
15 this particular case?

16 Mr. Schorr. No, sir.

17 Mr. Spence. Is there any case you can think of, any
18 situation where you would reveal your source?

19 Mr. Schorr. No. I cannot conceive of a situation where
20 I would reveal a source that I had promised to protect.

21 Mr. Spence. Well, you see, when you talk about national
22 security, that is a vague thing. People can hide behind it,
23 and everything. It doesn't get down to the life of a person.

24 Mr. Schorr. Right.

25 Mr. Spence. It might be the life of a whole country,

1 and our way of life and freedom of the press and all of the
2 rest.

3 Mr. Schorr. Right, right.

4 Mr. Spence. But, what if a man were going to be executed
5 tomorrow for the crime of murder, and you had information from
6 a source that that person was not guilty? To save his life
7 would you reveal your source? That is getting it down where
8 everybody can understand it, the life of one person versus
9 this protection you think you have.

10 Now, that is getting it down where we can all understand
11 it.

12 Mr. Schorr. Mr. Spence, I respectfully submit to you the
13 question is so hypothetical I don't know how to adress, I
14 don't understand what a situation would be where the identity
15 of a source would save a person's life.

16 The information might, but why the source?

17 Mr. Spence. If you tell who the source is, they can go
18 and find out who the source is, and save that man's life.
19 That fellow's life is pretty important and he would disagree
20 with you.

21 Mr. Schorr. Mr. Spence, I am not an absolutist about
22 anything, and I would not say flatly that if a life of a person
23 could be saved by revealing a source, although I can't
24 understand how that would work, I make no absolute statements.

25 I have never known of a situation where the balance between

1 the importance of protecting a source was ever in my forty
2 years in journalism outweighed by other consideration.

3 Mr. Spence. That's the answer I wanted, you see, because
4 it's not in all cases, this right is not absolute that you
5 claim you have.

6 Mr. Schorr. Very little in life is.

7 Mr. Spence. Well, that is what I am getting around to,
8 but it has been portrayed as being an absolute thing. For
9 forty years it's a personal thing, and principle, and all of
10 this, and I hate to ever make flat statements, and I didn't
11 think you wanted to.

12 Thank you very much.

13 Mr. Flynt. Mr. Foley?

14 Mr. Foley. Mr. Chairman, I don't have any questions.
15 I find myself very much in agreement with Mr. Schorr's judgment
16 that this Congress and committee have the power and perhaps
17 the responsibility to make a diligent inquiry as to whether
18 its officers, employees or members of the House of Representa-
19 tives had violated any of its rules. But I share with him the
20 concern that when the committee calls members of the press
21 and seeks to inquire into sources, it crosses or may begin to
22 cross a very delicate Constitutional barrier.

23 I have no questions of him. I will state again my belief
24 that it would have been better for the committee not to engage
25 in the issuance of the subpoenas, or pose questions that have
been posed to the witnesses today.

1 Thank you very much, Mr. Chairman.

2 Mr. Flynt. Mr. Quillen?

3 Mr. Quillen. Thank you, Mr. Chairman.

4 Mr. Schorr, in answer to an earlier question you said
5 that or rather you refused to reveal the number of copies of
6 the report you made and went further to say that the news
7 process was also protected by the First Amendment.

8 Do you mean to tell me that the news process, how many
9 Xerox copies you made of a report and the process that you
10 went through in the development of the story is also protected
11 under the First Amendment?

12 Mr. Schorr. I so believe, Mr. Quillen. I do believe that
13 in this case the number of copies made implies a question
14 about the distribution of the copies, begins to get into the
15 issue of who makes what decision when, would you consult about,
16 who says what you will do, and what you will not do with the
17 news, and how it will be handled, and the first general question
18 in that whole general area, which I believe to be the process
19 of the work product inside of a news organization, would have
20 to have been the number of copies made, and on that ground I
21 respectfully decline to reply.

22 Mr. Quillen. Well then, by inference you have led this
23 Member to believe that what happens in that process is secret
24 as far as the reporter is concerned, as far as others in the
25 news process are concerned. Yet, at the same time you defy

1 Congress in saying that anything a committee does, anything
2 that the House of Representatives does, is open to the public.

3 Now, which side, which show is on, and which side of the
4 mouth are we talking out of?

5 Mr. Schorr. Mr. Quillen, I submit to you that that is
6 only a superficial paradox. What happens inside a news
7 organization is not necessarily secret, it's written up in
8 journalism books.

9 The time, however, when it must become secret is when
10 a subpoena is used to try to compel the production of informa-
11 tion about the specifics of that process, because the element
12 of compulsion involved in this is a chilling element for
13 future consultation.

14 Mr. Quillen. I don't question your sincerity, Mr.
15 Schorr. Quite frankly, I think you are a dedicated reporter.
16 Would you classify yourself as an investigative reporter?

17 Mr. Schorr. Others have. I think at sixty it's a little
18 old to be an investigative reporter; but if it's meant as a
19 compliment I accept it and if it's meant otherwise, I reject
20 it.

21 Mr. Quillen. Well, let's do it in a favorable way as a
22 compliment then. Would you say that in your career, and you
23 have had a distinguished career, and you still will have many
24 more years of fruitful labor I am sure, have you ever made any
25 mistakes in your reporting that you later regretted?

1 Mr. Schorr. Yes, sir.

2 Mr. Quillen. Did you protect yourself under the First
3 Amendment?

4 Mr. Schorr. In what sense, by not correcting my mistakes,
5 or not saying that this was an error?

6 Mr. Quillen. Maybe some expose' stories, or cover-ups or
7 things that maybe that you later found out that you were not
8 exactly accurate in reporting, did you stand up to it, did
9 you face up to it, did you stand under the First Amendment?

10 Mr. Schorr. Do I understand your question to be would
11 I use the First Amendment simply to cover up the journalistic
12 error in order to avoid correcting that error?

13 Mr. Quillen. That is one way of putting it, yes.

14 Mr. Schorr. No. Usually the organization I worked for
15 wouldn't let me.

16 Mr. Quillen. Well, I am sure -- have you worked for only
17 one organizations, Mr. Schorr?

18 Mr. Schorr. No, sir, only for the past twenty-three years
19 for one organization. But there have been others before then.

20 Mr. Quillen. Did you ever send any material to the
21 Village Voice or the New York Magazine and receive compensation
22 for it?

23 Mr. Schorr. Every time I hesitate it's because I have
24 to ask my lawyer if there is a waiver problem here. The answer
25 is no.

1 Mr. Quillen. How many people, and this question is phrased
2 a little differently, how many people know of your source?

3 Mr. Schorr. How many people know of my source?

4 Mr. Quillen. Yes.

5 Mr. Schorr. I don't know how many people know of my source.

6 Mr. Quillen. You don't?

7 Mr. Schorr. No. Couldn't possibly.

8 Mr. Quillen. In other words, you wouldn't know whether
9 it's one? It's bound to be one, the person who handed it
10 to you.

11 Mr. Schorr. Mr. Quillen, let me try to understand the
12 question.

13 Mr. Quillen. Or would it be two?

14 Mr. Schorr. The question you are asking is how many people
15 know of my source. The only question you can ask is how many
16 people know of my source from me, since I have no knowledge
17 of how otherwise people might learn of my source.

18 You are asking a question to which I possibly cannot
19 answer. If you understand what I mean. If your question is
20 how many people have I told of my source, how many people of
21 my knowledge do I know know my source, the answer is two.

22 Mr. Quillen. Well, I think that puts it in prospective.
23 I was getting around to that.

24 Thank you for helping me.

25 Mr. Schorr. Those two are my attorney and my wife, both

1 of whom I regard as privileged, and the reason I have trouble
2 with you here is that I can only tell you what I know of my
3 knowledge and I cannot tell you about the knowledge of other
4 people.

5 Mr. Quillen. Of course there is one other. The person
6 who gave you the report, and that's the one that you say that
7 you are not going to reveal.

8 Well, Mr. Schorr, I don't know, I was in the newspaper
9 business as a young man. I would think that the secrets of
10 my country, particularly after the Congress, the House of
11 Representatives voted overwhelmingly not to make it public,
12 that I would have in my newspaper career, I would have respected
13 that opinion, but I guess times have changed, and things move
14 on.

15 I am not going to delay this, but I wish you would come
16 forth and for the benefit of our country. Thank you, Mr.
17 Chairman.

18 Mr. Schorr. Sir, I respect your opinion, and let me only
19 say that I by my rights respect my rights and your rights, but
20 by my rights I cannot come forward with it for the benefit of
21 the country.

22 Mr. Quillen. I understand your sincerity, Mr. Schorr, and
23 I respect it.

24 Mr. Flynt. Mr. Price?

25 Mr. Price. No questions.

1 Mr. Flynt. Mr. Hutchinson?

2 Mr. Hutchinson. No questions.

3 Mr. Flynt. Mr. Hebert?

4 Mr. Hebert. No questions.

5 Mr. Flynt. Mr. Mitchell?

6 Mr. Mitchell. Thank you, Mr. Chairman.

7 Just for the record, I thought counsel's characterization
8 of our hearings as some kind of a game was unfortunate. I
9 think counsel was guilty of one significant omission in his
10 statements, and that was the fact that Congress voted two to
11 one requesting that we determine some way to preserve our
12 Nation's secrets, at least as part of our recommendations.

13 I think that is part of our job, and believe me, Mr.
14 Counsel, it's been anything but a game.

15 The Congress, as you know, has spent upwards of \$150,000.
16 We have spent day after day after day in the various committee
17 hearings listening to testimony.

18 We have had investigators questioning many, many people,
19 hundreds of hours of interrogation. There are reputations at
20 stake. Some individuals feel that the intelligence capability
21 of our country may well be at stake until we can clamp down
22 and determine some way to keep secrets.

23 Now, I want to say to you and Mr. Schorr that perhaps you
24 can help us in our final report. This is one of our duties
25 too, and I am pleased to learn that you are not an absolutist,

1 because maybe that will help us a little bit there too.

2 You would agree that our Nation must be able to keep some
3 secrets?

4 Mr. Schorr. Yes, sir.

5 Mr. Mitchell. And you would agree that we must have an
6 intelligence capability in this United States, and the Congress
7 must be able to take a look at what the intelligence agencies
8 are doing and prevent abuses, would you agree?

9 Mr. Schorr. I wish they would take a better look than
10 they have.

11 Mr. Mitchell. Right. But in order to do that would you
12 agree we must be able to keep secrets while we are overseeing
13 the intelligence agencies?

14 Mr. Schorr. Yes, sir.

15 Mr. Mitchell. You are aware that the House, of course,
16 you are aware the House voted two to one not to release that
17 document and you are aware probably too that a vote by the
18 House of Representatives overrules a vote by a committee.

19 You mentioned nine members of a committee. Well, more
20 than 200 members of the House voted to overrule that particular
21 committee action.

22 Would you agree, Mr. Schorr, that in an extreme situation
23 the inability to keep secrets and/or provide oversight
24 capability could conceivably destroy the very country that is
25 offering these freedoms?

1 Mr. Schorr. Yes, sir, I would agree with that. The
2 difficulty is determining whether or not that situation exists.
3 There have been situations where the President, at least one
4 where a President of the United States, on the ground of
5 national security, asked a newspaper not to publish information
6 and later said he wished the paper had published the information
7 and I refer to President Kennedy in the Bay of Pigs.

8 There have been situations in which a President of the
9 United States has cloaked a cover-up of illegality with
10 invocation of national security. If we could define it we
11 would have no problems between us.

12 Mr. Mitchell. Well, one thing the committee certainly
13 learned in these hearings, Mr. Schorr, was we do need an
14 improved system of classification and we do need an improved
15 system of declassification.

16 It's highly doubtful or it's questionable at least that
17 that committee of the House could declassify those documents.
18 The Senate has a provision for doing so; they call the entire
19 Senate in and vote to do so. The House doesn't even have a
20 procedure.

21 Let's take a look at a hypothetical situation. I get the
22 feeling from your testimony you just don't believe there was
23 anything in the report that should have been kept secret.

24 Mr. Schorr. Well, I had to rely on the fact that a
25 committee of the House believe that there was nothing that

1 should have been kept secret, and my own reading of the
2 report did not give me any reason to doubt that.

3 Mr. Mitchell. And the only agency, as I know it, that
4 has the power to classify, or the only agencies are the
5 intelligence agencies, the CIA.

6 Mr. Schorr. I beg your pardon?

7 Mr. Mitchell. The only people who can classify information,
8 as I understand it, are the Executive Branch, people in the
9 Executive Branch of Government. The CIA has said that, I
10 don't know whether they said it prior to your getting the
11 report, but they told us that more than 25 percent of the
12 document was highly classified.

13 The President of the United States had asked that the
14 report not be published. The Congress voted not to publish
15 the report.

16 Let me set up a hypothetical situation, Mr. Schorr.

17 Mr. Schorr, I feel that you just don't believe those
18 people who felt that the document should be kept secret until
19 it could be sanitized, and I know many people in the country
20 have that same problem, and God knows people in Government
21 have given them many, many reasons for lack of trust of
22 public officials.

23 But, let's take a hypothetical situation just so I can
24 help get a feeling for a newsman's thinking.

25 Say the United States has an excellent system of

1 classification, and I would be the first to admit it does not
2 at the moment.

3 You respect that system as a reporter. Under those
4 circumstances, you secure by one means or another a document
5 that is stamped "Top Secret."

6 Would you, under those circumstances, feel compelled to
7 publish that report?

8 Mr. Schorr. My frank answer to you, Mr. Mitchell, is
9 that while I do have a great respect for national security, I
10 have very little respect for the system of classification. And
11 that thirty years of experience with information, some of
12 which was derived from highly classified information, has not
13 increased my respect for the system of classification.

14 Therefore, let me address myself to what I think is your
15 central question, and I think your question is the question
16 that is frequently asked of journalists and a question that
17 journalists have to consider and I guess really that question
18 is if I have a piece of information which I can realize
19 involves the security of, really the security as I recognize
20 it, of the country or the security of persons or soldiers,
21 troops, troop ships, and CIA agents, would I in some absolute
22 way say to hell with everybody, say to hell with everybody, I
23 got it, I am going to publish it?

24 The answer is two-fold. One is it's very rare you get
25 such information because the people in Government are mostly

1 quite loyal, and what is leaked tends to be overclassified
2 material that people are outraged about. And we come to your
3 ultimate question.

4 I am an American. I would be given pause if I thought
5 it would do harm. It is only that in all these years of
6 having gone through all of these things of the Pentagon papers,
7 which they said would harm the national security, but the
8 Executive Branch was unable to prove to the satisfaction of
9 the judge in chambers that there was any significant damage
10 to be done by publication, though they claimed that there
11 would be irreparable damage, after having gone time after time,
12 where the claim was made of damage, and being unable to
13 discover a damage, you would -- I remain a little dubious about
14 classification as an instrument in itself.

15 Mr. Mitchell. I think we have all learned to be a little
16 dubious, Mr. Schorr, but in the hypothetical situation --

17 Mr. Schorr. In the hypothetical situation I would be
18 given great pause if I thought great harm would be done, yes, sir

19 Mr. Mitchell. Thank you, Mr. Schorr.

20 Thank you, Mr. Chairman.

21 Mr. Flynt. Mr. Bennett?

22 Mr. Bennett. Mr. Schorr, would you consider it improper
23 for you to identify your source if your source advised you
24 that he or she had no objection to your revealing the source?

25 Mr. Schorr. Mr. Bennett, is that a hypothetical question?

1 Mr. Bennett. No. I did not intend it, because there is
2 nothing in the record so far that indicates that your source
3 has any objection.

4 Mr. Schorr. I haven't, frankly, approached that kind
5 of question. I am not quite sure -- the answer is probably I
6 would refuse, I don't know. I haven't thought it through.

7 Mr. Bennett. Maybe I will ask you my next question and
8 you can answer them both together. Maybe I will ask you the
9 next question and you will get in context what I am trying to
10 get at.

11 Since your statement to this point of time has not included
12 a statement that your source objects to revealing the source,
13 would you want to make a statement as to your source objecting
14 or not objecting to revealing the source? And before you
15 answer, I must say that as a former lawyer I somewhat question
16 whether you have made a good case for the point that you are
17 taking, because I know of nothing in the First Amendment which
18 would say that you have a right to protect something that the
19 source doesn't desire for you to protect.

20 Mr. Schorr. The quick answer to your question, sir, is
21 that I said in my opening statement that we must keep
22 confidential those matters entrusted to us only because of the
23 assurance that they would remain confidential, and the most
24 crucial kind of such confidence is the identity of a source of
25 information.

1 Mr. Bennett. I read your statement with great care and
2 then I paused and looked it over very carefully. The strongest
3 statement you make is in the second paragraph on page 3 where
4 you say, "In some forty years of practicing journalism I never
5 yielded to a demand for the disclosure of a source that I had
6 to protect. I cannot do so now."

7 But, this, in fact, fails to say that the source has
8 not relieved you by now, or that he promised or that you
9 promised him in this particular case. In other words, you
10 have gone all around it, but you haven't said it forthrightly,
11 and it would seem to me from the standpoint of helping you make
12 your case factually that perhaps I should have you and your
13 lawyer confer as to whether or not you are asserting a right
14 to remain silent when your source may not object.

15 Mr. Schorr. I am having difficulty coping with the
16 question. Any source that, any source that had no objection
17 to being revealed could act on the source's own initiative.

18 Mr. Bennett. Surely.

19 Mr. Schorr. And if that has not happened --

20 Mr. Bennett. Is it difficult for you to say that your
21 source objects? That should be really easily solved by saying
22 he does or doesn't.

23 Mr. Schorr. The only difficulty, sir, frankly, is this
24 minefield that lawyers tell me is called the waiver problem.
25 There are a great many things which as a layman would not be

1 very difficult for me to answer because the answers would come
2 rather easily, but I am told you start on what is called,
3 they are things that lawyers talk about called slippery slopes
4 and waivers and things like that that you start on and open the
5 door in certain areas, that then somebody claims that you have
6 given up the right when it comes to more important things.

7 That is the only reason for my hesitation, but let me
8 find out.

9 The source requested confidentiality, and the source has
10 never released me from that request and promise.

11 Mr. Bennett. Then my final question to you is that did
12 you ever say to your wife or your attorney that the CIA gave
13 you this report?

14 Mr. Califano. Mr. Bennett, let me, as Mr. Schorr's
15 attorney, say that, and I believe you are an attorney as well --

16 Mr. Bennett. I used to be. I don't practice now.

17 Mr. Califano. That his conversations with his attorney
18 and his wife we regard as privileged.

19 Mr. Bennett. Well, they are privileged, but I think
20 they could be waived. So, I am asking the question.

21 Mr. Schorr. With due respect, I choose not to waive
22 anything right now.

23 Mr. Bennett. I want to reassure --

24 Mr. Flynt. Just a minute.

25 Mr. Schorr, I must at this time advise the witness that

1 this committee is acting pursuant to the authority vested in
2 it by Resolutions 1042 and 1054 of the House of Representatives,
3 94th Congress.

4 Copies of those resolutions and the opening statement of
5 the Chairman of this committee setting out the legislative
6 purposes of these hearings were served upon you prior to your
7 appearance as a witness here today.

8 The subject of these hearings is an inquiry into the
9 circumstances surrounding the publication in the Village Voice
10 of the text and of any part of the report of the House Select
11 Committee on Intelligence so that this committee can report
12 back to the House its findings and recommendations thereon.

13 The question put to you is pertinent to the subject under
14 inquiry in that the identity of the person from whom the text
15 and any part of the report were obtained and the method by
16 which the text and any part of that report were obtained
17 constitute evidence of the circumstances surrounding publi-
18 cation of the text and any part of that report.

19 Your answer to the question put to you is necessary for
20 this committee to carry out the mandate of the House of
21 Representatives.

22 If you continue to refuse to answer the question, your
23 refusal will be deemed by this committee to constitute a
24 willful failure to answer a question pertinent to the subject
25 under inquiry and will subject you to prosecution and punishment.

1 by fine or imprisonment or both under Title 2 of the United
2 States Code, Sections 192, 193, and 194.

3 Your refusal to answer will also subject you to prose-
4 cution and punishment for contempt of the House of Represen-
5 tatives.

6 Accordingly, you are hereby advised that your objection
7 to the question and your grounds for refusing to answer the
8 question are hereby overruled.

9 As Chairman of this committee, I hereby demand and direct
10 that you answer the question put to you.

11 Mr. Schorr. Mr. Chairman, on the ground of the First
12 Amendment privilege, and in this case on the additional ground
13 of attorney-client privilege, and wife-husband privilege, I
14 respectfully decline to answer that question.

15 Mr. Flynt. Mr. Bennett, you may proceed.

16 Mr. Bennett. Well, in view of the fact that your lawyer
17 has allowed you to answer the basic question which I really
18 wanted to inquire about, you can really see I was not trying
19 to be slippery. I really felt there was a defect in what you
20 had said, and it's now been clarified for the record, and I
21 appreciate it.

22 I am not in any way attempting to do anything slippery
23 or open up anything that would be hurtful. I haven't
24 briefed the laws on the subject. I just thought it was an
25 essential part of the First Amendment protection of source

1 that if the source had no objection, the press could not
2 decline on that basis.

3 Mr. Flynt. Mr. Cochran?

4 Mr. Cochran. Thank you, Mr. Chairman.

5 Mr. Schorr, I noticed in your statement that you made
6 initially you pointed out your regret that the committee had
7 issued a subpoena to you, and how this is somewhat like
8 crossing the Constitutional Great Divide, which separates the
9 Congress from the press.

10 I want to observe in respect of that statement aht I
11 frankly think that that great divide has been cross twice
12 before this committee ever commenced its investigation, and
13 it was crossed first of all when you elected in your own
14 wisdom and in accordance with your conscience and good
15 judgment, to cause a copy of the report of the Select Committee
16 to be published, and secondly, I think that great divide was
17 crossed by the House when it adopted the Stratton Resolution
18 directing this committee to commence this investigation, which
19 is a pretty broad directive to the committee to investigate,
20 circumstances surrounding the publication of the Select
21 Committee Report.

22 I don't really feel as though, therefore, that this
23 committee ought to bear the brunt of these feelings, but that
24 if the feelings are well placed, they ought to be placed at
25 the feet of the entire Congress and not just this committee.

1 We are doing a job none of us asked to do, and it's a
2 very difficult job, as you can appreciate.

3 So that the issuance of the subpoena is certainly not a
4 reflection of our view toward you as a person, but rather a
5 view toward our obligation that was placed upon us by the full
6 House of Representatives to fully explore the circumstances
7 surrounding the publication of the report.

8 Since you cause it to be published, it follows that we
9 certainly have a duty to ask you at least where you got the
10 report, and what you thought you were authorized to do under the
11 Constitution with respect to a report that the House had voted
12 to be kept secret.

13 In that regard I think the counsel, in stating in his
14 remarks to the committee that the resolution the House adopted
15 to keep the report secret was not directed at you, but rather
16 was directed at the Select Committee on Intelligence, may not
17 tell the whole story.

18 The Constitution doesn't just exist to contain the First
19 Amendment, which we are glad it does, but it also contains an
20 article, in Article 1, Section 5, a provision that empowers
21 the House of Representatives to keep certain of its proceedings
22 secret.

23 That provision was referred to by counsel in a brief he
24 filed before the committee, but it says simply that each House
25 shall keep a journal of its proceedings and from time to time

1 publish the same except such parts as may, in their judgment,
2 require secrecy.

3 Now, I suppose my question then to you is how can that
4 provision, which empowers the House to keep certain of its
5 proceedings secret, have any utility whatsoever if it only
6 seeks to bind members of the House or a committee of the House?

7 It seems to me that to have any utility whatsoever, and I
8 ask you if you do not agree, that it has to bind all of those
9 who might have access to such proceedings?

10 Mr. Schorr. Mr. Cochran, I most emphatically do not
11 agree.

12 Leaving aside the question as to whether the provision
13 concerning the journal is even applicable to a report of a
14 committee, which I understand is itself a contentious matter,
15 and coming directly to the heart of your argument, I
16 emphatically do not agree that the House has the right to
17 reach out and try to enforce its rules by reaching out to the
18 free press and establishing, in fact, a gag order.

19 It is my deep conviction, based on a certain study of
20 how the Constitution came to be written, that the function of
21 this House and the function of the press are quite different
22 as viewed by the Constitution.

23 This House was created to be responsive to the political
24 will of its constituency, which may change from time to time,
25 and the House as it did on January 29th, regarded itself as

1 responding to what its constituents wanted when it decided
2 that a report which the taxpayers' money had paid for and had
3 been commissioned by the House should not in that form be
4 released, and I appreciate that as a proper function of the
5 House, responsive to the will of the people, which may in
6 different climates change.

7 The press was given a different function. The press, as
8 I see it in the Constitution, was given the function of
9 monitoring what the Government does, of giving people informa-
10 tion, even information which may at that moment not be popular.

11 Perhaps information which people didn't want at that time.
12 Because how could they ever change their minds or be informed
13 if they didn't get all of the information possible?

14 The line that goes there is yes, the House has a full
15 right and the necessary powers to be able to clean its house,
16 to close its doors, to plug its leaks. I understand that.

17 There is a necessary tension between what you do and what
18 I do. But once it's out, if you go and try to chase it down,
19 and call it back and punish the one who has published it, then
20 I think you have gone too far.

21 Because, if I may just conclude in one line, because the
22 function of the press, as stated by some of the writers of the
23 Constitution, was to expose the secrets of Government, and to
24 let the people know everything that it was doing, and how in
25 God's name can we expose the secrets of Government and let the

1 people know what this Government is doing if we can only
2 expose what you say we can expose?

3 Mr. Cochran. Okay. Well, it may be a good point that
4 you make if, in fact, the publication of the report had occurred
5 at a time prior to the vote of the full House of Representatives
6 on the question of whether or not to permit the publication of
7 the House Select Committee's report, in my judgment.

8 Certainly we would not want to exercise the power to go
9 out and try to retrieve a document that had previously been
10 given to you at a time when that release was neither unlawful
11 nor violative of any House rule.

12 Mr. Schorr. Is it unlawful to your mind now?

13 Mr. Cochran. I think that there is a serious question
14 about whether or not it is. I have not reached that decision
15 yet, and that is why I am exploring this line of questioning
16 with you, to try to help make up my mind about it. I don't
17 think it's as simple, for instance, as counsel and as you
18 have just seemed to indicate it is.

19 For instance, if you try to compare, as you did in the
20 questioning with Mr. Mitchell, the gentleman from New York,
21 the classification system which the House has the power to
22 impose, and that which the Executive Branch, through its CIA
23 or FBI, or whatever agency seeks to impose, I think that is
24 an error too, and that there is not just one classification
25 system in the Government.

1 But that the Congress is peculiarly entrusted with a
2 power because it does, in fact, represent the people of the
3 country to keep whatever proceedings it may chose, whether wise
4 or not, secret, and when it exercises that power, then that
5 power, I think, must be given very strong weight.

6 I think that it's not just as in the Pentagon Papers
7 case, where it must be shown that the publication of the
8 report or the papers actually contained information that is
9 harmful, in fact, to the country. Therefore, I think, too,
10 that a good argument can be made for the fact that it matters
11 not whether the content of the report did, in fact, contain
12 harmful information.

13 The power that is entrusted in the House seems to be that
14 it can, as a lawful exercise or proper exercise of its powers,
15 keep its proceedings secret.

16 I know counsel in his brief suggested that it was probably
17 not appropriate in this case to invoke Article 1, Section 5 of
18 the Constitution because the House Select Committee's report
19 was not a part of the journal.

20 He makes that point. But, of course, there is no Supreme
21 Court case that has decided whether or not a report has to be
22 a part of the journal as it is known now in custom and usage,
23 or not, or at least I haven't been able to find a Supreme Court
24 case that says that.

25 As a matter of fact, the following section of that same

1 Article 1 grants to members the right not to be questioned in
2 any other place for something they have said in speech or
3 debate in either House and has been expanded to include what
4 is said or what is contained in a committee report or any
5 proceeding in either House.

6 Therefore, I think you could just as easily say that a
7 report of a committee of the House is a proceeding of the
8 House, whether or not it is in the journal as it was suggested
9 by counsel that it should be.

10 I haven't come to a conclusion about it, and I am not
11 suggesting that I have decided that this is violative of that
12 power or the exercise of that power.

13 I want to say further that I support you one-hundred
14 percent, or if the vogue is one-thousand percent or whatever
15 it is in your refusal to disclose your source. I don't think
16 you ought to be made or asked to. We can ask you and if you
17 say you are not going to tell us, I think we ought to let it
18 go at that, and that is my view of that.

19 But I think there is a serious question, I really do, with
20 respect to the other Constitutional confrontation that has
21 befallen us, and it's not of this committee's making. I want
22 to say certainly not of mine.

23 Mr. Schorr. If you would like me, Mr. Cochran, to say
24 I regret not only the subpoena, but the Stratton Resolution,
25 I will be happy to.

1 Mr. Cochran. I understand you probably would regret
2 that, but I did feel that that point ought to be made.

3 Thank you, Mr. Chairman.

4 Mr. Flynt. Counsel to the committee?

5 Mr. Marshall. Mr. Schorr, so that the record will be
6 clear, I will ask a very few brief questions. At the time you
7 obtained the report from whatever source you obtained it, you
8 were employed as a reporter by CIS, is that right?

9 Mr. Schorr. Yes.

10 Mr. Marshall. And you were not employed as a reporter by
11 any other legal entity?

12 Mr. Schorr. Yes, sir.

13 Mr. Marshall. At the time you made the report available
14 to Mr. Felker, you were employed solely by CBS?

15 Mr. Schorr. Yes, sir.

16 Mr. Marshall. Am I correct in understanding your
17 testimony that both at the time you obtained the report and at
18 the time you made the report available to Mr. Felker, your
19 sole means of employment was as a reporter for CBS. Is that
20 correct?

21 Mr. Schorr. Yes.

22 Mr. Marsahl. All right. Now, you were not employed by
23 Mr. Clay Felker at either of those two times, were you?

24 Mr. Schorr. No, sir.

25 Mr. Marshall. And you were not employed by the Village

1 Voice at either of those two times?

2 Mr. Schorr. No, sir.

3 Mr. Marshall. And you were not employed by the New York
4 Magazine at either of those two times?

5 Mr. Schorr. No.

6 Mr. Marshall. Then you were not employed by any other
7 mmeber of the media, that is press or TV or other publication
8 type organization?

9 Mr. Schorr. No, sir, solely and exclusively by CBS
10 News.

11 Mr. Marshall. That is all I have.

12 Mr. Flynt. Further questions on my right? Or further
13 questions on my left?

14 Mr. Quillen. Mr. Chairman, just one other question, an
15 observation, and maybe a question.

16 I think the impression which has been left here today is
17 that the media and press throughout the country is unanimously
18 behind you, Mr. Schorr. And that is not true.

19 I remember reading an editorial I believe in Editor and
20 Publisher where they did not agree with your leak of the
21 report, and there have been literally hundreds of editorials
22 in newspapers throughout the country who do not agree with what
23 you did, and I thought for the record we ought to say that the
24 media itself, or collectively, I won't say in majority, but
25 in good numbers, do not agree with what you did. And they also

1 take exception to the standing behind the First Amendment.

2 So I just wanted to make that statement, and if you have
3 any comment I would be happy to receive it.

4 Mr. Schorr. Yes, sir, I have one brief comment on that.
5 The gentleman is correct in saying there has been something
6 less than unanimity and a great chorus of personal praise for
7 me since last January and February, to which I would only add,
8 in response to what you have said about the First Amendment,
9 that since the subpoena was issued that the criticism is less
10 and the support has become much greater.

11 Mr. Quillen. Well, I haven't been out into the hinter-
12 land to get the observation, but time will tell. Has Editor
13 and Publisher changed its position?

14 Mr. Schorr. I don't know, sir, I have not been in
15 consultation with them, I have been very busy preparing for
16 today.

17 Mr. Quillen. Thank you, Mr. Chairman.

18 Mr. Flynt. Mr. Bennett?

19 Mr. Bennett. Well, as a person who thought we ought to
20 have the subpoena, I am somewhat trouble by your point of
21 view. Perhaps we don't have a complete communication here.
22 I don't know, but I understood that you did not want to
23 voluntarily come before the committee, and the committee was
24 given the responsibility, which we didn't ask for, by Congress,
25 to look into all of the circumstances, and I never felt when

1 voted for the subpoena, in fact, I think I offered the
2 amendment or offered the motion, that it had anything to do
3 with other than fulfilling the responsibility that was on
4 our shoulders to get all of the facts.

5 If you had voluntarily come before the committee it
6 wouldn't have been necessary to have the subpoena, but the
7 subpoena does not necessarily move toward anything destructive
8 to you.

9 You are an American citizen, we are asking you to help the
10 committee get -- it's ordered by Congress, information, and I
11 think perhaps it's so close to you that maybe you took a little
12 umbrage at something which really so far is not justified by
13 the record, or by the feeling of certainly some members who
14 voted for the subpoena.

15 I hope you will think about that at least. I am not
16 necessarily asking for a response, but I do think the record
17 ought to be clear that just because the committee voted to
18 have a subpoena in no way prejudged you.

19 It was just ordered that, this committee was just ordered
20 to bring in all of the information it could obtain by volunteering
21 on your part to come in and give the information.

22 The committee was under orders from Congress to put, as I
23 see it, to have a subpoena to have you bring in whatever you
24 wanted to bring in or were willing to bring in under subpoena,
25 so I don't think you should take the issuance of a subpoena as

1 being any affront to you, or judgment on you, but simply
2 carrying out the processes that Congress has ordered this
3 committee to fulfill.

4 Mr. Schorr. Thank you, sir.

5 Mr. Bennett. I have no further questions.

6 Mr. Flynt. Mr. Schorr, you and your counsel, Mr.

7 Califano, may step down.

8 You are excused from your subpoena. Strike that. We
9 do not excuse you from your subpoena, because we continue to
10 demand the answering of questions which you have previously
11 refused to answer, and for the production of and your refusal
12 to produce the documents, the committee still insists upon
13 its right to the answers to the questions which you refuse to
14 answer, and the production of the documents which you refuse
15 to produce.

16 You may step down, and you will be notified in the
17 event the committee has any further questions at any further
18 time.

19 Mr. Schorr. Thank you, sir.

20 Mr. Flynt. The committee will adjourn for the purpose
21 of taking testimony and receiving evidence, pursuant to the
22 provisions of House Resolution 1042 and 1054.

23 The committee will reconvene for the purpose of considering
24 H.R. 15, and related bills at this point.

25
Hills fls.

3:05

25

Mills
p.m.

1 Mr. Flynt. The committee will come to order.
2 The committee will reconvene for consideration of
3 H. R. 15, the Lobbying Disclosure Act of 1976, and related bills

4 Mr. Quillen. Mr. Chairman, since there was an objection
5 to a unanimous consent request to conduct business other than
6 hearings, I so make a point of order. I will not object
7 and could not object to any hearings this committee would
8 take on any measure providing that no official action is
9 taken.

10 Mr. Bennett. Providing what, sir?

11 Mr. Quillen. No official action -- is my motion
12 in accordance with the request?

13 Mr. Flynt. The Chair has never heard a restricted point
14 of order made before.

15 Mr. Quillen. I just make a point of order, Mr.
16 Chairman. I was trying to work it out -- you got permission
17 to sit in hearings this afternoon.

18 Mr. Flynt. That is correct, for the purpose of receiving
19 testimony and taking evidence.

20 Mr. Quillen. That is right.

21 Mr. Flynt. Does the gentleman make a point of order?

22 Mr. Bennett. Would you reserve it just a moment? Or
23 do you want to put it down? Is he making a point of order?

24 Mr. Flynt. I don't know.

25 Mr. Bennett. Before you do --

1 Mr. Quillen. I make a point of order on the conducting
2 of any business other than hearings.

3 Mr. Bennett. I would like to testify as a witness.
4 I have got a little testimony.

5 Mr. Flynt. The gnetleman from Florida.

6 Mr. Bennett. I testify as a witness. What I wanted to
7 say to you is the hearings we had -- are you hearing me
8 down there?

9 Mr. Hutchinson. No. I think it is better to meet
10 somewhere where we can sit around a table.

11 Mr. Bennett. I will shout out real loud, befause it is
12 a real small thing I want to bring to your attention. As
13 to the hearing we had the other day, during the hearing it
14 occurred to me that possibly a very simple bill might solve
15 our problem. And I indicated at that time that I thought
16 I had introduced such a simple bill. I have looked through my
17 files, and I find that I did, in 1965. And I have re-introduced
18 it into the current Congress as 15538. Now, what this bill
19 does, it does what the GAO said that ought to be done with
20 regard to the lobbying law. It said that the reports ought to
21 go to somebody that was authoritative, that would look into
22 the reports, and see if they were properly made, as required
23 by the '46 law. And it suggested itself as the proper person
24 to do that and the proper organization. So my bill, all it
25 does is require the GAO to receive these reports. You can't

1 hear me?

2 I just bring this bill to your attention, that is all.

3 Mr. Flynt. I would like to ask the gentleman -- has the
4 bill been printed?

5 Mr. Bennett. Yes. H. R. 15538, as a favorable
6 report.

7 Mr. Flynt. When was it printed? When was the bill
8 introduced? It has a very high numerical number.

9 Mr. Bennett. Two or three days ago. I just got out my
10 old '65 bill, which had a favorable report, and re-introduced
11 it.

12 Mr. Flynt. Has it been referred to this committee?

13 Mr. Bennett. It has, only to this committee.

14 Mr. Flynt. Mr. Hutchinson.

15 Mr. Hutchinson. Mr. Chairman, I make a point of order
16 against sitting on 15, because the Rules of the House do
17 not permit it.

18 Mr. Flynt. What rule?

19 Mr. Hutchinson. Well, you have to get unanimous
20 consent to sit under the Five-Minute Rule.

21 Mr. Flynt. Is the gentleman making a point of order
22 that the committee cannot sit because the House is under
23 the Five-Minute Rule?

24 Mr. Hutchinson. That is right.

25 Mr. Flynt. Then the point of order stands.

1 Now, --

2 Mr. Spence. Are we recessed?

3 Mr. Flynt. I would like to get some idea from the
4 Members of the committee.

5 If the committee of the whole rises, and if the
6 House goes into session as the House itself, prior to 5:30
7 p.m. this afternoon, is it the will of the committee that
8 the committee stands in recess until 10 minutes after the
9 committee rises on this afternoon?

10 Mr. Price. You mean come back at 5:30?

11 Mr. Flynt. Come back whatever time the committee rises,
12 assuming it rises before 5:30.

13 Mr. Price. I could not return after 5:00 o'clock.

14 Mr. Flynt. All right.

15 In the alternative, the notices have already gone out
16 for a meeting of this committee to convene tomorrow at
17 10:00 o'clock a.m., Thursday, the 16th of September, 1976
18 for further consideration of the bill H. R. 15, the Lobbying
19 Disclosure Act of 1976, and related bills which have
20 been referred to this committee. So in view of the objection
21 raised by Mr. Price -- and am I correct in assuming concurred
22 in by Mr. Bennett, because of the time?

23 Mr. Bennett. I cannot come.

24 Mr. Flynt. You concur in what Mr. Price said?

25 Mr. Bennett. I do.

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Mr. Flynt. The committee will stand adjourned until
10:00 o'clock tomorrow morning.

(Whereupon, at 3:20 o'clock p.m., the committee
adjourned to reconvene at 10:00 o'clock Thursday, September
16, 1976.)
