U.S., Aid the Afghans

By Rosanne Klass

Just two years ago, when Soviet forces rolled into Afghanistan to prevent the overthrow of the Communist regime installed in the bloody 1978 coup, most of the world thought that Afghanistan was conquered. Few observers would have predicted then that Moscow's new puppets would fail as badly as their predecessors, and that in 1982 the Afghan people would still be fighting for their freedom, and more strongly than ever.

Yet today Moscow is casting about for non-Communist turncoats to prop up the impotent regime of Babrak Karmal, while the Afghan resistance — made up of virtually all the Afghan people — controls most of the country. Soviet forces are pinned down in Kabul and a few military bases, waiting for the Afghans to exhaust themselves, forgotten by the world. The United States must make sure that this does not happen.

It is time for Washington to make the American public aware that for more than three years the stubbornly independent Afghans, struggling alone and almost unaided against the Soviet Union, have been fighting our fight. It is time to give up convoluted efforts to ignore Moscow's transparent goals and its decades of careful preparation for the opportune moment to seize Afghanistan, and face a stark fact: Afghanistan is a key to eventual Soviet expansion in South Asia and the Indian Ocean.

In 3,500 years, no power that held the mountains of Afghanistan and wanted to move into the Indian subcontinent has been prevented from doing so. The Soviet Union has in effect annexed Afghanistan's Wakhan Salient, the finger of land reaching eastward to China's border, and installed radar that scans India, Pakistan, and parts of China and the Indian Ocean. Preparations for subverting Pakistan proceed apace: Since 1979, *agents provocateurs* have been trained in Afghanistan. Only Afghan resistance has kept the Russians from completing new air bases within easy reach of the Persian Gulf.

Leaders of the resistance *inside* Afghanistan have made it clear to me that, despite reports to the contrary, the resistance is operationally unified. They have asserted that their people are prepared to continue fighting for years, even decades — long enough, they hope, to persuade Moscow to accept a political solution restoring Afghan independence and a Government chosen by the Afghan people. But the Afghans cannot carry out such an extended struggle unaided and alone.

It is time for America to provide strong, effective assistance — diplomatic, political, economic, and with arms support. First of all, Washington, using international political and economic pressures, must make it clear that Afghanistan remains a major issue. Poland and Afghanistan should be linked in policy as they are in fact: Afghanistan helped give the Poles their 16 months of hope and perhaps kept the Soviet Army out of Poland, while every pressure put on Moscow in Poland's behalf aids the Afghan struggle.

Washington should serve notice that it will respond to any further cross-border attacks that violate Pakistan's territorial integrity. Even if the Pakistani Government is less than ideal, its collapse would spell international disaster.

America should provide more effective aid to the resistance fighters inside Afghanistan, and make sure that it gets to them — antiaircraft and antitank weapons, medical supplies, the guns and the bullets they need and lack. Afghanistan is not Vietnam: The Afghans want to do their own fighting; they ask only the weapons to do it with.

America should support and strengthen those elements — the vast majority of Afghans — who seek a more democratic rather than authoritarian future. And the Administration should reappraise its understanding of Afghan realities: For decades, American policies have been affected by accumulated disinformation systematically fed to us by Communists who infiltrated the local staff of our embassy in Kabul, starting with Noor Mohammad Taraki, the leader of the 1978 coup, who was a translator in the embassy. A number of reliable Afghan leaders have survived, and their expertise should at last be used.

Washington should stop demanding the kind of political unity that is impossible during an occupation and guerrilla warfare and should ignore the squabbling of political factions based in Pakistan. It should prepare to recognize the unprecedented internal unity that, according to reliable information reaching me, is being forged by local leadership councils throughout Afghanistan.

The Afghans have more than proved their willingness to fight for themselves. If the monstrous details of Soviet-directed atrocities in Afghanistan ever become fully known, they will rank with Lidice, the Katyn Forest, and Babi Yar. These horrors might cease if the Afghan people would only stop fighting. I asked an Afghan field commander: Why don't they? "Do you think that Americans are the only ones who care about freedom?" he replied.

The Administration should act on Jeane J. Kirkpatrick's warning: "The Soviet Union can conquer Afghanistan only by eliminating the Afghan nation. This the world must not permit to happen, for if Afghanistan is vanquished, no independent nation will be safe."

Rosanne Klass directs the Afghanistan information center at Freedom House, which monitors political rights around the world.

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For East and West, Avenues, Not Ruts

By W. W. Rostow

AUSTIN, Tex. — The latest phase of the tragedy of Poland has raised but not resolved fundamental questions in the West about policy toward Eastern Europe and the Soviet Union's role in that region. What is now required is a vision — a farsighted plan to end the confrontation in Central Europe that, for 35 years, has passed for normality. Like President Reagan's "zero option" for reduction of theater nuclear forces in Europe, such a plan would transcend current conflicts and practical obstacles but provide a goal that would both unify the West and guide short-term decisions and negotiations.

Four historical processes make the continued acceptance of the division of Europe unwise, not merely for the West but also for the Soviet Union.

First, the coming to maturity and responsibility of the generation in Eastern Europe born after World War II, to whom the present arrangements make little sense, is likely to render Stalin's empire a source of increasing insecurity rather than security for the Soviet peoples. The irrepressible question is, Why shouldn't the peoples of Eastern Europe chose their governments in civilized democratic ways? Moscow may well succeed in containing the Polish revolt of 1980-81. But as thoughtful Soviet officials are well aware, the repressive tactics that have sufficed for 35 years are not likely to prove viable over the longer future. In a nuclear age, it is important, therefore, that there be on the table a well-thought-out alternative way to provide for Soviet security — and thus avoid the desperation that might arise in Moscow if confronted by an uprising so endemic as to appear to require either a surrender of Soviet national security or a Soviet invasion in the heart of Europe similar to the invasion of Afghanistan.

What's needed is 'a farsighted plan'

Second, powerful decelerating economic forces at work in the Soviet Union and Eastern Europe have slowed these countries' aggregate annual growth rate to something like 1.3 percent. Remedy requires, among other things, wider and more harmonious economic relations with the West, including increased flows of capital and technology. The well-known Polish debt problem is merely one symptom of a large and growing crisis.

Third, the economic forces at work in the West as well as in the East dictate efforts of the highest seriousness to reduce defense spending.

Fourth, there is a new generation in the West that finds irrational the perhaps inevitable but second-rate solution devised (or passively accepted) for the Soviet Union and the United States, with reduced but not totally eliminated involvement in the military affairs of Europe.

The elements for such a plan have long been familiar in diplomacy and, indeed, were canvassed not only in the immediate post-1945 years but also in negotiations with the Soviet Union in 1949, 1954, 1955, and 1959. The specific plans considered then need revision, of course, but the three interconnected basic elements are likely to remain what they have been from the beginning.

1. Freedom for the peoples of East Germany and Eastern Europe to determine, without interference, their forms of political organization, accompanied by arms-control agreements that would reduce the level of the European armed forces in both NATO and the Warsaw Pact countries — agreements that both the United States and the Soviet Union would monitor and supervise along with European states.

2. Strategically balanced United States and Soviet military-force withdrawals from Europe — short of total withdrawal. Geography dictates that a total withdrawal of United States military forces from Europe would be dangerous for the West, while the Soviet Union is likely to resist total military withdrawal from Europe until it is assured that inspected arms-control agreements work effectively.

3. Provisions for heightened multilateral economic cooperation within Europe. This would ensure, among other things, that a powerful united Germany did not seek to establish hegemony on the Continent. The Economic Commission for Europe, in Geneva, was, indeed, created in 1947 for this purpose and could be strengthened to meet new responsibilities.

The bringing to life of some such vision and plan is unlikely to be quick and will certainly not be easy. It would have to emerge through persuasion and negotiation, as the underlying generational and economic realities assert themselves and are accepted.

Along the way, some in Moscow would argue that if in the end the Kremlin succeeds in dismantling the Solidarity movement, there would be nothing to fear in the time ahead. Others in the Soviet Union would seize on the prospect of some such plan to rig its terms to achieve the abiding Soviet dream of a Western Europe cut off from the military support of the United States. They would be supported by a few Americans who have long hankered to cut the Western Europeans loose, leaving them to make the best terms they can with Moscow. There would be those in the West who would see in such a plan a way to add the military strength of Eastern Europe to that of NATO, and there would be Eastern Europeans ready to rally to that conception.

Fondazione Alcide Berlinguer Lewin



Francis Jetter

Miners, Mr. President, Are Not Slag

ESSAY

Poly Wants a Leaker

By William Safire

WASHINGTON — The muffled voice on the phone told me to be in a bar near the White House in a half-hour, if I wanted a message from "the halls of Montezuma." Since I know no family by the name of Hall in Mexico, I took that to be a veiled reference to "the shores of Tripoli," suggesting a leak from intelligence sources about Libya. I grabbed the latest clippings about dictator Qaddafi, put on my galoshes (which really leak) and mushed across Farragut Square to my rendezvous.

The story was this: A month ago, a Libyan general wounded Muammar Qaddafi in an assassination attempt. The dictator was flown to Moscow for treatment, and over 600 Libyan soldiers and politicians had since been put to death. Col. Qaddafi was now back in Tripoli, holed up in a bunker. Hot stuff, huh?

Some big leak: I handed my source a clipping from an inside page of The New York Times of a week ago. An Associated Press dispatch recounted the event and added that the Libyan strongman had been wounded in the jaw and named the dead assassin. But the story had not received much play, and no TV film was available, so not many people knew about it. Glumly, my source muttered that he or she could not be responsible for the C.I.A.'s being a week behind in its newspaper reading.

This thrilling, real-life episode illustrates the atmosphere in Mr. Reagan's Washington, a capital currently suffering from one of its periodic outbreaks of leakomania. As always, because the problem has been exaggerated, the solution has become the problem.

More than a score of Administration officials have been humiliated by the Carlucci Chastity Test. This lie-detection examination, which demeans both giver and taker, is designed not so much to discover who leaked national security secrets but to intimidate any Government official who dares to reveal or help avoid potential political embarrassments.

The CCT is the brainwashing child of Frank Carlucci, who has long been to Defense Secretary Caspar Weinberger what Frank Nitti was to Al Capone — a permanent underboss, an enforcer of that combination of lockjaw and lockstep that helps insiders combat their insecurities. It is the first priority of the new N.S.C. chief "Judge" Clark — here come de plumber.

With all due piety, the crackdown on internal dissent is being conducted in the name of national security. People on the inside often confuse national security with memos routinely stamped "secret." They equate the secrets that protect the nation (location of deterrents, and the methods the C.I.A. uses to learn what is happening in Tripoli) with the secrecy that endangers the nation by cloaking the development of policy. Much secrecy, like much welfare, is not directed to the truly needy.

Self-hypnosis then begins, as sycophants begin to extend the President's righteous worry about genuine security leaks with his irritation at seeing the contents of his State of the Union address in print before he delivers it. (Let's watch for Churchill quotes.) When Mr. Reagan began his bimonthly news conference last week with a crack about leaks, he was kidding — but he wasn't kidding.

When Lyndon Johnson became enraged at leaks, he would change his mind so as to make the leaks inaccurate — and thus was controlled by leakers. When Richard Nixon caught leakomania, he launched the plumbers operation in room 16 of the Executive Office Building. I went past that basement office the other day; the room number has been removed, but the spirit may be coming back.

An Administration that makes extensive use of polygraphs on its own people is a short step from wiretaps. And wiretaps on Government sources soon slop over to wiretaps on media outlets; that is how the solution becomes the problem.

The Carlucci-Clark plumbing operation is not directed at those who want to weaken our defense by leaking genuine secrets; such disservicemen are better thwarted by "bigot lists" and other counterespionage devices with which Mr. Carlucci is familiar.

In effect, the New Plumbers are out to scare other Reagan officials — many of them troubled hardliners — into silence. How can Mr. Reagan be saved from the ravages of leakomania? How can he be shown that his legitimate concern for protecting the truly-needy secret must not be perverted into a chilling operation that undermines national-security policy-making?

One way is ridicule; I have already asked an antiques dealer to search for a chastity belt to send to Mr. Carlucci. Another way is for the press to accept the challenge and to urge officials to drive the plumbers batty.

Therefore, send your policy-development leaks to your favorite newsman, through a cutout, if necessary, to defeat the polygraph. My own Washington address is 1000 Connecticut Avenue — no zip code needed for leaks — and for starters, let's have the memcon on Al Haig's secret meeting with Fidel Castro's vice president. (Please do not send C.I.A. documents based on A.P. dispatches.)

WASHINGTON

and technology. The well-known Polish debt problem is merely one symptom of a large and growing crisis.

Third, the economic forces at work in the West as well as in the East dictate efforts of the highest seriousness to reduce defense spending.

Fourth, there is a new generation in the West that finds irrational the perhaps inevitable but second-rate solution devised (or passively accepted) by the statesmen of 1945 to 1948. Young people in Western Europe and the United States are asking perfectly fair and understandable questions: Why should Germany not be unified? Why should the European Continent be littered with American and Soviet nuclear weapons? Why should United States and Soviet forces be stationed in Europe 37 years after World War II ended?

Some of the solutions they suggest are impractical or even dangerous. But the questions must be answered. What is needed now is for young and old, East and West, to ask ourselves responsibly how could affairs in Europe be reorganized to provide more political freedom for Eastern Europe; to allow Europeans, East and West, to organize themselves more as Europeans; to ensure continued security

United States. They would be supported by a few Americans who have long hankered to cut the Western Europeans loose, leaving them to make the best terms they can with Moscow. There would be those in the West who would see in such a plan a way to add the military strength of Eastern Europe to that of NATO, and there would be Eastern Europeans ready to rally to that conception.

But I return to where I began. Without such an agreed vision and plan, Western policies are unlikely to be stable, patient, and effective.

It would require balance and maturity both to sustain the existing institutions of the West and move toward a larger goal. But there is danger for East and for West in what looks to be the easier course — that is, plodding along the deeply grooved, familiar, bureaucratized tracks of schism and confrontation in Europe until a possibly unmanageable crisis is upon us.

W.W. Rostow, national security adviser to Presidents John F.Kennedy and Lyndon B. Johnson, is professor of economics and history at the University of Texas and author of the forthcoming book, "The Division of Europe: 1946".

Winter Thoughts

By May Sarton

YORK, Me. — Here in Maine it is a cold start to the new year as a tempestuous ocean throws up fountains of spray at the end of my field and its ice on the dirt roads where I walk Tamas, my dog. But the cold is not only in the weather — after all, we expect that, and we are bundled up; the cold is in the heart. I cannot remember a year when I was more aware of suffering and need, more aware of the botch governments make of human lives, more aware of my own helplessness as though the fire in me had frozen at the center.

When Tamas comes in from the snow, he shakes himself, and this evening I tell myself, as the moon rises in a brief respite from storm, that I must find a way to shake myself out of this frozen mood and start the fire going again. Hard times tempt one to run for cover and hide, wait it out, give up trying to act in the face of gigantic problems no one of us is equipped to solve. The temptation is to withdraw.

But, I tell myself, that is not what being a liberal is all about, however put down and cast aside we may be at the moment. Anger lights the fire when I see some people hanging their heads, allowing themselves to be persuaded that government cannot concern itself with the poor, the disabled, the old, the children. We may have failed, but if so we failed because we did too little, not too much.

We have got to warm ourselves back to the certainty that it is only when we lose the connection between ourselves and other people that we begin to freeze up into despair. That connection has to be kept open whatever happens. It is kept open by letters, by unexpected encounters, or by simply contemplating the points of light here or there. I think of three friends of mine.

Way Down East in Orland, Karen is working with Sister Lucy at H.O.M.E. to help build houses for people who otherwise could not hope to own a home of their own. They have built five houses, all with volunteer work.

Across the continent, in Mill Valley, Pam, an art therapist in a hospice, sends me the record spoken by a dying woman, who, cherished for the first time in her life, "blossomed" and was able to leave behind her the dictated record of what it had meant: "I have so much peace inside." Remembering what it had been like to have only boys and at last a girl, she says: "A girl, finally. Go through the ironing, all those shorts and then pick up a little dress and be rewarded."

In Ohio, Dr. Frances, working with the senile, those so often simply written off, learns that listening is amazingly effective. She writes "a coloured loose-leaf notebook titled *This is my Life* was prepared for each patient capable of verbalization — the listeners never tired of the telling and the reading of their stories."

I contemplate all these messages from people who have not given up making connections with other people. And I remind myself because I am a writer, not an activist, that it is not only by doing something, it is also by being something, by keeping fully awake in the cold and the dark that can lift me out of the doldrum. Books as well as food nourish and warm people. Books make connections. Painters, poets, are candles.

So, I tell myself, forget the principalities and the powers. The birds are hungry, too. Go out and fill the feeders!

May Sarton is working on a novel, "Anger."



Francis Jetter

Miners, Mr. President, Are Not Slag

By Paul J. Nyden

BECKLEY, W. Va. — "The only thing keeping the rock off your back when you're two miles underground is Government regulations," says Willie Anderson. Like most West Virginia coal miners, he is incensed by President Reagan's drive to reduce the Mine Safety and Health Administration's budget. Mr. Reagan cut Jimmy Carter's fiscal 1981 budget from $157.7 million to $153.6 million; the current, fiscal 1982 budget is only $148 million. These cutbacks involve an industry where there have 121,000 deaths since 1870 and there have been 1.7 million lost-time injuries since 1930.

As a result of attrition and a freeze on hiring, the Mine Safety and Health Administration's force of coal mine inspectors has shrunk from 1,406 to 1,317 since Mr. Reagan took office. The United Mine Workers union projects that at least 125 more will go by the end of this year.

Winter's bitter cold heightens dangers to the men and women laboring beneath the Appalachians. Rock layers shift as moisture alternately freezes and thaws, coal dust becomes finer than ever as air dries out underground, and seams liberate explosive methane gas more rapidly when barometric pressure drops.

For five days in December, these problems captured national attention as a mine-roof collapse killed 3 miners in Bergoo, W.Va.; a dust and powder explosion killed 8 in Topmost, Ky.; and a methane blast left 13 dead in Whitwell, Tenn. The disasters justify a halt to the assault on the Labor Department's Mine Safety and Health Administration. The 1981 death toll was 153, the highest since 1975. So far this year, 16 miners have been killed.

Coal mine safety has improved only with strengthening of Federal legislation, which historically has come only in the wake of tragedy. The Bureau of Mines was created in 1910 after a series of major disasters. The 1969 Coal Mine Health and Safety Act was signed under the threat of a national coal strike, 13 months after 78 miners died in an explosion in Mannington, W. Va. The gains made under this act will be lost if Congress accedes to corporate claims of over-regulation.

"When you work in the mines, you sense whenever pressure for enforcement eases up," says Everett Acord, former national safety director of the U.M.W. He said that each one of the country's 2,601 deep soft-coal mines must be completely inspected four times a year and that each of the 2,818 surface mines and 1,149 other surface facilities must be inspected twice a year. "Reagan wants to cut required visits in half, and largely eliminate weekly spot inspections at more than 200 excessively gassy mines," he said.

Elected safety committees at unionized operations provide mine workers with some protection. "But what protection does a nonunion miner have, especially in states like Tennessee with weak mining laws?" asks Mr. Acord. "If he complains to management, he's out on the street. His only protection comes from Federal inspectors."

In 1981, only 37 of the 153 killed were union miners — U.M.W. members constitute 66 percent of the total work force; 76 percent of all fatalities were suffered by unorganized miners and foremen — a startling figure, even in light of the 10-week strike over a contract last spring. But the biggest killer of all is coal dust. Each year, the deaths of more than 4,000 coal miners can be safely attributed to black lung disease, according to Dr. Loren Kerr, a leading authority on occupational disease. "Most coal operators are anxious to increase production, even when it raises dust levels above legally defined limits. Federal inspectors must insist on adequate ventilation and water spraying to control this dust today, or else years down the road, miners will suffer an avalanche of new breathing problems."

Testifying in 1969 before the Labor Subcommittee of the Senate Committee on Labor and Public Welfare, Dr. Isadore E. Buff asked: "How would you like to try to catch fish with a net full of holes? Let me tell you, just like a net, a lung that is full of holes put there by coal dust doesn't catch any air. These miners with black lung have

Budget cuts, and fewer inspectors

a constantly tightened string around their necks. If I had my choice, I would rather have lung cancer — it's quicker."

American coal miners are twice as productive as miners anywhere in the world. The much deeper European mines are more dangerous than ours, but European miners have long enjoyed safer, healthier working conditions. During the latter half of the 1970's, deaths in British mines, where the work force is about 246,000, averaged 52 each year, but fatal accidents in our mines averaged 137 annually, with a work force of only 216,000.

Dollars stripped from mine health and safety enforcement translate quickly into crushed bodies, more slowly into hardened lungs. Perhaps, when Mine Safety and Health Administration cuts are debated in coming weeks, the spirits of the 121,000 miners who have lost their lives since 1870 can make their presence felt on Capitol Hill.

Paul J. Nyden is a reporter for The Gulf Times, a semi-weekly in Sophia, W. Va.

on the inside often confuse national security with memos routinely stamped "secret." They equate the secrets that protect the nation (location of deter-

Al Haig's secret meeting with Fidel Castro's vice president. (Please do not send C.I.A. documents based on A.P. dispatches.)

WASHINGTON

Reagan and His Critics

By James Reston

WASHINGTON, Jan. 23 — Between the first anniversary of his Presidency and his 71st birthday (Feb. 6), Ronald Reagan has been condemned by the Russians as a warmonger, criticized by his allies as a waffler and battered by the radical conservatives of his own party as a traitor to his own campaign promises.

It's almost, but not quite, enough to make his critics come to his defense, or at least to reflect on the endless tangles and conflicts of popular government and recognize the problems of those who have the terrible responsibilities for dealing with them.

No doubt he will remember, as De Lawd said in "Green Pastures": "Even bein' God ain't no bed of roses."

How do you deal with a vast continental nation like this, where there are 35 inches of snow in Minneapolis, floods along the Mississippi and its tributaries, ice on the orange trees of Florida and arguments on Wall Street, Main Street and Capitol Hill over a faltering national and world economy?

The public opinion polls, which the White House watches maybe more than it should, tell the President many contradictory things: the American people want less government but more government services. They want to build up our military defenses, but don't want a military draft. They are hostile to the philosophy and aggressions and outrages of the Soviet Union, but still favor negotiations for the control of nuclear arms.

The European governments are alarmed by the threat of Soviet intermediate nuclear missiles targeted on their capitals, but their children go into the streets by the hundreds of thousands to protest, not the Soviet SS-20 and SS-5 missiles, but the U.S. proposal to restore the balance of power by putting modern U.S. cruise and other missiles on their soil.

What is particularly interesting about all this here in Washington is not the opposition of the Democratic Party and liberals or radicals, however you want to describe them, for this was to be expected. But the opposition of the Republican extreme conservatives, who thought Mr. Reagan would reverse the welfare state philosophy of Roosevelt at home and the coexistence policy with the Soviet Union abroad, and thus establish a new era of Republican domination of U.S. politics for the rest of the century.

Mr. Reagan clearly had the same objective, but to do so, like most of his predecessors in the White House since the last war, he was persuaded that he had to compromise and capture not the extremes but the decisive center of American politics, and in the process try to hold the Western alliance together.

This has infuriated the conservative ideologues in his party, who presume to think that they elected him, which is only partly true. They were his true-believers and effective organization supporters, but he won the White House with the help of many normally democratic blue-collar and democratic middle-class voters, and with the help of Jimmy Carter.

But Mr. Reagan's old buddies on the Republican right are cutting him up. In some ways, they are being more mean and critical than his natural opponents in the other party. It is not that they are insincere or even that they are wrong. They are undoubtedly sincere and convinced that they are right, and want him to bend national and world politics to their prejudices, which neither Mr. Reagan nor they have the power to do.

So the President has fiddled in his own amiable way with all this, backing and filling on both foreign and domestic policy, condemning the Russians, the Chinese, the Israelis; encouraging the rich and depressing the poor; demanding a lot on one side and giving a little on the other; and trying with a nod of the head and a smile to hold things together.

Yet even he and his colleagues know that it's not really working. The people on the right and left in this country and also his allies and his adversaries are critical because they don't think he can really make up his mind, and most of them wouldn't like it if he did.

In his first year in the White House he has discovered that things are a little more fuzzy, and that therefore he has had to compromise, even if his original supporters thought he was deserting them.

None of this, of course, is new. Mr. Reagan has merely learned the Rossiter principle of American politics: "No America without democracy; no democracy without politics; no politics without political parties; no parties without compromise and moderation." And it follows from this: No Reagan revolution or Republican era without the support of the restless and troubled independent voters in both parties out in the country.

The Chief Justice of the United States, Warren E. Burger, is making a speech tomorrow to the American Bar Association, arguing that confrontation and litigation may not be the way to progress but that the duty of government is to serve "as healers of human conflicts" and think about the possibility of cooperation. Isn't there a better way, the Chief Justice asks. It's a good question not only for the judiciary but also in domestic and world politics.

Fondazione Alfred Lewin

'Shield Laws' Protect Press Sources — in Most Cases

JONATHAN FRIENDLY

On Aug. 4, 1978, M. A. Farber, a reporter for The New York Times, was jailed in Hackensack, N. J., for contempt of court. He and his newspaper had refused court orders to turn over documents detailing what they knew about the case of a surgeon, Doctor X, charged with murdering patients at a small osteopathic hospital 13 years earlier.

As the jail doors slammed shut on Mr. Farber, many lawyers and journalists shuddered at what it meant for the press. They feared that the Farber decision would encourage others to demand reporters' unpublished notes and records, scaring away sources who would reveal wrongdoing only if their identities could be kept secret.

Last week, in one of his last acts as Governor of New Jersey, Brendan T. Byrne pardoned Mr. Farber and The Times and remitted $101,000 of the $286,000 in fines the newspaper had paid. The journalists' purpose, Mr. Byrne explained, "was not to insult or frustrate the judicial process, but to stand on a noble, if sometimes imperfect, principle." Those who had supported the reporter and the newspaper, however, were already breathing more easily.

A review of cases over the last three years shows no sharp increase in the number of reported incidents in which journalists were forced to disclose their sources or were jailed for not doing so. Twenty-six states now have statutory protections for newsmen, and some, New York among them, have strengthened their "shield laws." Among states without shield laws, several courts have ruled in favor of reporters.

This turn of events, say legal experts, rests in part on the specific circumstances of the Farber case, where the issues of press freedom were colored by the fact that the reporter's investigation of the unsolved deaths of patients at the Riverdell Hospital in Oradell, N. J., had prodded the county prosecutor to reopen the matter. Accusations of collaboration between journalists and law enforcement officers have not figured prominently in other courtroom battles between the Sixth Amendment rights of defendants to a fair trial and the First Amendment rights of the press.

The courts, themselves, have helped shift the legal climate in favor of the press, generally insisting that defense attorneys must vigorously seek alternative sources of information before they can demand the notes of newsmen. In a major ruling in 1980, for example, a Federal Appeals Court in Philadelphia affirmed a reporter's "qualified privilege" not to disclose unpublished information, although it allowed that defendants in a fraud case involving fast-food franchises might be entitled to some "outtakes" — footage not broadcast — from a CBS "60 Minutes" program on the subject. In a more explicit commentary last year, the appellate court instructed the trial judge to release only footage that was material to defense efforts to impeach the testimony of prosecution witnesses.

In the years since the Farber case, New Jersey has rewritten its shield law and the State Supreme Court has upheld it in a decision widely read as an acknowledgement that its 1978 decision, affirming the contempt finding, went too far. "To all confidential sources," the court said, "the promise of silence is absolute, and *any* breach is a total one." To compel a reporter's testimony would destroy the "free flow of information," the court concluded.

Not all such cases have ended with as clearcut a judgment in favor of press protections. In September 1980,



Idaho Statesman/Milan Chuckovich

Reporter Ellen Marks shedding tears as she talked to a visitor through a glass partition at the Boise jail in 1980.

Ellen Marks, a reporter for the Idaho Statesman in Boise, was jailed for a day and her paper was fined $36,000 when they refused to tell a magistrate how Miss Marks had found a woman whose former husband had charged her with kidnapping their child. The case against the reporter became meaningless when the parents reconciled. But it is not meaningless for Miss Marks, who in a recent article for the Society of Professional Journalists wrote: "We all pay in a community where the line between law enforcement and the media is blurred, and where reporters are punished for being reporters." Last week, a Superior Court judge in California ruled the state's two-year-old shield law unconstitutional. The judge said the rights of a criminal defendant are simply stronger than those of the press.

Libel Cases as Pressure Points

While the criminal cases involving journalists tend to grab the headlines, the issue of compelling a reporter's testimony may be developing more rapidly on the civil side, particularly in libel cases, where press defenses are weakest. The Supreme Court opened wide the civil suit door in 1978, in the case of a Green Beret colonel, Anthony Herbert, versus "60 Minutes." The Court said that because libel plaintiffs who are public figures must prove malicious intent, they must be given access to the information reporters and editors had gathered for the article or broadcast in question. In 1980, the New Hampshire Supreme Court took the High Court's reasoning one step further, striking down the libel defense of The Concord Monitor by ruling that if the paper would not reveal its sources, it should be presumed not to have any.

Libel litigation has raised other seemingly quirky issues, such as who constitutes a confidential source. A nightclub owner in Babylon, L. I., for example, is suing The Babylon Beacon, a local weekly, over an anonymous letter to the editor criticizing the bar. The nightclub owner has demanded the name of the letter writer. The newspaper owners, citing shield law protections, have lost the first round of court action,

Still, several observers see Governor Byrne's pardon last week as the ultimate vindication of press principles. In a letter to the Governor, Floyd Abrams, the lawyer who began seeking pardon more than a year ago, observed: "Journalists generally believe, and in this case firmly believed, that only by protecting their sources could they serve their country as well as their profession. That they do not always prevail, that they did not prevail in the Farber case itself, should not lessen the recognition that the 'crime' committed here was one committed with regret, in good faith and out of a sense of honor."

Fondazione Adriano Olivetti

Battling Oil Prices With Fuel Co-ops

By ALIX M. FREEDMAN

In a time of strained budgets and freezing weather, local governments need all the ingenuity they can muster to try to outwit upward lurches in oil prices. In the latest innovation, several states — led by Massachusetts — are looking at the advantages of fuel oil cooperatives.

In the first program of its kind, the city of Springfield, Mass. and 11 surrounding municipalities banded together last August to buy eight million gallons of heating oil under a single contract. Known as the Massachusetts Municipal Fuel Cooperative, the program is considered a landmark because of its use of so-called "modified escalation" bidding, which prevents jobbers — oil suppliers who purchase directly from wholesalers — from passing along their full cost increases to communities.

In this bargaining approach, jobbers specify not only a base price for oil, but also a percentage of the price difference they would be willing to absorb if their own oil costs rose. For example, in August, Springfield set a base price of $1.0365 on Number 2 oil, allowing a six cent markup for operating expenses. City Oil, a local oil supplier, offered $1.0755 a gallon and agreed to absorb 2 percent of any price increase. (The company must also pass along 98 percent of any price reduction.) When City Oil's price reaches $1.0955, Belcher New England, another company that had participated in the bidding, and didn't offer the oil at a lower price, will assume the contract at the higher fixed price through June 30. In other words, the company has agreed to deliver the oil from that point on at a "zero escalation."

The Escalator Clause Tango

The program, designed by the Energy Futures Group, a Washington-based independent consultant firm, is modelled on a plan the group introduced in New York City last February and which so far has saved the city some $2.5 million, or 14 cents per gallon on the 17.6 million gallons that it bought under competitive bidding for the fiscal year beginning July 1. Energy officials in Massachussets contend that "modified escalation" bargaining is the wave of the future and the Department of Energy is planning to extend the program throughout the state next year by establishing about half dozen cooperatives, with individual contracts for some 300 million gallons of both heating oil and gasoline. "All municipal managers are looking for ways to stabilize costs," said Joseph Fitzpatrick, former Energy Secretary for Massachusetts and the moving force behind the program. "The escalator clauses were killing cities and towns in terms of the uncertainty."

But if the old system dusted municipal coffers, the new program has hardly lined them as originally promised. Originally, it was expected to produce savings of $800,000. Such hopes were dashed when Score Oil of Mass. Inc., the cooperative's initial exclusive supplier, defaulted on its contract. After Score bowed out, Belcher New England, Roberts and Perry Fuel Oil and City Oil Company took over the Springfield contract — but their terms are a far cry from Score's irresistible offer of zero escalation, coupled with a relatively low base price. With the less attractive terms, the cooperative buying venture will shave an estimated $400,000 this year off the towns' energy budget, which reached about $8 million last year.

Why Oil Companies Won't Dance

Moreover, even though municipal contracts can boost volume, most local oilmen do not appear anxious to repeat their participation in the program, largely because of its speculative aspect. "This system presupposes that I would

In the years since the Farber case, New Jersey has rewritten its shield law and the State Supreme Court has upheld it in a decision widely read as an acknowledgement that its 1978 decision, affirming the contempt finding, went too far. "To all confidential sources," the court said, "the promise of silence is absolute, and *any* breach is a total one." To compel a reporter's testimony would destroy the "free flow of information," the court concluded.

Not all such cases have ended with as clearcut a judgment in favor of press protections. In September 1980, while the criminal cases involving journalists tend to grab the headlines, the issue of compelling a reporter's testimony may be developing more rapidly on the civil side, particularly in libel cases, where press defenses are weakest. The Supreme Court opened wide the civil suit door in 1978, in the case of a Green Beret colonel, Anthony Herbert, versus "60 Minutes." The Court said that because libel plaintiffs who are public figures must prove malicious intent, they must be given access to the information

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Security and Science Collide on Data Flow



Sovphoto/Tass

A Soviet scientist (left) and two American scientists discussing the effects of radiation and extremely low temperature on the physical and chemical properties of various substances at a Soviet scientific institute in 1976.

By PHILIP M. BOFFEY

The exchange of ideas between nations is not easily controlled through export fees and licenses. So, while the Reagan Administration is raising the alarm over the flow of America's advanced scientific information to the Soviet Union, it is not clear how the Administration can stop it, or that it merits stopping. Indeed, many American scientists consider attempts to curb scientific interchange unpardonable, and dangerous, censorship.

Administration officials have been arguing that unclassified sources, including scientific journals and meetings, exchanges of students and scholars, and Government depositories of technical data, are gold mines of information with potential military importance for the Soviet Union. Thus, last week the State Department placed Stanford University off-limits to a visiting Soviet scientist, Nikolay Umnov, when the university said it could not enforce restrictions on his movements and access to information as required by the Government.

Other Government voices are becoming more insistent. Speaking at the annual meeting of the American Association for the Advancement of Science (A.A.A.S.) earlier this month, Adm. Bobby R. Inman, Deputy Director of the Central Intelligence Agency, warned: "In terms of harm to the national interest, it makes little difference whether the data are copied from technical journals in a library or given away by a member of our society to an agent of a foreign power." Frank C. Carlucci, Deputy Secretary of Defense, warned the association that Russia is exploiting scientific communications and exchanges in an "orchestrated effort" aimed at "gathering the technical information required to enhance its military posture."

Such statements suggest that what Admiral Inman called a "confrontation between national security and science" is at hand. If so, it will be a conflict in which battle lines are not easily drawn. Restricting trade in high technology goods alone is a thorny problem, raising questions of whether export prohibitions will do more harm to Western economies or to the Soviet Union. Such issues took center stage last week when the United States urged its allies, represented in Paris at the Coordinating Committee for Multilateral Export Controls, to increase the types of high technology equipment banned for export to the Communist world, including items needed by the Soviets to build their natural gas pipeline from Siberia to Western Europe.

A comparable effort to block the flow of ideas and data raises not only questions of practicality and national self-interest, but strikes at the very structure of scientific communication and, in the United States, involves constitutional issues of free speech.

Interestingly, the extent to which scientific communication can threaten national security has never been established. In a letter to the A.A.A.S., for example, Mr. Carlucci pointed to the potential for harm in scientific exchanges, but gave few examples of actual damage. He noted that American scientific articles are published in journals for all the world to read, whereas Soviet articles are subject to censorship before publication. He also complained that the United States sends humanities students to Russia on academic exchange, while the Russians send over physicists whose work is of potential military value.

The most dramatic information leak Mr. Carlucci cited, however, occurred in the late 1970's and involved Russian scientists who studied fuel-air explosives and an advanced aerodynamic vehicle at American universities, and then, he said, pursued similar studies on returning home. There was also the case of a Hungarian researcher who reportedly gave the Soviet Union information on magnetic bubble memories, important in advanced computer designs, gleaned from visits to American laboratories.

Many American scientists doubt that the information leak is quite the hemorrhage portrayed by defense and intelligence officials. They point out that the Federal Government has restricted scientific exchanges in the past — in 1980, for example, the Carter Administration denied visas to Soviet bloc scientists who wanted to attend conferences on bubble memories or lasers — and will do so in the future to express disapproval of Soviet diplomatic or military maneuvers. Federal regulations already prohibit disclosure of technological data that have direct military application. "Any suggestion that universities are behaving irresponsibly or are a source of leakage of scientific or high-technology information is a distortion of the facts," said Marvin L. Goldberger, president of the California Institute of Technology.

Of Benefits and Beneficiaries

Frank Press, president of the National Academy of Sciences, disputes the notion that the Soviet Union gains disproportionately from bilateral exchanges. "I couldn't get American scientists to waste their time educating a Soviet counterpart," Dr. Press said. "So by and large, we cooperate only in areas where we are equal or almost equal. And these are not areas involving classified material." In a letter to Mr. Carlucci, William D. Carey, executive officer of the A.A.A.S., said the United States has much to gain through bilateral exchanges, since American scientists can in this way keep posted on "Soviet excellence in fields that matter to us, including metallurgy, condensed matter physics, theoretical physics, astrophysics, geophysics and cancer research."

More important, many observers argue that the Soviet Union's main sources of Western scientific data are articles in journals and trade publications. And the dissemination of these materials, they note, would be extraordinarily difficult to restrict without infringing free speech. The National Security Agency and academic mathematicians have launched an experimental program of voluntary restraints in the field of cryptography. The small community of specialists in this field submit their papers to the agency for comment before publication. There is an appeals procedure, with the final decision on whether to disseminate a paper remaining with the scientist. Thus far, some 25 papers have been reviewed. But the system has not really been put to the test, since no paper has been deemed a security problem.

Admiral Inman believes that a similar voluntary system might work in fields such as computers and other electronic gear, lasers, crop projections and manufacturing procedures, where, he suggests, potential harm to national security should be examined from the moment a scientific undertaking is considered. Admiral Inman has urged the research community to devise remedies before Congress imposes legislative restrictions.

The nation's leading scientists, however, doubt the need for or legality of mandatory restrictions on unclassified information. "If you want to protect information, you have to classify it," says Dr. Press. "If you try to restrict it in other ways, it's probably unconstitutional."

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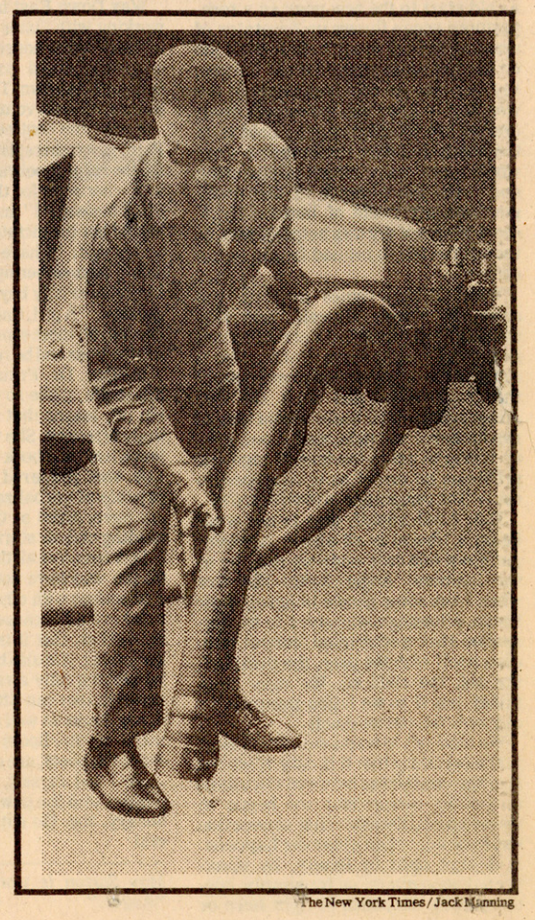
Why Oil Companies Won't Dance

Moreover, even though municipal contracts can boost volume, most local oilmen do not appear anxious to repeat their participation in the program, largely because of its speculative aspect. "This system presupposes that I would have to have a crystal ball to determine what will happen to the price of oil," said Stuart Hurwitz, president of City Oil Company in Springfield. "Not even the OPEC ministers have that." Government officials say the answer to this problem might be the futures market, which allows suppliers to lock in the contract prices by buying oil for delivery at a future date; suppliers gamble on the price of oil, swallowing a loss if it goes above the contract price, reaping a windfall if it falls far enough below. But local jobbers say they are being squeezed out of the marketplace because they have neither the large amounts of ready capital nor the sophistication to play it.

The state energy department acknowledges that the local dealer on Main Street might be going the way of the eight-cylinder engine. But officials maintain that his survival depends on adaptation — in other words, that dealers should form cooperatives of their own to enter the futures market. "The small dealer is going to have to change with the market," said Mr. Fitzpatrick.

Other oilmen warn that the program is a fair weather friend, meaning it can only function when there is a glut of oil. "I can't say the municipalities have come to any great advantage," said Jim Tunderson, chairman of the New England Fuel Institute. "Sure, they are saving, but that has to do with market conditions. If the market tightens up, this kind of bidding will go out the window and it will again become a question of who has the supplies."

Nonetheless, Springfield officials view the program as a success. Ray P. Turgeon, the city's purchasing agent said, "I had hoped for a lower esacalation, but anything is better than where we were in the past." Other states including Ohio, Virginia, Califiornia, and Maryland are monitoring the Massachussets experiment closely.



The New York Times/Jack Manning

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