Harold Fey, Editor of "Christian Century"
Virginius Dabney, Editor of "Richmond Times-Dispatch"
E. C. Pulliam, Publisher of "Indianapolis Star"
David Williams, Research Director of Americans for Democratic Action
Bernard S. White, Washington attorney
Lowell B. Mason, former member, Federal Trade Commission
William F. Buckley, Jr., Editor of "National Review"
Ruben Levin, Editor of "Labor"
Daniel A. Poling, Editor of "Christian Herald"
Fred Siebert, Dean of Journalism, Michigan State University and author of "The Rights and Privileges of the Press"
John Stempel, Chairman, Journalism Department of Indiana University
Ralph Ellsworth, Director of Libraries, University of Colorado
Victor Weybright, Editor of The New American Library
O. W. Riegel, Chairman of the Journalism Department, Washington and Lee University
Fred Rodell, Professor of Law, Yale University
Graham DuShane, Editor of "Science," weekly publication of the American Association for the Advancement of Science
R. C. Swank, Director, Stanford University Libraries
Lester Sobell, Editor of Facts on File
Alexander Brooks, Professor of Law, Rutgers University
Burton Marvin, Dean of William Allen White School of Journalism, University of Kansas
Ernest Griffith, Dean of the School of International Service, American University and former Director of the Legislative Reference Service of the Library of Congress
Hillier Kreighbaum, Chairman of the Journalism Department, New York University
Palmer Edmunds, Professor of Law, John Marshall Law School
Bryant Kearl, Chairman of the Journalism Department, University of Wisconsin
Edward J. Ennis, General Counsel of the American Civil Liberties Union
Wendell Phillippi, Chairman of the Freedom of Information Committee, Associated Press Managing Editors Association

Others opposed to copyrighting of official material by government agencies and officials: Bernard Perry, Director of Indiana University Press; James S. Pope, Executive Editor of the Louisville Courier Journal; William Bridgewater, Editor-in-Chief of Columbia University Press; Gerald W. Johnson, Historian; Gerard Piel, Publisher of the Scientific American; Sylvan Gotshal, New York attorney; Quincy Howe, Journalist; B. M. Huebsch, Editor of Viking Press and Treasurer of the American Civil Liberties Union; James Bracken, Editor of the Spokesman Review; Thorsten Sellin, Editor of the Annals of the American Academy of Political and Social Science; L. B. Heilprin, Council on Library Resources; J. Edward Murray, Editor of the Arizona Republic; Harold Cross, late Counsel for the American Society of Newspaper Editors.

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PROFITS FROM PUBLIC PAPERS: THE GOVERNMENT COPYRIGHT RACKET

(NOTE.—Mr. Brucker is the Editor of the Hartford Courant and former Chairman of the Freedom of Information Committee, American Society of Newspaper Editors.)

(By Herbert Brucker)

It was November 19, 1863. An official procession, with President Lincoln on a horse too small for him, struggled out from Gettysburg toward the cemetery where lay the thousands who had died in the three-day battle in July. When after two hours Edward Everett had finished his polished oration, the President arose, put on his spectacles, and looked down at a single sheet of paper in his hand. Fifteen thousand persons, or as many of them as could get near enough, for the first time heard the words: "Four score and seven years ago our fathers brought forth. . . ." The unexpectedly brief speech, varyingly received at the time, in due

course took its hallowed place in the literature belonging to the nation and, indeed, to the whole world.

Suppose it had been 1963 instead of 1863. Soon there would have appeared a book reproducing the Gettysburg Address among the papers, speeches, and statements of the President. And it would be marked up front, "Copyright © 1963, by A. Lincoln."

Copyright? Doesn't that give an individual exclusive right to what is written? It does. How then can a public paper that belongs to the nation become the private property of the man who happens to be President at the moment? It's impossible!

It should be impossible, that is. The 1909 copyright law still in effect today specifically says (17 USC Section 8): "No copyright shall subsist . . . in any publication of the United States Government, or any reprint, in whole or in part. . . ." But despite what the law says, public papers are being copyrighted every day, in ever-increasing numbers. And nobody seems to care.

If you don't believe it, go down to your library or bookstore and take a look at a book published last January. Its title is "To Turn the Tide," and its author is John F. Kennedy. The subtitle reads: "A selection from President Kennedy's public statements from his election through the 1961 adjournment of Congress, setting forth the goals of his first legislative year." Two pages later you will find the notice, "Copyright © 1962 by John F. Kennedy," and the statement "No part of this book may be used or reproduced in any manner whatsoever without written permission except in the case of brief quotations embodied in critical articles and reviews."

That public papers should thus be transmuted into private property, which may be sold or withheld from the public at will, seems a contradiction in terms. Nevertheless it is being done, eagerly and widely, not only by Presidents but by officials and functionaries all the way down through the ranks of the bureaucratic hierarchy.

Please don't blame President Kennedy. The chances are that he did not even know it was being done in his name. He did not know about it, that is, until there appeared in the Washington *Post* of last January 3 an advertisement addressed to the President that asked: "What's the point of placing any type of restriction on the quotability of the public statements of a President of the United States?" Sure enough next day, from temporary White House quarters at Palm Beach, there came the report that this copyright on a book of the President's public papers "was a mistake that is being corrected in future editions."

How could such a mistake be made? Because violation of the law has grown so fast and so far that even the expert staff of the President seemed to have been unaware that there was anything inappropriate, let alone illegal, in thus quietly turning public papers into a source of private revenue. Book publishers take out a copyright as a matter of course. Naturally—since they benefit if their collections of public papers can have the same protection as private creations. And often the matter is made fuzzy because original and copyrightable material has been added. The Kennedy book, for example, has background comments by the editor and a foreword by Carl Sandburg.

The relevant point, however, is the copyrighting of what is plainly public property. And probably this practice would have gone on unnoticed to this day had it not been challenged by an individual who squawked, and who keeps right on squawking. He is M. B. Schnapper, editor of Public Affairs Press in Washington, a publishing house that issues pamphlets and books on contemporary social, economic, and political affairs. Understandably, Mr. Schnapper wants to make use of public papers when appropriate. And he has every right to do so, just as does any other citizen.

It was Mr. Schnapper who put the ad in the Washington *Post* that smoked out the error in copyrighting the Kennedy papers. He has been at this kind of thing for years, and by now his cry in the bureaucratic wilderness has been heard by a number of individuals who have taken alarm at what is going on.

There are two principal reasons for the burgeoning practice of putting a private copyright on the taxpayers' property. The first and most obvious one is the possibility of making money. And there is ample evidence that individuals in government service have in fact made money by acquiring property rights in, and then selling, the products of their official duties.

The other reason is that a copyright provides a means of censorship: "No part of this book may be used or reproduced. . . ." As Major General C. G. Dodge, the Army's Chief of Information, wrote Mr. Schnapper earlier this year, "The

[Army historical] works were copyrighted at that time to prevent quoting of material out of context." In other words, if we in officialdom don't like the use you make of this public property that's yours as much as anyone else's, we'll stop you.

Happily, General Dodge added that it would henceforth be the Army's policy that military histories issued in the name of the American people would no longer be copyrighted. But the incident serves as a reminder of the increasing tendency of people in government to regard the information they produce in the name of the public, and at the public's expense, as having somehow mysteriously become something other than public property. If it is valuable, it can be sold. Or if the records are better concealed—Billie Sol Estes is but the latest brilliant star in an expanding universe of government boners—then a copyright is one means of concealing them.

This practice of supressing news generated by the government accounts for the contemporary battle for freedom of information, or the right to know. It is the ancient battle for freedom of the press in modern trappings. For of what use is it to be free to print anything you like, if you can't get anything to print?

To answer that the copyright holder will remedy this by publishing is to miss the point. There shouldn't be any copyright. In fact, what is startling about the whole development is that the government people who copyright public documents, when reminded that the law forbids the practice, tend to hold that they are right and the law wrong. The Office of Copyright in the Library of Congress actually has in the legislative works a report urging a change in the copyright law, one provision of which gets the camel's nose well under the tent. There should be, it says, "exceptions in unusual cases."

This turn of mind is a fairly recent development. The first time anyone dreamed that such a thing as the prohibition of government copyright might be necessary was at the turn of the century. At that time one Representative James D. Richardson, a prominent Democrat from Tennessee, put together the addresses of the presidents, including, of all things, Washington's Farewell Address and the Gettysburg Address. Yet, though the printing plates of his "Messages and Papers of the Presidents" had even been manufactured at public expense, Representative Richardson had the work published under his own copyright—and then took in $11,320 in royalties.

So unusual was this kind of thing—at that time—that there was a row in Congress. In the end there was a Senate investigation. The report said:

"Your committee thinks that copyright should not have issued in behalf of the Messages, and that the law as it stands is sufficient to deny copyright to any and every work once issued as a government publication. If the services of any author or compiler employed by the Government require him to be compensated, payment should be made in money, frankly and properly appropriated for that purpose, and the resulting book or other publication in whole and as to any part should be always at the free use of the people, and this, without doubt, was what Congress intended."

So virtue triumphed. But copies of the Messages survive to this day, and researchers who find what they seek in the book may well be frightened about quoting because of the copyright. So it is with President Kennedy's "To Turn the Tide." The copyright is there, in print. Even if there are subsequent editions without it, the original notice that this is private property is in the libraries to warn the scholars of the future against using what it is their clear right to quote.

Another trouble is that, though the law specifies that there shall be no copyright on any "publication of the United States Government," it does not say what such publication is. Therefore the first need in any revision of the copyright law is a broad and precise definition that will prevent what the existing silence of the law encourages aggressive public servants to try to get away with.

Fortunately the issue has come to a head in a suit brought in 1958 by Mr. Schnapper and his Public Affairs Press against Admiral Hyman G. Rickover. Admiral Rickover, of course, is one of the outstanding public servants of our time. Without him we would have no atomic submarines. But that does not change the fact that he, too, has taken statements that he made as a public officer and thrown the mantle of private copyright over them.

The suit is not yet adjudicated. It went up through the ranks to the Supreme Court, and was sent back for more thorough review. The Supreme Court found that there were involved "matters of serious public concern" and "delicate problems" whose solution "is bound to have far-reaching import." The Court held

further that the original judgment had been based not on the "adequate and full-bodied record" demanded by the complexities involved, but on a record "woefully lacking." Hence the trip back to the lower courts.

Pending the outcome, some facts are known. The Public Affairs Press asked Mr. Rickover for copies of some speeches he had made in his official capacity. Among them were speeches that had been publicly distributed in the usual manner as press releases from the Department of Defense or Atomic Energy Commission. Later on, however, when the Admiral took out the copyright, he submitted verbatim copies of these speeches without indication that they had originally been official press releases, and without the insignia of the DOD or AEC on them. Admiral Rickover then warned the Public Affairs Press against quoting from these speeches in any way. Whether there is a connection or not, the Admiral had three months earlier sold his copyrighted speeches to another book publisher.

The matter is not one of black and white because all of us wear two hats, whether we are in government or a private job. Suppose, for example, that Admiral Rickover were a poet. Suppose he had been so moved by an early cruise on an atomic submarine that he had sat down, even on government time and in the government's submarine, to compose a poem on the experience. Presumably this personal creation would be his private property despite the circumstances of its composition.

However, isn't such a poem or other personal literary or scientific work, especially if done out of hours or on subjects not connected with the official's job, quite different from a speech or other public document issued as official government business?

Perhaps until the suit against Rickover is adjudicated, we have no right to an opinion about it. But it does seem on the face of it that official papers by government servants are ipso facto in the public domain. There is no more reason why such material should become the private property of the government official who wrote it as part of his job than that Representative Richardson should copyright Washington's or Lincoln's addresses. We might as well allow an enterprising individual to take out an original copyright on Shakespeare or Mozart.

PROTECTION OF PUBLIC INTEREST IN RESULTS OF RESEARCH PAID FOR BY FEDERAL GOVERNMENT

Mr. YARBOROUGH. Mr. President, through grants and contracts, the Federal Government has spent billions of dollars to aid scientific research and development. Information gained from this research should be made freely available to the press, to scholars, to private enterprise, and to the public at large. We in Congress have provided in several bills authorizing research expenditures that "all information, copyrights, uses, processes, patents and other developments" resulting from Government research expenditures "will be freely available to the general public" by adding to these bills the so-called Long amendment. I wholly agree with the Senator from Louisiana [Mr. LONG] that a provision of this type belongs on every bill authorizing research expenditures.

Although many agencies have resisted applying the Long amendment to their activities, support for this concept has been shown by the U.S. Office of Education, which published a statement of policy in the Federal Register of July 28 which will prohibit the copyrighting of any "material produced as a result of any research activity undertaken with any financial assistance" from that office. The statement of policy declared that:

"Material produced as a result of any research activity undertaken with any financial assistance through contract with or project grant from the Office of Education will be placed in the public domain. Materials so released will be available to conventional outlets of the private sector for their use.

"This policy is effective immediately."

I congratulate the Commissioner of Education, Mr. Francis Keppel, for the outstanding leadership he has shown in adopting this policy for the Office of Education.

The Office of Education has declared that the main thrust of its policy is to assure competition in the production and dissemination of different versions of curricular materials. As Deputy Commissioner of Education Henry Loomis stated in a conference held with representatives of educational organizations after the policy statement was published: