

High Court Rejects Newsmen's Bid

Access to Prisoners Denied

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The Constitution does not require state or federal prison officials to permit prearranged face-to-face interviews between newsmen and inmates, a 5-to-4 Supreme Court majority held yesterday.

Neither the prisoners' rights to communicate nor any First Amendment right to gather news is abridged by restrictions on interviews, the justices said.

In another corrections case, the court held, 6 to 3, that states do not violate the Constitution when they refuse to permit felons to vote even after they have "paid their debt to society" by serving their sentences.

The court said disfranchisement cannot be a violation of the 14th Amendment's equal protection guarantee when that very amendment, in references to the Confederate side of the Civil War, allows stripping the vote "for participation in rebellion or other crime."

The prison-access ruling came in two cases, one involving The Washington Post in which newsmen and prison reformers claimed that greater access to penitentiaries through direct interviews was indispensable to accurate and

adequate reporting of conditions behind prison walls.

Newsmen posed the issues in terms of the right of two individuals, one a prisoner, to communicate directly without official interference. But the court said it was a question of the government's "affirmative duty to make available to journalists sources of information not available to members of the public generally."

That duty, Justice Potter Stewart said for the majority, does not exist. He was joined by Chief Justice Warren E. Burger and Justices Byron R. White, Harry A. Blackmun and William H. Rehnquist.

Dissenting on grounds that the officials were impeding the free flow of needed information were Justices Lewis F. Powell Jr., William O. Douglas, William J. Brennan Jr. and Thurgood Marshall.

Stewart, a bitter dissenter when the court rejected newsmen's claims of a First Amendment right to gather news in 1972, relied heavily on the 1972 precedent, *Branzburg vs. Hayes*.

As in the *Branzburg* case involving the lack of immunity for confidential news sources, Stewart said, "newsmen have no constitutional right of access to prisons or their inmates beyond that afforded the general public."

In fact, said Stewart, both California and federal prison officials are going beyond their duty by permitting the press to tour institutions and converse briefly with inmates they encounter in a manner not permitted for the general public.

Stewart said courts should defer to the "expertise" of prison officials who fear that press attention will concentrate on a few news-making inmates and thereby upset prison discipline.

This reasoning, called the "Big Wheel" theory by corrections officials, was rejected by the dissenting justices as a basis for blanket interview bans. They said individual problem inmates could be handled individually.

Stewart said other methods of communication were available, including uncensored mail, information relayed through friends and relatives who are permitted to see a specific inmate, and interviews with prisoners after their release.

The restrictions, he said, are meted out with an "even hand" to the public and the news media and were "not part of an attempt by the state to conceal the conditions in its prisons or to frustrate the press's investigation and reporting of those conditions."

Powell said the restrictions impaired "a core value of the First Amendment." Reporters obtain information the public cannot obtain directly for itself, he said. "In seeking out the news the press therefore acts as an agent of the public at large."

Douglas said the court should sustain the judgment of U.S. District Court Judge Gerhard A. Gesell and the U.S. Circuit Court of Appeals here. "Judge Gesell did not vindicate any right of The Washington Post, but rather the right of the people, the true sovereign under our constitutional scheme, to govern in an informed manner," he said.

The Post and former staff writer Ben H. Bagdikian sought in-person private interviews with willing inmates at the Lewisburg, Pa., and Danbury, Conn., institutions. Newsman in California sought similar access to prisons there.

The Reporters Committee for Freedom of the Press said the ruling was "a major constitutional defeat for the right of the public to know what is happening in our prison systems." Benjamin C. Bradlee, executive editor of The Post, said he was disappointed by the decision.