

For the Record . . .

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A Free Press and a Free Society

From the dissenting opinion of Mr. Justice Stewart in the newsmen's privilege case (footnotes omitted).

The reporter's constitutional right to a confidential relationship with his source stems from the broad societal interest in a full and free flow of information to the public. It is this basic concern that underlies the Constitution's protection of a free press, because the guarantee is "not for the benefit of us all."

Enlightened choice of a free press citizenry is the basic ideal upon which an open society is premised, and a free press is thus indispensable to a free society. Not only does the press enhance personal self-fulfillment by providing the people with the widest possible range of fact and opinion, but it also is an incontestable precondition of self-government. The press has been a mighty catalyst in awakening interest in governmental affairs, exposing corruption among public officers and employees and generally informing the citizenry of public events and occurrences. . . . As private and public aggregations of power burgeon in size and the pressure for conformity necessarily mount, there is obviously a continuing need for an independent press to disseminate a robust variety of information and opinion

through reportage, investigation and criticism, if we are to preserve our constitutional tradition of maximizing freedom of choice by encouraging diversity of expression . . .

The error in the Court's absolute rejection of First Amendment interests in these cases seems to me to be most profound. For in the name of advancing the administration of justice, the Court's decision, I think, will only impair the achievement of that goal. People entrusted with law enforcement responsibility, no less than private citizens, need general information relating to controversial social problems. Obviously, press reports have great value to government, even when the newsmen cannot be compelled to testify before a grand jury. The sad paradox of the Court's position is that when a grand jury may exercise an unbridled subpoena power, and sources involved in sensitive matters become fearful of disclosing information, the newsmen will not only cease to be a useful grand jury witness; he will cease to investigate and publish information about issues of public import. I cannot subscribe to such an anomalous result, for, in my view, the interests protected by the First Amendment are not antagonistic to the administration of justice. Rather, they can, in the long run, only be complementary, and for that reason must be given great "breathing space."