

Constitutional Quandary

The Farber Case: Protecting the Free Press vs. a Defendant's Right to a Fair Trial

BY RUTH SHEREFF
WITH JOANNE BARKAN

New York. Myron Farber, a *New York Times* investigative reporter, is the latest gladiator of the press to take on the U.S. courts. Most of his fellow journalists are cheering him on for protecting the First Amendment, but the lines of right and wrong in this particular contest are not sharply drawn.

If Farber emerges the victor, the trophy for the press will be the right to keep the government out of its business and to protect the identity of sources. But in the process, the right of defendants to have access to all evidence that might possibly prove their innocence may be lost.

It all began in 1976 when Farber wrote a series of articles on a number of mysterious deaths which took place in New Jersey's Riverdell hospital a decade earlier. As a result, the local prosecutor reopened the case and Dr. Mario Jasclevich now stands accused of killing three patients with injections of the paralyzing drug, curare.

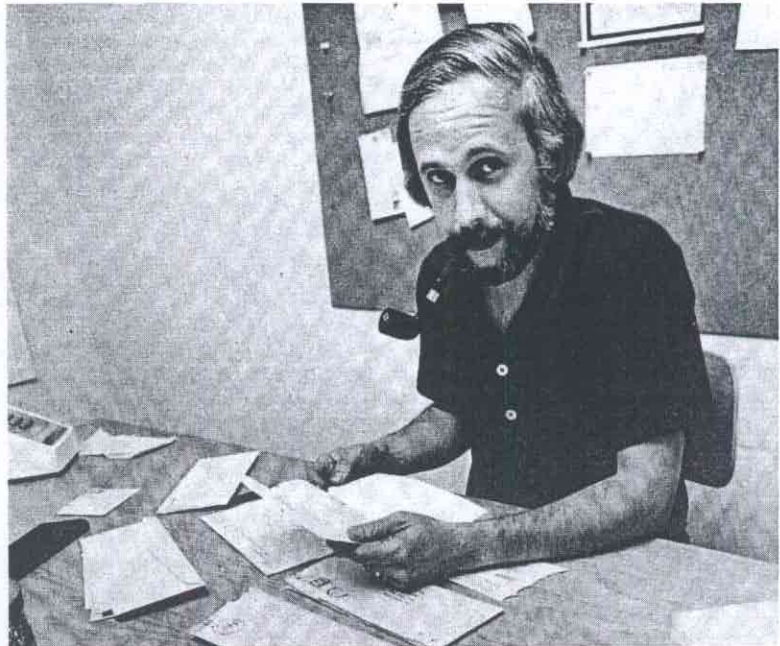
Jasclevich's lawyers asked to see the reporter's interview notes and the judge ordered them submitted so that he could go over them in private to decide whether there was material relevant to the defense. Farber refused, was thrown in jail for contempt and *The New York Times* has been playing \$5,000 a day in fines since August 4.

As the gladiator sits it out in the Bergen County jail until the September 18 hearing on the constitutional issue, a crowd of journalists is debating the case. Most have thrown their support to Farber. "The First Amendment takes precedence over all," said one *New York Daily News* reporter, expressing the majority sentiment. "The *Times* has to defend Farber or all their sources dry up."

The press has good reason to want to protect its reporters and sources from intimidation. Since Watergate, judges have cited some 40 journalists for contempt when they refused to turn in their files.

But at least one *Times* writer is more ambivalent. "A defendant charged with a serious crime," wrote columnist Anthony

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Wide World

New York Times reporter Myron Farber: Caught between two conflicting legal principles.

Lewis, "may have good reason to see the notes of a reporter who stirred up the case against him."

For Lewis, the confrontation may not have been necessary. The judge could have required Jasclevich's lawyers to show that the notes or parts of them are likely to be relevant and necessary to the defense. If they had done this, Lewis, for one, would opt for turning them over for the judge's private perusal.

But even this may have done no good. Farber has asserted that under no circumstances would he turn over the notes, and now his motives seem a little bit suspicious.

It was revealed for the first time during the August 11 hearing that Farber's contract with Doubleday Publishing Company for a book on the Jasclevich case stipulates that the manuscript must contain material published nowhere else. Farber has already received \$50,000 of the \$75,000 deal.

"He stands to lose half a million dollars in book and movie royalties if Jasclevich is acquitted," said District Court Judge

Frederick Lacey during the hearing. "Nobody wants to read about murders that were not even committed."

Five days later, Farber agreed to turn over his "incomplete and unedited" book manuscript to the court, asserting that "the net result of these baseless accusations has been...to obscure the fundamental issue"—a reporter's right to withhold notes. Jasclevich's attorney pointed out that Farber still had not complied with the subpoena and claimed that the reporter was trying to dictate what material the court would see.

Some observers feel that the attack on Farber's motives has been too heavy. Others are now worried about the reputation of the press. "This kind of conflict of interest involving a financial motive makes us all look bad," said one New Jersey radio reporter. So far the courtroom mood is such that Myron Farber rather than Dr. Jasclevich seems to be on trial. No one is predicting the outcome of the September hearing, and it remains to be seen if safeguards for the press and the rights of defendants will both win out. □