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An Author of Books Is Not Entitled To News Protection, a Justice Says

By ANNA QUINDLEN

The author of a book is not a journalist and is not entitled to a journalist's protections under the New York State "shield law" and the Constitution of the United States, a State Supreme Court justice in Brooklyn has ruled.

In what some legal authorities believe is the first time the matter has been decided by any court, Justice Sybil Hart Kooper drew a distinction between the rights of working journalists and of authors of books in her refusal to quash a subpoena served on Lee Hays, a former television producer.

Mr. Hays, who won the Peabody Award for his television work, is writing a book about the family of Navatro LeGrand. Various members of the Brooklyn family have been linked to a total of six murders. Mr. LeGrand is facing an upcoming trial for two of them.

An Appeal Is Expected

Joel Ezra, a lawyer for Mr. LeGrand, had asked for notes and tapes of interviews that Mr. Hays had conducted with Willie Frank Holman, who is expected to be a prosecution witness at Mr. LeGrand's trial.

Mr. Hays's lawyer, Melvin L. Wulf, has said he expects to appeal the decision.

Mr. Wulf argued that the author's material was protected by the First Amendment and the shield law. But Justice Kooper, in a decision handed down Friday, disagreed.

"Notwithstanding the fact that throughout petitioner's affidavit and brief he is referred to as 'a journalist,' he is, in reality, an author," she wrote. "To paraphrase a once popular song, 'wishing won't make it so.'"

Justice Kooper also said Mr. Hays's

previous work as a journalist did not entitle him to any protections now.

"An author who formerly worked for several newspapers and a television station but is now writing a book is still an author," she wrote. "If anyone who wrote anything could call himself or herself a journalist, the results would be ludicrous. Imagine, Betty Ford writes her autobiography. Is she a journalist? Julia Child pens a cookbook. Is she a journalist? The court writes a decision. Is she a journalist?"

The state's shield law defines a journalist as a person "engaged in gathering, preparing, or editing of news for a newspaper, magazine, news agency, press association, or wire service." Justice Kooper noted that Mr. Hays is not writing for any of those but is under contract to Harper & Row for his book, the 31st he has written.

Mr. LeGrand, who has been indicted in the murders of a pimp and his bodyguard, is one of the sons of Devernon LeGrand, a self-styled bishop who was convicted in 1977 of the murders of two teenage sisters.

Testified Against Brothers

Mr. Holman, who was a member of the LeGrand household for many years, was a prosecution witness in that trial and testified against two other LeGrand sons, who were convicted of the crime for which Navatro now stands accused.

Mr. Hays said he had promised Mr. Holman confidentiality until his book appeared, but Justice Kooper was not sympathetic to that claim, ruling that if the material was to appear eventually in any event, there was no real question of confidentiality of information.