THE REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS
Room 1310
1750 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

UGUST-SEPTEMBER 1974

PRESS CENSORSHIP NEWSLETTER No. V.

- US SUPREME COURT VOIDS FLORIDA RIGHT TO REPLY LAW
- ATLANTA OFFICIALS DEFEND PAID POLICE SPY ON BLACK NEWSPAPER
- HAWAII SEALS ALL CURRENT ARREST & INDICTMENT RECORDS
- MARYLAND COURT HOLDS SECRET TRIAL: BARS FEMALE REPORTING
- LOUISIANA SUPREME COURT UPHOLDS GAG ON RAPE TRIAL EDITORIALS
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- FEDERAL JUDGES MOVE TO ISSUE SECRET OPINIONS
- *STANFORD (UNIV.) DAILY* WINS $47,000 FOR ILLEGAL POLICE SEARCH

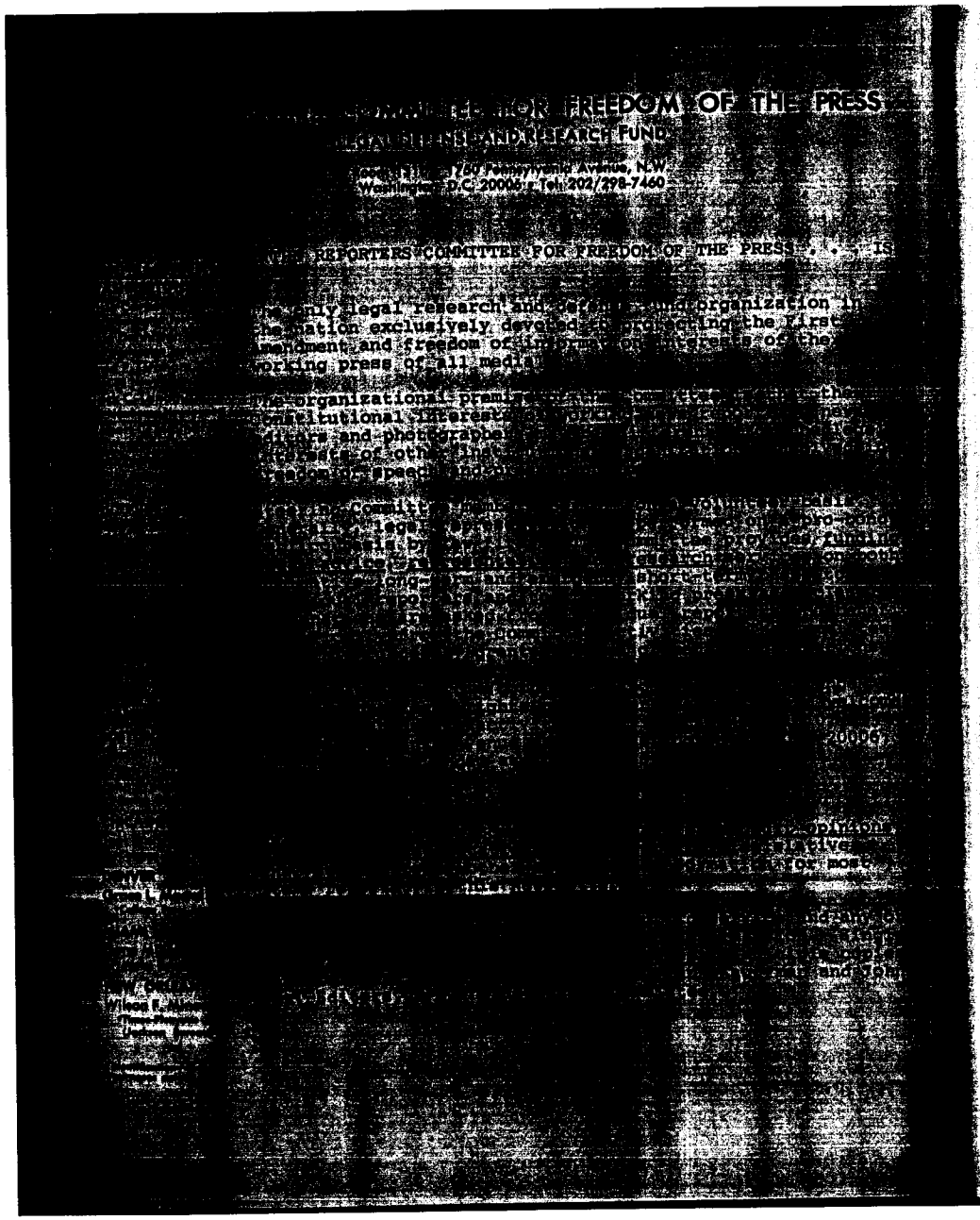
84 pages: 207 indexed summaries of
legal developments affecting the media

Compiled and distributed as a public service by

THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS

LEGAL DEFENSE AND RESEARCH FUND

WASHINGTON, D.C.



FYI

Enclosed please find the 96-page August-September, 1974 edition of the Press Censorship Newsletter, a nationwide compendium of actions involving First Amendment and freedom of information interests of the press of all media in the three months since the April-May edition.

As this Newsletter shows, litigation against the media continues to increase sharply. There is, however, some encouragement in the increase of law suits filed by the media taking the initiative to oppose newsgathering limitations.

The Committee notes that while the attempts to force newspersons to disclose confidential information is decreasing in the grand jury area, it appears to be on the increase in libel cases --- a move that may be accelerated by the Supreme Court's new libel decision. Gag orders against the press limiting coverage of judicial proceedings continue to increase sharply.

There is also, apparently, increasing pressure to undermine the Pentagon Papers decision by legislation authorizing both new prior restraints and criminal penalties for publication of national security information. The conflict over personal privacy and media access to public arrest and indictment records is increasing on both the federal and state levels.

This Newsletter is compiled as a public service and donations are needed to continue it in its present form. PLEASE SEE BACK PAGE FOR DONATION COUPON.

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I. RIGHT OF REPLY-ACCESS TO THE MEDIA/LIBEL & PRIVACY

ACCESS TO THE MEDIA

1. SUPREME COURT VOIDS FLORIDA RIGHT TO REPLY LAW

The most controversial press case before the Supreme Court this past term involved a 1913 Florida law that required newspapers to print replies from political candidates to editorial attack.

The case arose when Pat Tornillo, a 1972 candidate for the State House of Representatives, invoked the law to demand that The Miami Herald print his replies to two critical editorials the newspaper had published.

The Florida Supreme Court upheld the law and the Herald, one of the Knight newspapers, appealed to the Supreme Court with the support of more than 20 major media organizations.

On June 25, the high court unanimously struck down the law, ruling that the right-to-reply statute violated the First Amendment free press guarantee. In an opinion by Chief Justice Warren E. Burger, the court said:

"The choice of material to go into a newspaper, and the decisions made as to limitations on the...content, and treatment of public issues and officials --- whether fair or unfair --- constitutes the exercise of editorial control and judgment."

The government, Burger noted, cannot regulate this process "consistent with First Amendment guarantees of a free press."

Under the Florida law, the chief justice observed, editors might adopt a "safe course" and avoid controversy in their coverage of elections and other political news.

The Tornillo decision defeated the claims of several law professors and "public interest" groups that citizens have a right to greater access to present their views in the news media.

The decision apparently eliminated any possibility for a federal "right to reply" law suggested by the Nixon Administration. It also blunted possible adoption of reply laws in the states. Only one other state, Mississippi, has a "reply" statute, but it has never been used or contested.

2. FOUR STATES KILL RIGHT TO REPLY PROPOSALS

Before the Supreme Court decision in Miami Herald v. Tornillo (see above), which voided the Florida "right to reply" statute, four states rejected proposed reply laws.

The Vermont legislature defeated an amendment which would have guaranteed editorial reply to any person who felt he was "assailed".

In Pennsylvania, the House rejected an attempt to amend a bill to allow political candidates to reply to stories that "clearly imply misconduct."

In New Jersey, a bill directly modeled after the 1913 Florida statute was defeated in the Senate.

In North Carolina, the Assembly rejected a bill designed to guarantee editorial reply to "any offended person or candidate."

3. FLORIDA NEWSPAPER CHALLENGES STATE ELECTION LAWS ON ADS

Gore Newspaper Company, publisher of the Fort Lauderdale News, filed suit in federal court in April seeking a declaratory judgement striking down two Florida election statutes affecting the press.

The first of the statutes, enacted in June, 1973 by the Florida legislature, requires newspapers to offer political candidates in state, county and municipal elections the lowest advertising rate available. Federal elections are not governed by the statute.

The second statute challenged in the suit prohibits newspapers from publishing critical information and editorials about candidates on election day.

The News is currently complying with the lowest advertising rate statute. Florida is facing gubernatorial and senatorial state elections in the fall. The Miami Herald reportedly believes the law is unconstitutional and is not complying. The Herald is putting candidates under retail advertising contracts letting them earn the best rate they can. All money collected from these contracts will be put into an escrow account pending a decision of the case.

The Orlando-Sentinel Star reportedly has refused to run any political advertising affected by the statute pending settlement of the case.

4. MINNESOTA RIGHTS COMMISSION FINDS PAPER TO BE A "PUBLIC ACCOMMODATION"; REGULATES IDENTIFICATION OF MARRIED WOMEN IN NEWS STORIES

The National Organization of Women (NOW) filed a complaint March 19, 1974 with the Rochester, Minn. Human Rights Commission alleging that the Rochester Post-Bulletin violated state and city anti-discrimination ordinances by identifying married women by their husband's first name in news stories. The Post-Bulletin identifies married women as Mrs. John (Mary) Smith.

The complaint said such a policy denied women the "full and equal enjoyment of the services, facilities, privileges and advan-

tages of a place of public accommodation" in violation of a city anti-discrimination ordinance.

Post-Bulletin editor Charles Withers responded to the complaint saying it raised a First Amendment issue. "If pressure groups, or local government agencies are successful in dictating to newspapers how they shall print the news, Withers said, obviously they could seek to dictate what shall be printed - or what shall not be printed."

The Commission ruled May 15, 1974 that the "Post-Bulletin is a public accommodation" and that its identification of women by their husband's first name "constitutes discrimination based on sex."

The Commission's report was forwarded to the State Department of Human Rights for further investigation.

5. BOSTON GLOBE LIFTS CIGARETTE AD BAN

In 1969, The Boston Globe announced it would refuse to accept advertising from cigarette manufacturers, because of "accumulated medical evidence indicating that cigarette smoking is hazardous to health." The Globe was the first major newspaper to adopt this policy.

In June, the Globe reversed its policy. In an editorial it explained that the newspaper was not concerned with lost ad revenue, but rather, "the ultimate issue was whether the Globe had the right to censor from its pages any legal industry today, particularly in view of the required health warnings on all cigarette ads."

Globe publisher W. Davis Taylor said the newspaper has never supported or opposed the advertising of cigarettes, but believes all media "have a right to do whatever they thought was right."

6. WEST VIRGINIA PAPER GUARANTEES RIGHT TO REPLY

The Charleston (W.Va.) Gazette adopted a policy July 6 that guarantees newspaper space for persons to respond to editorials that question their judgment or conduct.

In an editorial, publisher W. E. Chilton III applauded the Supreme Court decision voiding Florida's right-to-reply law but said the Gazette "remains sensitive to its responsibility for providing access and clarification of issues."

7. MINNESOTA PRESS COUNCIL CRITICIZES KIDNAP COVERAGE

On March 15, 1974, Mrs. Eunice Kronholm, wife of a South St. Paul, Minn. banker, was kidnapped. FBI agents attempting to secure her release in exchange for a ransom complained to the U. S. Attorney early on the morning of March 18 that the exchange was not possible because of the presence of news media representatives at the ransom drop location.

Media members and the public were able to learn of the locations by listening to uncoded radio broadcasts on common police channels. The broadcast channel was next to one carrying routine weather reports and was overheard by many local citizens.

Minneapolis Tribune newspaper officials said later that the Tribune's newsgathering efforts in the kidnapping case "may have been overzealous." Subsequently, the paper distributed an internal staff memo regarding news coverage of kidnappings stressing that, "We should engage in no news activity that is likely to bring injury or death to a person because of our methods or actions."

Dissatisfied with the Tribune's actions, a citizen complained to the Minnesota Press Council in April. Following an investigation, the Council labeled as "not responsible" a Tribune reporter's efforts to be on the scene at a ransom drop and its March 18 article desoribing attempted drops prior to Mrs. Kronholm's release.

Charles W. Bailey, Tribune editor said he disagreed with the council's findings that the paper did not responsibly report the Kronholm kidnapping. "The Tribune will continue to judge news events of this kind on their merits on a case-by-case basis, keeping in mind any potential danger to innocent persons involved," Bailey said.

NOTE: Mrs. Kronholm was released March 18 after the FBI arrested a prime suspect in the case.

8. NEW YORK COURT BARS SEX-DESIGNATED WANT ADS

The National Organization for Women in a complaint before the New York State Division of Human Rights charged the Gannett newspaper chain with unlawful discrimination under state law for publishing separate "Help Wanted" advertisements for men and women. The Human Rights Division dismissed the complaint and NOW sought review in the State Supreme Court, which upheld the dismissal.

On June 19 the Court of Appeals, the state's highest court, ruled that the newspapers "aided and abetted sex discrimination" by publishing want ads under separate sex designations. The Gannett group discontinued its want-ad policy a year ago, but the court agreed to decide the case anyway because it said the issue was of "great public importance."

9. CBS, ABC REFUSE MOBIL OIL ADS ON OIL DRILLING (see this PCN, p.82)

10. ACCCESS TO TV-RADIO (see The Broadcast Media, this PCN, p.75)

11. URBAN LEAGUE OFFICIAL SAYS MEDIA IGNORES BLACKS

National Urban League director Vernon E. Jordan said that "the media--except for the black press--are "settling back into a spirit of benign neglect" in their coverage of black people. In a May 4 speech at the Capital Press Club in Washington, Jordan said the media had a "fling at tokenism and liberalism" in its coverage of the 1960s Civil Rights Movement, but that the press "has Watergated black people in its treatment of us in the news columns."

As an example, Jordan pointed to coverage of the energy crisis, which he said "focused on middle class whites on gasoline station lines." At the same time, he added, the press has ignored reporting on the high unemployment rate of black men.

12. FBI DIRECTOR CRITICIZES CRIME COVERAGE

FBI director, Clarence M. Kelley, expressed concern to the Associated Press Broadcasters Association about news coverage of "bizarre" crime which he said helped trigger criminal behavior.

As an example, he cited the rash of skyjackings that followed wide news coverage of a skyjacker who parachuted from a hijacked plane with a large ransom several years ago.

Kelley said he could offer no "concrete solutions" but certainly did not suggest suppressing "legitimate" crime news coverage.

13. GOV. MANDEL CRITICIZES PRESS

Maryland Gov. Marvin Mandel criticized reporters he claimed were exploiting the aftermath of Watergate to condemn all public officials as "guilty until proven innocent" at the National Governors' Conference meeting June 4.

Mandel said the press was employing "guilt by association" tactics while ignoring "the corrupters" responsible for anonymously accusing public officials.

"What are we doing about the corrupters?" Mandel asked, "I'll tell you what we're doing. We're giving them immunity and saying, 'Fellows, come back another day and continue corrupting.'"

14. NEWSMAN ASKS CENSURE OF CRIME REPORTERS

Reporters who disrupt police operations should be censured by their peers, the president of the Radio and Television News Association of Southern California, John Babcock, has suggested.

His comment followed police complaints of a "circus" atmosphere at Patricia Hearst stakeouts. Reporters found guilty could be ruled ineligible for awards and honors, Babcock said.

15. SUPREME COURT LIMITS PRESS LIBEL PROTECTIONS IN GERTZ DECISION; COURTS MUST NOW DECIDE WHAT ARE "CAREFUL" NEWS REPORTING STANDARDS

The Supreme Court has once again radically changed the constitutional law of libel in a 5-4 decision which appears to make it easier for private citizens to sue the news media but may make it more difficult for them to collect substantial damages.

The decision is still subject to some controversy among media lawyers. Here is our analysis:

1. It restricts who is a "public figure."

Under prior Supreme Court cases, there were three categories of defamed persons who had to prove "reckless disregard" in order to collect:

a. public officials
b. public figures who "thrust themselves" into news events
c. public figures who were basically "private citizens" "involuntarily" pulled into news events.

A separate category was a "private citizen" not involved in any news event. He had only to prove falsity and damage.

The Supreme Court decision now classifies as a "private citizen" the "public figure" who is basically a private citizen pulled involuntarily into a new event. He is now treated as an ordinary "private citizen".

Furthermore, even a true "public figure" such as Billy Graham may be treated as a "private citizen" if the libel is not related to his public activities. Therefore, falsely accusing Billy Graham of stock fraud, for example, would let him claim the "private citizen" protection. Falsely accusing him of defrauding buyers of Bibles would place him in the "public figure" area.

2. It eliminates "libel per se".

Under previous decisions, the private citizen only had to prove that an article was false and that it damaged him.

Under the Court decision, private citizens will now have to prove that a newspaper also was "negligent" or careless. This eliminates automatic libel or "libel per se".

3. Compensatory damages:

Under previous decisions, a private citizen only had to prove that the article was defamatory on its face -- such as falsely accusing a person of committing a crime. The jury could then judge for itself what the damage was presumed to have been.

Under the Court decision, the defamed person must now also offer proof of "actual injury" such as "impairment of reputation, standing in the community...mental anguish and suffering." He need not, however, assign "an actual dollar amount" to the damage.

4. Punitive damages:

Under prior decisions a defamed private person could collect punitive damages if he could show "malice" or "ill will".

Under the Court decision, he must now show that the article was written with "reckless disregard for the truth" or that it was "knowingly false."

This is a somewhat subtle change because it is possible for a news medium to have "ill will" toward a person but still not be reckless.

NOTE: The negligence standard means that courts will now hear evidence in libel cases as to what constitutes "reasonable care" in news reporting; and is the standard of care for The New York Times or CBS the same standard as for a rural weekly or small TV station?

16. SUPREME COURT SAYS FEDERAL LABOR LAWS PRE-EMPT STATE LIBEL LAWS (see this PCN, p.84)

17. CBS LIBEL CASE SUBPOENAS NBC & ABC NEWS EXECUTIVES TO PROVE CBS NEGLIGENCE

In June, 1973, Henry Buchanan, brother of White House aide Patrick Buchanan, filed a $12 million libel suit against CBS, Walter Cronkite and CBS affiliate WTOP-TV in Washington, D. C. (see PCN IV., p. 6).

The suit contended that a May 8, 1973 CBS Evening News broadcast, which said Buchanan's accounting firm had been used to "launder" campaign contribution to the Nixon presidential campaign, was false and malicious. CBS retracted its story three days after it was originally broadcast . ABC and NBC did not air broadcasts containing the charges. CBS based its story on an AP dispatch. AP was also sued as was AP reporter, Stephen Cohen.

In May, 1974, attorneys for Buchanan subpoened ABC Evening News producer, William Lord and NBC Nightly News associate producer, Herbert Dudnick. The subpoena sought "testimony, records, memorandums, and documents" related to their handling of the Buchanan story. Attorneys for both networks are currently fighting the subpoenas as an invasion of their editorial and newsroom decision-making processes.

Buchanan's attorneys have argued in response that they are not seeking information regarding either network's internal editorial decisions. They argue that it is "vital" they discover from NBC "from what sources CBS could have learned the accurate and true facts" regarding the involvement of Buchanan's accounting firm with the Committee to Re-elect the President.

In legal papers filed in June in response to ABC's motion to quash the subpoena against Lord, Buchanan's attorneys argued that their "sole purpose" in questioning him is to "determine what knowledge ABC reporters or staff members possessed" concerning a court proceeding which originally gave rise to the stories.

NOTE: This attempt to apparently establish the "standard of care" employed in news stories by competing news media represents a new approach in libel actions. If successful, it could threaten to endlessly involve top news media representatives as witnesses in future libel cases.

18. JOURNALISTIC CRITIC SUBPOENED IN CBS LIBEL CASE.

In a related development in the case, attorneys for Buchanan asked a federal judge in Washington to cmmpel Minneapolis Tribune Washington correspondent Finlay Lewis to reveal the names of people he spoke with at CBS about the Buchanan incident. At the time, Lewis was preparing an article on "mistakes" in news coverage of Watergate later published in the November-December issue of the Columbia Journalism Review.

They argued the information Lewis had gotten in his interviews at CBS "went to the heart of their case" and was not available from other sources. In a July 18 opinion, U. S. District Court Judge Thomas A. Flannery refused to order Lewis to reveal his sources at CBS or to answer questions about his discussions there.

He concluded that Buchanan had failed to demonstrate that Lewis' information was crucial to his claim and said that newsmen's sources should only be sought as a "last resort". Flannery noted that Buchanan's lawyers had not yet questioned CBS anchorman Walter Cronkite about information he may have in the matter.

19. NBC WINS LIBEL CASE ON INDIANS DOCUMENTARY

In 1969, NBC televised on its "First Tuesday" program a documentary dealing with the cultural and social problems of American Indians. The 26-minute documentary, "Between Two Rivers," focused on Thomas White Hawk, a South Dakota Sioux Indian who had been sentenced to death after pleading guilty to murder in 1967.

During the program, the network presented a three-minute segment on the 1969 shooting and killing of an Indian by a white rancher, Baxter Berry, and his subsequent acquittal. The segment was later characterized by a federal appeals court as being "unsympathetic" to Berry.

Berry, in a one-million dollar suit against NBC, alleged that the documentary invaded his right to privacy by placing him in a false light before the public.

Berry claimed that the documentary implied that he benefited from a double standard of justice: one for Indians and another for whites.

NBC argued that the statements broadcast were true; that the documentary did not invade privacy since Berry was a public figure involved in a matter of public interest; and that the program was protected by the "actual malice" doctrine, which requires a showing that the broadcast was made with knowledge of its falsity or with reckless disregard of truth.

A federal district court jury awarded Berry $25,000. In June, 1973, the U.S. Court of Appeals for the Eighth Circuit reversed and ordered the case dismissed.

The appeals court held that Berry had failed to establish the malice "needed to sustain a verdict against a broadcaster in light of the dictates of the First Amendment."

Berry appealed to the U.S. Supreme Court, but on July 22 the appeal was dismissed by stipulation of both sides.

20. ABC NEWS WINS 7-MONTH TRADE LIBEL INJUNCTION (see this PCN, p.20)

21. OHIO UNIVERSITY EDITORS SUED FOR LIBEL

Reporters for the Ohio University Post wrote an article claiming that campus personnel director, Ward Wilson, gave union Local 1699 president, Tommy Adkins, university information to discredit leaders of an on-campus student union.

The April 26 article said the information contained arrest and university records of student organizers who had recently led a Student Workers Union strike on campus. S. Ezra Goldstein and Gary Putka, authors of the article headlined, "Conspiracy, Record Misuse Alleged", attributed their information to "well placed" union sources.

Wilson denied the charges the day the article appeared calling them "so absurd they hardly deserve comment" and filed a libel suit against reporters Goldstein and Putka and Post editor P. J. Bednarsky, claiming $1 million compensatory damages for injured reputation and $1.5 million punitive damages, for malice. In the complaint, in the Court of Common Pleas in Athens County, Wilson said that the article was "reckless" and was used to convey the impression that he was involved in a criminal conspiracy to violate the civil rights of student union leaders.

22. L.A. TIMES WINS LIBEL CASE IN WATTS RIOT STORY

The Los Angeles Times published a story in 1970 reporting on a shouting match between real estate broker J. Alex Cota, head of a local citizens group, and militant Chicanos outside an inquest into the death of Ruben Salazar, a Times reporter who was killed during disorders in East Los Angeles in 1970.

As Cota was being interviewed for television, the story said, "several youths accused Cota of selling slum housing in East Los Angeles and deploring the riots because of his investments."

Cota, a West Los Angeles broker, sued Times publisher Otis Chandler and two staff writers, Dave Smith and Paul Houston, claiming the story had libeled him.

A Los Angeles County Superior Court granted summary judgment for the newspaper because, under the New York Times v. Sullivan rule, Cota was a public figure and there was no showing of actual malice. The state Supreme Court refused to hear the case and Cota appealed to the U.S. Supreme Court, which declined review.

23. OHIO PAPER PROTECTED IN PUBLISHING CREDITORS

Eight years ago the Lorain (Ohio) Journal published a story listing 43 creditors of Muriel Watt Mead, a real estate developer who planned to build an apartment complex in the town. Ms. Mead filed a 1.34 million dollar libel suit against the newspaper and 18 others (including a lawyer, accountant, a bank and builders). She alleged that the defendants conspired to libel her, charging that the list was a "grossly inaccurate and exaggerated picture of insolvency."

Ms. Mead sought to compel disclosure of the source of the story, but the state court sustained the newspaper's objections under the Ohio shield law.

A state court of common pleas granted summary judgment of behalf of the defendants. That ruling was affirmed in 1973 by an Ohio court of appeals which agreed with the lower court finding that the publication was constitutionally privileged because it was of public interest and actual malice was not shown. The Ohio Supreme Court dismissed an appeal.

Ms. Mead appealed to the U.S. Supreme Court, claiming in part that a state statute granting a reporter the right not to reveal news sources was unconstitutional. Last May, the Supreme Court denied review.

24. BANKER FILES LIBEL SUIT AGAINST FOUR NEWSPAPERS

Carlo Bordoni, a former director of Franklin National Bank's holding company, charged that four newspapers libeled him with stories saying he was involved in foreign monetary exchange dealings that cost the bank $45 million.

Bordoni claims total damages of $30 million from the New York Times, The Washington Post, the Wall Street Journal and the New York Journal of Commerce. He charges the stories, published in June and July, impaired his reputation and exposed him to "public contempt and scorn" that injured him financially.

The Italian banker, who resigned from the Franklin board June 21, said he was "never involved, directly or indirectly," in Franklin's daily financial affairs and transactions.

25. APPEALS COURT RULES FOR MORE LIBEL TRIALS

A book published three years ago, "The Negroes and the Jews," included a prologue that counterposed the stories of a Jewish merchant in Philadelphia, Max Gordon, with that of "Earl," an anonymous black in Harlem who was quoted as saying that Jewish businessmen cheat blacks.

Gordon filed a $500,000 libel suit against the publisher, Random House, Inc. Gordon, who in 1964 called the Philadelphia Inquirer to recount his experiences during the riot that year, claimed he was libeled by the implication in the prologue that he was a dishonest merchant who cheated blacks.

A U.S. District Court judge dismissed the complaint. The court ruled that Gordon's involvement made him a "public figure" and that he had not shown that the book's author, Lenora E. Berson, had written in "reckless disregard for the truth"--- the libel standard for "public figures."

The U.S. Court of Appeals reversed. It ruled that a publisher sued for libel must go to trial first and give the plaintiff a chance to prove recklessness before a suit can be dismissed.

Random House, in an appeal to the U.S. Supreme Court, argued that the decision will mean that plaintiffs in libel actions will be able to force publishers to trial in most instances. The decision "cannot help but have a chilling effect on the exercise of First Amendment rights," the publisher maintained.

Gordon, in opposing review by the Supreme Court, said the record in the case was sufficient to present a jury question as to whether the publisher had acted in reckless disregard of truth.

26. EX-PUBLISHER SUES JOURNALISM REVIEW

The Columbia Journalism Review in its November-December, 1972, issue published an article by Richard Reeves analyzing the death of the Newark Evening News. The article said the newspaper, which folded two years ago, "was mismanaged, or unmanaged, on a mind-boggling scale by the third generation of the Scudder family," the former owners.

Last January, Richard Scudder, former News publisher, filed a libel suit against Columbia University; Reeves; Alfred Balk, former Review editor; Elie Abel, dean of the Columbia School of Journalism; and Douglas Eldrige, former chairman of the News unit of The Newspaper Guild and the author of a letter about the article to the Review editor.

Scudder claimed the article and subsequent letters and replies to his rebuttal injured his "good name and fame." The article itself, the former publisher alleged, imputed to him "incompetence, dishonesty, and corruption."

The university, in an answer to the complaint filed in New Jersey superior court, claimed the article was published without malice and in good faith. All the writings, the university said, were protected by the First Amendment.

It claimed that statements contained in the article were true and denied that the piece imputed to Scudder incompetence, dishonesty, and corruption.

27. U.S. COURT RULES FOR REBOZO IN LIBEL CASE

Charles G. (Bebe) Rebozo, Florida businessman and close friend of President Nixon, filed a $10 million libel suit against The Washington Post, contending that an October 25, 1973 Post story was published "in reckless disregard of the truth." The story, by reporter Robert Kessler, stated that there was evidence that Rebozo cashed $91,500 in stocks in 1968 after being informed that the stocks were stolen (See PCN IV, p. 6).

A federal district judge in Florida denied a Post motion to dismiss the case. The Post is currently appealing the denial of the motion to the Fifth Circuit Court of Appeals.

28. PROVIDENCE JOURNAL WINS LIBEL CASE

In 1972 George J. Lambert was charged with murder in connection with a shooting death in the Fall River, Massachusetts nightclub he owned. Lambert was acquitted by a jury last year after he testified that he shot the victim in self-defense.

The Providence Journal and Evening Bulletin published several stories about the shooting and Lambert filed a five million dollar libel suit against the newspaper company. He charged the stories accused him of a crime in that they conveyed the "sense and meaning" a murder had been committed for which he had been charged.

On June 19, U.S. District Court Judge Raymond J. Pettine dismissed the suit. He said the four articles "were accurate reflections of the incident and no way stated that the plaintiff had committed murder."

Rosenbloom v. Metromedia News "may well have the practical effect" of giving the news media "total immunity" from libel actions unless stories are proved malicious. (The high court recently limited the Rosenbloom decision. (see p. 6)

29. FLORIDA COURTS SAY PRESS MUST PROVIDE CONFIDENTIAL FINANCIAL INFORMATION

For 15 months beginning in June, 1969, the Palm Beach Post and the Palm Beach Times published a number of stories critical of the administration of the county public schools by then superintendent, Lloyd F. Early. Early brought a libel action against the newspapers, two editors and two reporters in 1970, alleging that the articles were false and were published with knowledge of their falsity or with reckless disregard of truth. He sought more than one million dollars in compensatory damages and two million in punitive damages.

In the pre-trial stages of the lawsuit in August, 1972, the Circuit Court issued an order requiring the newspaper to produce a detailed balance sheet or statement of net worth for a three-year period; a profit and loss statement for the same years; and federal and/or state income tax returns for 1969, 1970 and 1971.

Palm Beach Newspapers, Inc., the parent corporation, had previously answered interrogatories by supplying Early's lawyers with a statement summarizing its total assets, liabilities and net worth for the three years. It refused to provide the additional information and appealed.

In 1973, both the state District Court of appeals and the Florida Supreme Court declined to review the case. The newspapers, in an appeal to the U.S. Supreme Court, argued the constitutional protections afforded the press in libel cases "will be destroyed if broad discovery of confidential financial matters, including federal income tax returns, are forced from a newspaper defendant."

The Supreme Court denied review last January and the case returned to the circuit court.

30. SUPREME COURT DISMISSES ARKANSAS EDITOR'S CRIMINAL LIBEL APPEAL

The U.S. Supreme Court dismissed on jurisdictional grounds July 8 the appeal of an Arkansas newspaper editor charged with violating the state's criminal libel law. The case now reverts to a state circuit court for trial.

Joseph Weston, editor of the Sharp Citizen, was charged with criminal libel two years ago for a story he wrote which called a county judge illiterate and said a local politician owned a still inherited from his father. (see PCN IV, p.8)

The trial judge ruled the law was unconstitutionally vague and dismissed the charges. The Arkansas Supreme Court last November upheld the constitutionality of the law, which provides for penalties of a $5,000 fine and one year in jail.

Meanwhile, Weston faces trial in September on criminal libel charges arising out of another series he wrote attacking officials of Clay County, Ark. Last January, he was jailed for three days on these charges before being released by a federal district court judge.

The law defines criminal libel as "malicious defamation... tending to blacken the memory of one who is dead or to impeach the honesty, integrity, veracity, virtue or reputation, or to publish the natural defects, of one who is living, and thereby expose him to public hatred, contempt and ridicule."

31. APPEAL PENDING ON WOODWARD LIBEL CASE

In November 1973, a Maryland school principal won a $281,000 libel judgment againt the Montgomery County Sentinel after a 1971 article by former Sentinel reporters Bob Woodward and William Bancroft, called him "unsuited" (see PCN IV, p.7).

The reporters refused to identify their school sources. The judge ruled that the defendants were not covered by the Maryland shield law, a decision the reporters are appealing. The case will be heard late this year.

32. BRIT HUME-JACK ANDERSON LOSE LIBEL APPEAL (see this PCN, p.33)

33. MARSHALL FIELD WANTS TOUGHER LIBEL LAWS

Chicago newspaper publisher Marshall Field called June 19 for a toughening of libel laws to allow more reporters and their employers to be sued for reporting errors even if committed without malice.

Field, publisher of The Chicago Sun-Times and Chicago Daily News, said the credibility of the media was increasingly under attack by the public and the administration because of errors ascribed to the "human element". This, he said, included stories slanted by reporters because of emotional involvement or sloppy reporting techniques.

"To encourage more responsible reporting", Field said, "I think an individual who feels he has been wrongly or unfairly treated in a story should be able to sue not just the media that printed--or broadcast --the story, but also the individual who wrote or reported the story."

"I believe that if a person can show" he continued, "after the fact damage to himself or herself, that a person should be able to sue the writer, as well as the communications company for negligence, even if there is no malice."

Field advocated a limit upon the amount a reporter could be held liable for but did not suggest a maximum.

34. HIGH COURT REFUSES TO STOP WOODSTOCK SUIT

Thomas Taggart, a workman who was filmed in the movie "Woodstock" emptying latrines, filed a $1.25 million invasion of privacy suit against the producers, charging that the movie held him up to public ridicule. (See PCN IV, page 7).

A federal district court dismissed the suit, deciding that Taggart was portrayed in a newsworthy event, for which the producers were constitutionally immune from suit. In September, 1973, the U.S. Court of Appeals for the Third Circuit reversed, saying that it was still an open question for the jury to decide as to whether Taggart was a newsmaker or an involuntary "performer" in the film.

The Supreme Court on June 3 let stand the Appeals Court reinstatement of the suit. The case now goes back to the district court.

35. NEW YORK COURT BANS BOOK FOR PRIVACY VIOLATION (see this PCN, p.21)

36. NEW MEXICO PRESS CAN LIST POLICE ADDRESSES

Two years ago the Albuquerque Tribune published a story listing the names and addresses of six police officers involved in the fatal shooting of two burglary suspects, members of a Chicano group called the Black Berets.

The police officers filed a one-million dollar invasion of privacy suit against the newspaper and its city editor, Harry Moskos. They claimed that publication of their names and home addresses had placed them and their property in danger.

In February, New Mexico District Court Judge Maurice Sanchez granted the defendants' motion for summary judgment and dismissed the case, ruling that the newspaper had a constitutional right to publish the information.

LIBEL & PRIVACY

The judge said publication of the names and addresses appeared in a "newsworthy" story and that the newspaper had no duty to afford protection to the police officers. "...If the press were to be restricted in publishing what is news concerning public officials and their actions...then it would indeed be a restriction of freedom of the press," the opinion said.

Citing case law, the judge concluded that the "right of privacy is generally inferior and subordinate to the dissemination of news."

The police officers are appealing the decision to the New Mexico Supreme Court.

37. VIRGINIA SUIT TO EXPUNGE ARREST RECORD (see this PCN, p.65)

38. PENNSYLVANIA PRESS CAN OBTAIN POLICE NAMES (see this PCN, p.66)

39. NIXON LIBEL PROPOSAL STALLED

Earlier this year, President Nixon said he would advocate new legislation to give public figures a broader right of redress against libelous statements (see PCN IV, p. 1). Nixon said his proposal would decrease libel protection for the press established by N.Y. Times v. Sullivan and subsequent cases. To date, no action has been taken on this proposal.

GOVERNMENT MOVES TO PROTECT PERSONAL PRIVACY BY LIMITING MEDIA ACCESS TO PUBLIC RECORD. CRIMINAL JUSTICE INFORMATION

40. FEDERAL LEGISLATION (see this PCN, p.61)

41. JUSTICE DEPARTMENT REGULATIONS (see this PCN, p.62)

42. HAWAII BILL (see this PCN, p.64)

43. FLORIDA LAW (see this PCN, p.25)

GOVERNMENT AND CORPORATE PRIVACY

44. FTC CONSUMER SESSIONS (see this PCN, p.63)

45. AMTRAK CORPORATE MINUTES (see this PCN, p.62)

PRIOR RESTRAINTS/JUDICIAL

46. TREASURY DEPARTMENT MEETINGS (see this PCN, p.63)

47. AT&T COURT PAPERS (see this PCN, p.51)

48. AT&T FILES AT FCC (see this PCN, p.62)

II. PRIOR RESTRAINTS ON PUBLICATION & DISTRIBUTION: (Criminal-Civil)

JUDICIAL

1. JUSTICE POWELL REVERSES PRESS GAG IN NEW ORLEANS RAPE-MURDER TRIAL BUT SAYS PRESS CAN BE GAGGED IN SOME CIRCUMSTANCES

A New Orleans judge ordered the press in June not to report any open court testimony in a pre-trial hearing in a controversial criminal case. The two defendants in the case had been charged with the rape and murder of the daughter of a prominent New Orleans official while she was working as a student nurse in a public housing project.

Responding to a defense motion to limit prejudicial pre-trial publicity, Judge Oliver P. Schulingkamp also barred the press from: 1) publishing interviews with witnesses; 2) reporting the criminal records or prior "discreditable acts" of the accused; 3) publishing any statements of the prosecution or defense bearing on the guilt or innocence of the accused; and 4) making any editorial comment "which tends to influence the Court, jury or witnesses."

Charging that the judge's orders constituted an unconstitutional prior restraint on the press, the New Orleans Times-Picayune appealed. The Times-Picayune pointed out that the trial judge had no authority to prevent publication of out-of-court information, some of which was already in the public domain. The newspaper also argued that the order directly interfered with the right of the press and the public to know about the conduct of public judicial proceedings.

In a 4-3 decision, the Louisiana Supreme Court refused to void the gag order. The Times-Picayune also appealed to the U.S. District Court in Louisiana and to the Fifth Circuit Court of Appeals, but both deferred to the ruling of the state supreme court.

The Times-Picayune, supported by an amicus curiae brief by The Reporters Committee, appealed to U.S. Supreme Court Justice Lewis Powell for a stay of the order.

On July 24, the day the trial began in New Orleans, Justice Powell stayed the gag order "insofar as it imposes direct restrictions on media publication."

In his opinion, Justice Powell said the case "presents a fundamental confrontation between the competing values of free press and fair trial, with significant public and private interests balanced on both sides."

He then noted language in the 1972 Branzburg decision which stated that newsmen might be prohibited from publishing information about trials if such restrictions were necessary to assure a defendant a fair trial.

However, Justice Powell said there was no showing of "an imminent threat to fair trial" to justify Judge Schulingkamp's order.

Justice Powell also rejected The Reporters Committee request to stop the court proceedings pending resolution of the press restriction question saying, "I find that action to be unwarranted and unwise."

2. VIRGINIA SUPREME COURT STAYS GRAND JURY PROCEEDINGS AND THEN VOIDS MEDIA GAG ORDERS

Last spring a multi-million dollar malpractice suit was filed in Albemarle County (Va.) Circuit Court against a local doctor. In April, Circuit Court Judge David F. Berry ordered that the public be denied access to any pleadings, motions and papers filed in connection with any civil suit for 21 days from the day they were filed. The order, Judge Berry's lawyers contended, was motivated in part by his desire to prevent publication of "scandalous pleadings" in the newspaper.

At about the same time--in March--a special grand jury was convened in Charlottesville to investigate alleged misconduct of officials in Albemarle County.

On May 14, the county attorney filed a motion seeking to quash the grand jury proceeding, arguing that the special panel had been improperly chosen because some of its members were prejudiced against the county and officials. Judge Berry ordered that the motion itself be kept secret; held a secret hearing on the motion, barring the press and public; and imposed a gag order on all participants in the hearing with the warning that disclosure of what went on would subject them to being held in contempt of court. Then Judge Berry scheduled another secret hearing on the merits of the motion for May 28.

The Charlottesville Daily Progress, relying on information supplied by unnamed sources, published details about the county attorney's motion and carried a number of stories about the activities of the special grand jury. On May 16, the newspaper and two of its reporters, Douglas Pardue and Benjamin F. Critzer, filed suit in the Virginia Supreme Court to prohibit the judge from denying access to all filed court records and to compel him to open the motion hearing and allow disclosure of filings in civil actions.

A week later, the state Supreme Court, in an apparently unprecedented decision, ordered Judge Berry to suspend the grand jury hearings and to conduct no further hearings until the Court decided the issues

raised by the Daily Progress suit. It was believed to be the first time that any federal or state court had halted a judicial proceeding because of possible denial of the public's right to know about the operation of the court.

Among the intervenors in the case were The Reporters Committee, in a brief also signed by Joseph Dunn, managing editor of the Norfolk Virginian Pilot, and Charles S. Rowe and Edward W. Jones, editor and reporter respectively for the Fredericksburg, Va. Free Lance-Star. Also intervening were the Virginia Press Association and the Richmond News-Leader and Times-Dispatch.

On June 19, the Supreme Court ruled that Berry lacked any state statutory authority for his actions and added, "Nor is there in the record anything justifying such actions under his inherent powers." The Court found it "unnecessary to decide the constitutional issues" raised in the case.

The Court noted that Judge Berry's "sole justification" for the orders was his belief that the county attorney's motion to quash the grand jury proceedings was a "direct attack on the integrity" of the panel and would undermine its investigation. This, however, did not constitute sufficient justification for the orders, the court found. (see p. , for story on New Orleans gag order.)

3. SAN FRANCISCO MEDIA BARRED FROM PUBLISHING REPORTS AND COMMENTS ABOUT ZEBRA KILLINGS (see this PCN, p. 44)

4. APPEALS COURT ORDERS NEW HEARING IN CBS NEWS CONTEMPT

A year ago, U. S. District Court Judge Winston Arnow banned all sketch artists from attending the Gainesville Eight trial and imposed a total ban on the publication of any courtroom sketches. A CBS News artist, Aggie Whelan, drew a sketch from memory which the network broadcast. CBS, Inc. was then held in contempt.

On July 11, the U. S. Court of Appeals for the Fifth Circuit ruled:

(1) that "the total ban on the publication of (all) sketches is too remotely related to the danger sought to be avoided" and is "too broadly drawn to withstand constitutional scrutiny" under the First Amendment.

The court did say, however, that there may be circumstances involved in press coverage of a trial which would warrant a direct prior restraint against the press if it could be shown that publication would pose an "imminent" threat to the administration of justice.

(2) that, in banning the physical presence of sketch artists from the courtroom, the trial judge has "extremely broad discretion to control courtroom activity". But it said it was "unwilling to condone a sweeping prohibition of in-court sketching when there has been no showing whatsoever that sketching is in any way obtrusive and disruptive."

(3) that in line with Dickinson v. U.S.--the news media may be held in contempt for violating invalid prior restraint orders. However, it vacated the contempt and sent it back for a new hearing before a different judge "in view of our determination that the verbal orders issued are unconstitutional" (see Gainesville details - PCN IV, p. 19; also, U. S. v. Dickinson - PCN III, p.4).

5. INDIANA COURT LIFTS SEVEN MONTH PRIOR RESTRAINT ON ABC NEWS

Last November, an Indiana circuit court judge issued an injunction preventing the broadcast of a 43-second crib-burning scene in the ABC News television documentary "Close-up on Fire." In effect, the court charged trade libel.

The crib's manufacturer, Smith Cabinet Manufacturing Co., Inc. of Salem, Ind., obtained the injunction on allegations that the segment --- in which one of its plastic crib is set aflame --- was libelous. ABC complied with the injunction last Nov. 26 and in a June rebroadcast.

It is believed to be the first time a state or federal court had ever issued a prior restraint against network news.

On June 12 the Indiana Court of Appeals reversed the lower court, ruling that the injunction was an unconstitutional prior restraint in violation of the First Amendment. The court cited cases which it said "firmly establish that a prior restraint is not permissible for either a publication or republication of a statement of public interest."

The court rejected the manufacturer's argument that courts can enjoin publication of libelous statements. The "truth or falsity" of the crib-burning segment, the court said, is of "no consequence" in deciding whether to permit a prior restraint.

The court returned the injunction to the lower court for dismissal. Once the injunction is lifted, an ABC spokesman said, the network will broadcast the crib-burning segment nationally. Still standing is the crib manufacturer's claim for $5.5 million in damages.

6. APPEALS COURT HEARS CIA BOOK SUPPRESSION ORDER

U. S. District Court Judge Albert Bryan handed down in April a largely favorable decision to authors Victor Marchetti and John Marks in their continuing two year legal battle to publish an uncensored version of their controversial book on the CIA (see PCN IV, p. 43).

Judge Bryan ruled that the book--"The CIA: The Cult of Intelligence"--could be published if 27 items, which he decided contained classified information, were deleted. The CIA had originally sought 339 deletions before reducing that number to 168 by the time of trial.

Both parties appealed Judge Byron's decision to the Fourth Circuit Court of Appeals where oral arguments were heard June 5. The government argued that all 168 items should remain deleted from the manuscript. Marchetti and Marks argued that the information was not a clear and present danger to the national security under the Pentagon Papers decision.

The book was published earlier this year by Alfred A. Knopf, Inc. with 168 blank spaces in place of the 168 deletions sought by the CIA.

7. NEW YORK COURT BANS BOOK DISTRIBUTION

A book published in New York last year detailed in anonymous fashion the case history of a former woman psychiatric patient whose treatment had ended a decade ago. The patient had been treated for seven years by a psychiatrist who co-authored the book with her husband, a psychotherapist.

The former patient sought to enjoin distribution of the book, "In Search of a Response", on the grounds it violated the physician-patient privilege. In April, 1973 the Supreme Court of New York issued a preliminary injunction against further circulation of the book, limiting its distribution solely to scientific and medical channels and barring it from distribution to the general public.

Noting that there was an "implied if not express agreement" that confidence would be respected, the court said an injunction was an appropriate remedy "when confidential information is learned, in confidence, under a contract that it shall not be disclosed."

The Appellate Division affirmed the issuance of the injuction and broadened it to prohibit any distribution. Last December, the Court of Appeals, the state's highest court, affirmed.

Lawyers for the authors and the publisher, who are identified in court papers only as Joan Roe, Peter Poe and Coe Press Inc., appealed to the U.S. Supreme Court. They claimed that the issuance of the injunction represented an unconstitutional prior restraint of freedom of the press in violation of the First Amendment.

On May 28 the Supreme Court agreed to hear the case.

8. FLORIDA LAW BARS PUBLICATION OF ELECTION DAY CRITICISM
(see this PCN, p. 2)

PRIOR RESTRAINTS/JUDICIAL

9. PLAYBOY ALLOWED INTO TENNESSEE PRISON

In April, 1973 prisoners of Fort Pillow State Farm in Tennessee filed suit in the U.S. District Court for the Western District of Tennessee against warden J.W. Norvell to enjoin the further exclusion of Playboy magazine from the prison.

Last December 3, Chief Judge Bailey Brown ordered prison officials to allow prisoners to receive Playboy because it was an approved publication of the American Correctional Association not presenting any danger to the institution.

State officials have appealed to the 6th Circuit Court of Appeals where argument will be heard in the fall.

10. PUBLIC EMPLOYEES MAY BE FIRED WITHOUT A HEARING FOR CRITICISM OF GOVERNMENT.

In a case which may have a direct effect on the ability of government employees to publish newsletters critical of government performance, the Supreme Court has ruled that public employees have no constitutional rights to a "due process" hearing before they are discharged for "cause."

The "cause" in the case was a statement by an Office of Economic Opportunity employee that his superior was attempting to obtain improper payments from a grantee. OEO, in firing the worker, said the statement was "reckless".

11. FEDERAL COURT SAYS GOVERNMENT EXEMPT FROM COPYRIGHT ACT

The National Institutes of Health--like most scientific research and teaching facilities in the United States--frequently reprints--without permission or payment of royalties--numerous copies of copyrighted articles from scholarly and popular journals for distribution to its staff, students and various library facilities.

This "age of the Xerox machine" phenomenon was challenged in a law suit filed by a publisher of medical journals against NIH and the National Library of Medicine. The suit claimed that the reproduction policy violated the 1909 copyright act.

A single judge of the U. S. Court of Claims ruled that the government had violated the act and was liable for damages. This decision was reversed by a 4-3 vote of a Court of Claims panel.

The court held the copying constituted "fair use" in light of the fact that it was being done by federal nonprofit institutions involved in medical research. In its narrow decision, the court stressed that the "problem of photo and mechanical reproduction calls for legislative guidance."

PRIOR RESTRAINTS/CRIMINAL

The publisher, Williams & Wilkins Co., appealed to the Supreme Court, which on May 28 agreed to hear what is being viewed as a ground-breaking copyright infringement action.

12. SUPREME COURT TO REVIEW FEDERAL POLITICAL AD CASE

In enacting the 1971 Federal Elections Campaign Act, Congress gave the print media major responsibility in a scheme designed to limit media spending by candidates for federal office (See PCN IV, p.44). No publication could print any paid advertisement either "in behalf" or "In derogation" of a candidate for federal office without first obtaining special certification.

In response to a suit challenging the law's constitutionality, a three judge federal panel struck down the challenged section of the 1971 act as a prior restraint violation of the First Amendment. The Justice Department appealed to the Supreme Court which agreed to hear the case when the court resumes next October. The New York Times refused to carry the ad.

13. SUPREME COURT TO REVIEW TV BAN ON LOTTERY NEWS (see this PCN, p.78)

14. STATION BARRED FROM BROADCASTING COMMENTS ON EDITOR'S CONTEMPT

In the Will Lewis case (KPFK-FM) (see this PCN, p.31), the trial judge barred all "parties litigant" from commenting to the news media. As Lewis was subpoenaed in his representative capacity for the station, this order was interpreted as barring station personnel from commenting on the case. That order was later modified, permitting comment by station personnel.

CRIMINAL

15. SUPREME COURT TO HEAR EDITOR'S APPEAL OF CONVICTION FOR ABORTION ADVERTISEMENT

The U.S. Supreme Court agreed July 8 to hear the appeal of the editor of a Charlottesville, Virginia underground newspaper who was convicted and fined $500 in 1971 for publishing an advertisement for an abortion referral service in violation of state law. (See PCN IV, page 47).

The Virginia Supreme Court has twice upheld the conviction of Jeffrey C. Bigelow, editor of The Virginia Weekly, based on a state law that makes it a misdemeanor to advertise "or in any other manner encourage or prompt the procuring of an abortion." The Virginia court said the First Amendment does not bar government regulation of commercial advertising.

In his appeal, Bigelow argued that the advertisement contained important newsworthy information entitled to First Amendment protection. Even if the advertisement could be characterized as "purely commercial," he maintained, the state had no legitimate interest in prohibiting it since most abortions are legal.

16. U.S. SUPREME COURT UPHOLDS CRIMINAL LIBEL TRIAL FOR EDITORIAL (see this PCN, p.13)

17. SUPREME COURT UPHOLDS COURT MARTIAL FOR SERVICEMEN WHOSE STATEMENTS "PREJUDICE GOOD ORDER AND DISCIPLINE."

In an opinion which may severely discourage underground servicemen's newspapers, the Supreme Court has upheld the constitutionality of the two general court martial articles which forbid "conduct unbecoming an officer and a gentleman" and conduct "prejudicial to good order and discipline."

The two articles were attacked as being too vague and as infringing on freedom of speech. The plaintiff was former Captain Howard Levy who was convicted for verbally criticizing the war in Vietnam while on duty at Fort Jackson, S. C.

The Supreme Court also refused a similar challenge by former Marine Private Mark Avrech, who was convicted for attempting to duplicate an antiwar statement while serving in Vietnam.

LEGISLATIVE

18. CIA ASKS PRIOR RESTRAINT AGAINST MEDIA PUBLICATION OF NATIONAL SECURITY INFORMATION (see this PCN, p.59)

19. ADMINISTRATION BILL SEEKS CRIMINAL PENALTIES FOR PUBLICATION OF NATIONAL SECURITY INFORMATION (S. 1400) (see this PCN, p.59)

20. SENATE REVERSES ELECTION EVE NEWS BAN

On April 3, the Senate approved an amendment to the Federal Elections Campaign Act of 1974 (S.3044) which would have made it illegal to disclose vote totals in presidential elections before midnight, EST, on the day of the election (see PCN IV, page 44).

Senator Henry Bellmon (R-Ok.), sponsor of the amendment, contended that the publicizing of returns while citizens are still voting has a "negative impact" on free elections. News media representatives viewed the amendment as a prior restraint on the publication of news.

Media opposition to the Bellmon amendment however, was muted later the same day it was adopted when the Senate approved a substitute amendment introduced by Senator Peter H. Dominick (R-Colo.). His amendment, adopted by a 48-42 vote, would close all polls in federal elections simultaneously across the United States. Federal polls in California would therefore close the same moment as polls in New York.

There are currently no bills in the House similar to the Dominick proposal.

21. FLORIDA PASSES PUBLICATION BAN ON TELEPHONE TAPS

The Florida Legislature passed a bill in April that makes it illegal for the news media to print or broadcast the name of any person whose telephones were wiretapped by police under a court order, until the person has been indicted. The ban applies even if the wiretap information is a matter of public record in a court proceeding.

The bill, effective in October, was prompted by a Miami conspiracy case which resulted in media disclosures of wiretaps on persons who were never indicted.

Violation of the law is a felony punishable by prison and a maximum fine of $10,000.

22. HAWAII LEGISLATURE KILLS NEWSPAPER REGULATION BILL

Continuing his running battle with the Honolulu Advertiser and the Honolulu Star-Bulletin (see PCN IV, p.31), Honolulu Mayor Frank F. Fasi sought passage of a bill that would have placed newspapers under the jurisdiction of the state Public Utilities Commission.

The regulatory legislation (H.B. No. 2659-74), introduced during the 1974 legislative session at the mayor's request, would, for example, have given the PUC the authority to regulate the newspapers' "rates, fares, charges, classifications, schedules, rules and practices." The PUC would also have had the authority to halt operations of a newspaper for violation of any statutory provision or any lawful order of the commission.

In April the state attorney general's office ruled that the measure was unconstitutional because it subjected the newspapers to "an intricate and extremely broad statutory scheme of regulation" in violation of the First Amendment.

The Hawaii House Committee on Consumer Protection defeated the bill after the attorney general issued his opinion.

PRIOR RESTRAINTS ON HIGH SCHOOL & COLLEGE PRESS

23. U.S. SUPREME COURT TO REVIEW HIGH SCHOOL PRESS CASE

Three years ago a school board rule prohibited distribution of publications in Indianapolis schools without the prior approval of the superintendent. A group of high school students, whose alternative newspaper had been suppressed, challenged the regulation and in 1972 the rule was struck down as an unconstitutional prior restraint. (See PCN IV, page 46)

The school board issued a new rule prohibiting the distribution of literature "likely to produce a significant disruption" of the educational process. The U.S. Court of Appeals for the Seventh Circuit last December ruled that regulation unconstitutional. The court found the rule was vague and overbroad and endangered the First Amendment rights of students. The court also ruled that a publication containing a "few earthy words" was not "obscene as to minors."

Since lower court rulings in their favor students have distributed several issues of the newspaper that prompted the litigation.

The Indianapolis Board of School Commissioners asked the U.S. Supreme Court to review the decision, claiming that the appeals court wrongly applied to school disciplinary measures the constitutional standards for vagueness and overbreadth applicable to criminal laws. The board also argued that the lower court wrongly assumed that the power of school officials to control the press-related activities of minors did not exceed the scope of state authority over adults, and maintained that the student newspaper in question was obscene to minors.

On June 3, the Supreme Court agreed to hear the case.

24. SUPREME COURT TO DECIDE IF HIGH SCHOOL STUDENTS CAN BE EXPELLED WITHOUT A DUE PROCESS HEARING

The Supreme Court has agreed to hear a case involving the due process rights of high school students. The case may help define the rights of student reporters who find themselves in censorship conflicts--sometimes involving threatened suspension--with school officials over the content of publications.

The case involves two young women from Mena, Arkansas High School who claim their due process rights were violated when they were expelled without a full hearing after having allegedly "spiked" punch at a home economics class party.

25. U.S. SUPREME COURT LETS STAND COLLEGE FREE PRESS RULING

The University of Mississippi refused to publish two issues of a student literary magazine in 1972 because two articles about the emotional problems of young black men contained frequent use of the word, "fuck." (See PCN IV, page 45)

A federal district court ordered the university, which provided the major financial support for the publication, to publish the magazine. The U.S. Court of Appeals affirmed the decision, saying the language is "commonplace in various strata of society" and is protected under the First Amendment from censorship by a state university, which is "an arm of the state."

In an appeal to the Supreme Court, the university said the magazine was an "official publication" of the school and as such may be censored or cancelled at the discretion of university officials.

On May 13, the high court refused to review the decision. Chief Justice Warren Burger, in a special concurrence, said he was basing his decision not to review on his reading of the district court order "as not requiring the University to continue to make available to the respondents (the students), at public expense, facilities of the University for the production of any future publication.

"Those attending a state university have a right to be free from official censorship in their speech and writings, but this right does not require the University to commit its faculty or financial resources to any activity which it considers to be substandard or marginal quality."

26. U.S. DISTRICT COURT UPHOLDS HIGH SCHOOL CENSORSHIP

Last year a Baltimore high school principal, James Hackman, banned the distribution of two student newspapers at Woodlawn Senior High School. The ban on the Woodlawn Lampoon and Today's World, both privately owned and mimeographed for distribution, was initiated after school officials termed the Lampoon obscene.

Last December, editors of both papers filed a class action suit against members of the Baltimore County Board of Education. The complaint alleged that the board's high school press regulations were vague and violated First Amendment protections against pre-publication censorship and requested declaratory and injunctive relief.

A U.S. District Court judge denied the injunction but ordered the Board of Education to redraft its regulations defining obscene and libelous material to conform with constitutional requirements. In addition, the judge concluded that pre-publication censorship of secondary school publications was permissable if censorship regulations provided "narrow, objective, and reasonable standards by which the material can be judged."

...judge rejected two sets of revised regulations before ...ing a third set on May 30. The new regulations narrowed the ...'s definition of libel and obscenity. They also allowed school administrators to review in advance all school publications for libelous and obscene material or information which would "disrupt school functions."

The newspaper editors, represented by the Baltimore ACLU, are appealing to the U.S. Court of Appeals for the Fourth Circuit, challenging the board's right to exercise a prior restraint of high school newspapers.

27. L.A. BOARD GIVES PRINCIPALS POWER TO CENSOR HIGH SCHOOL NEWSPAPERS

The Los Angeles Board of Education's policy governing student newspapers gave school advisers and administrators "the authority to censor when necessary."

The Los Angeles Journalism Teachers Association urged the board to abandon that policy. On April 22, the board of education rejected a proposal that would have limited censorship to articles considered libelous, obscene or disruptive.

The board adopted a new rule which states that student newspaper articles "should reflect all areas of student interest, including topics about which there may be dissent and controversy."

The new policy continued the discretionary powers of principals to have the "ultimate decision" about the content of student newspapers. The journalism teachers regard the revised rule as unconstitutional and plan to sue.

STREET SALES AND NEWSRACK BANS

NEWSPAPER STREET SALES BANNED IN FOUR CITIES

Recently, several western cities have enacted "newsrack ordinances" designed to increase regulation of the location and use of sidewalk newspaper vending machines, especially in downtown areas. The cities say the ordinances were enacted for health,safety and aesthetic purposes, claiming that racks and vending machines block pedestrian traffic and are unsightly.

28. EL CAJON, CALIFORNIA

On August 17, 1973, the El Cajon City Council adopted a city ordinance banning all newsrack stands from the public sidewalks in an attempt to "protect the health, wealth and safety" of the citizens and improve the city's appearance. Publishers of The Door to Liberation, an alternative newspaper, challenged the ordinance and won a permanent injunc-

tion January 25 against its enforcement. A San Diego Superior Court judge said: "Newspapers cannot be considered in the same category as the sale of commodities upon the street. The sale of commodities on a street enjoys no constitutional right or privilege whatsoever. But the dissemination of information on the street has always been recognized as one of the most important methods of dissemination of information."

29. BURBANK, CALIFORNIA

Last December, the Burbank City Council adopted a newsrack ordinance, effective January 7, 1974, that limited newsrack stands to a six-block area known as the Golden Mall. On December 27, the California Newspaper Publisher's Association,together with other publishers, filed a suit seeking a preliminary injunction and declaratory relief.

The complaint alleged that the ordinance violated the first amendment and was an unlawful exercise of the police powers. A Los Angeles County Superior Court judge enjoined the city from enforcing the ordinance.

30. LOS ANGELES

On May 2, 1974, the Los Angeles City Council adopted an ordinance banning the sale of newspapers in newsracks containing pictures of nudes visible to the public.

Joan Carl, a Los Angeles resident, filed a taxpayer suit seeking injunctive and declaratory relief against the ordinance.

Her complaint alleged that city officials were wasting public funds attempting to enforce the ordinances which she claimed violated freedom of the press. In addition, she said the ordinance was unconstitutional because it encroached upon the exclusive jurisdiction of state law.

In June, a Superior Court judge for the County of Los Angeles granted a preliminary injunction.

31. COURT VOIDS BAN ON STREET SALE OF "GOODS"

Last year Vivian Welton was found guilty of violating a provision of the Los Angeles municipal code that prohibits the street and sidewalk sale of goods. Excepted from the prohibition were "newspapers and other news periodicals." Welton was arrested for selling maps with directions to movie stars' homes. She appealed the conviction.

The appellate department of Superior Court declared the provision unconstitutionally overbroad on its face and in conflict with the First Amendment. The court observed that although the ordinance excepted news periodicals and newspapers, it effectively banned the sale of other written material entitled to First Amendment protection such as political pamphlets and religious tracts.

32. SEATTLE

The Seattle City Council adopted an ordinance October 9, 1973 regulating the placement of newsracks on public property and requiring owners to pay annual "permit fees" up to about $15 per newsrack beginning last March.

On March 28, attorneys for the Seattle Post-Intelligencer challenged the constitutionality of the ordinance.

A U. S. District Court Judge granted a preliminary injunction April 12 preventing the city from enforcing the ordinance pending a full hearing later this year on its constitutionality.

III. PROTECTION OF CONFIDENTIAL SOURCES AND INFORMATION

JUDICIAL DEVELOPMENTS: STATE AND FEDERAL

1. WILLIAM FARR GIVEN 5 DAY SENTENCE; NEW SUBPOENAS EXPECTED

In 1971, reporter William T. Farr was found in contempt for refusing to identify two attorneys who gave him information for a story he wrote during the 1970 Charles Manson murder trial. Farr, who now writes for the Los Angeles Times, spent 46 days in jail before he was freed in January, 1973, pending federal appeals.

A California appeals court last January ruled Farr could avoid further imprisonment if there was a "substantial likelihood" that he would never reveal his sources. The court returned the case to Superior Court for a hearing on that issue, where Farr was supported by testimony of Walter Cronkite of CBS News, Tom Brokaw of NBC News and Jack Nelson of the Los Angeles Times.

On June 20, Superior Court Judge William H. Levit ruled "there is no substantial likelihood that further incarceration of Farr will result in his compliance with the court's order to reveal the identity of his sources." The judge removed the threat of an indefinite jail sentence with the observation that in the news profession there is an "established articulated moral principle" protecting the confidentiality of sources.

Judge Levit found that further jailing of Farr "will not be coercive but rather punitive" and limited further incarceration to the maximum allowed under California law--five days or a maximum $500 fine or both for each count. Farr refused to answer 13 questions under oath when he was ordered to identify the two attorneys three years ago.

In June, Farr refused to answer six questions asked by the Los Angeles County Grand Jury during its investigation into possible perjury charges against two lawyers who, the grand jury claimed, gave the reporter his information. Farr has said only that he got the information from two of the six lawyers in the Manson case.

Farr was initially held in contempt by Superior Court Judge Raymond Choate for refusing to answer the grand jury's questions, but Judge Choate later reversed his ruling.

Despite the favorable ruling, Farr's legal problems aren't over yet. He expects to be called to testify about his sources if the cases of Vincent Bugliosi and Daye Shinn, the prosecutor and defense attorney indicted for perjury, go to trial. And on July 29, Superior Court Judge Charles Older sentenced Farr to five days in jail and fined him $500 for contempt of the judge's orders in 1971 to reveal his sources.

Still pending in the U.S. Court of Appeals for the Ninth Circuit is his federal appeal of the 1971 contempt citation.

2. LOS ANGELES RADIO REPORTER JAILED FOR REFUSING TO TURN OVER INFORMATION AND TO ANSWER QUESTIONS ABOUT NEWSROOM ACTIONS; CASE COULD THREATEN STATE SHIELD LAW PROTECTION

Pacifica radio station KPFK-FM in Los Angeles received a photocopy of a letter from the radical "Weather Underground" on March 31st claiming credit for the bombing of the office of California Attorney General Evelle Younger.

A week later, KPFK said it obtained a tape recording made by the Symbionese Liberation Army which contained a statement by Patricia Hearst.

KPFK station manager Will Lewis gave copies of the letter and the tape to law enforcement officials. He refused to turn over the original letter and tape on the grounds that this action would compromise the station's trust relationship with radical groups and might lead -- through fingerprints or other scientific tests -- to the sources who supplied the information. Other media groups, which received the letter, had turned over their copies to the FBI.

Lewis was subpoenaed by a federal grand jury and asked to turn over the tape, the letter and to answer a series of questions about the internal newsroom handling of the tapes and the letter. Lewis refused all three requests, was held in contempt by U.S. District Court Judge Andrew Hauk Jr., sentenced immediately to prison and was placed in "deep lock" at the Terminal Island federal prison -- a five-by-seven foot cell, 15 minutes exercise and other restrictions for 16 days until U.S. Supreme Court Justice William O. Douglas ordered him free pending appeal.

In his appeal, he claimed a lack of due process in the contempt hearing and alleged government wiretapping. The Reporters Committee submitted a brief arguing that the federal court should have followed the California newsperson's privilege law.

The Committee said a refusal to follow the state privilege law in a federal court would, in effect, jeopardize newsperson privilege laws in 25 states because most serious crime today can be investigated by both a federal or a state grand jury. In addition, the federal grand jury -- having obtained the information -- could then turn it over to the state grand jury.

On July 19th, the Court of Appeals affirmed the contempt. It said that the case was covered by the Supreme Court decision in the Branzburg/Caldwell case and that, in addition, neither the Weather Underground nor the SLA sources had requested annonymity. It did not mention the California shield law problem. A Supreme Court appeal is planned.

Note: Pacifica stations have been subjected to considerable legal problems stemming from their radical contacts. Its New York station manager was held in contempt two years ago (see PCN I, p.5) and its offices in San Francisco were subjected to a no-notice search warrant (see PCN IV, p.25).

The case has caused considerable controversy in Los Angeles. The Los Angeles Times, in a June 20 editorial, said it had turned over its Weather Underground letter because there was no request for confidentiality.

3. MASSACHUSETTS COURT SAYS REPORTERS CAN PLEAD SELF-INCRIMINATION TO PROTECT SOURCES

In February, 1974, Lowell (Mass.) Sun city editor Kendall Wallace and investigative reporter Frank Phillips wrote a series of articles exposing an alleged extortion scheme involving two town officials. The County District Attorney's office investigation turned up no evidence in the case but subsequently, the U.S. Attorney's office in Boston launched an investigation and indicted the officials.

In June, another Sun story identified two more town officials as part of the alleged extortion operation. A Middlesex County grand jury then petitioned Superior Court Judge Joseph Ford for permission to question Wallace and Phillips regarding the source of their information.

In response to the grand jury petition, both newsmen pleaded the First and Fifth Amendments. Judge Ford, citing the Supreme Court decision in the Branzburg case, ruled July 3 that Wallace and Phillips had no First Amendment protection of sources in this case. Instead, the judge upheld the newsmen's claim that they need not divulge the source of their information if it would tend to incriminate them.

The District Attorney is planning to appeal Judge Ford's ruling to the Supreme Judicial Court of Massachusetts.

4. STANFORD DAILY AWARDED $47,500 IN LEGAL FEES IN SEARCH AND SEIZURE SUIT

In December, 1972, U.S. District Court Judge Robert Peckham ruled that a 1971 search by Palo Alto, California police of the Stanford Daily was illegal (see PCN III, p.15 & PCN II, p.14). Peckham said police should attempt first to subpoena materials before seeking a search warrant.

Following a two-year court battle, the court awarded $47,500 to the paper for legal fees. The police plan to appeal.

5. BOB WOODWARD REFUSES TO DISCLOSE SOURCE; APPEAL PENDING (see this PCN, p.14)

6. CBS LIBEL CASE SUBPOENA SEEKS CONFIDENTIAL INFORMATION FROM NBC, ABC & COLUMBIA JOURNALISM REVIEW REPORTER (see this PCN, p.7)

7. SOURCE RELEASES HUME FROM CONFIDENTIALITY PLEDGE; SUPREME COURT APPEAL DISMISSED

Three years ago Edward L. Carey, former United Mine Workers counsel, filed a libel suit against columnists Jack Anderson and Brit Hume for an account published in December, 1970 which said Carey had removed files from a UMW office.

In a pretrial deposition Hume refused to disclose the identity of his source, but a U.S. District Court judge and the U.S. Court of Appeals for the District of Columbia ordered disclosure. Hume then appealed to the Supreme Court, which on May 28 refused to stay the lower court orders.

Two days later the source released Hume from his pledge of confidentiality and the following day the columnist identified the source in a deposition taken by Carey's lawyers. The Supreme Court appeal of the disclosure order was then dismissed by stipulation of both sides.

The libel case is now proceeding to trial.

9. MISSOURI FEDERAL COURT PROTECTS CONFIDENTIAL SOURCES

Last March, Sandy Gilmour, a reporter for CBS-owned KMOX-TV in St. Louis, broadcast a story predicting that a federal grand jury would soon return indictments in connection with the murder of inventor Victor Null. The story, obtained from unnamed sources, did not identify the persons expected to be charged.

8. FLORIDA COURT FORCES PALM BEACH POST TO DISCLOSE CONFIDENTIAL FINANCIAL INFORMATION (see this PCN, p.13)

The next day the grand jury returned a 12-count indictment against James H. Calvert and his son, Ronald F. Calvert. They were charged with mail fraud and conspiracy to have Null murdered to collect over two million dollars in life insurance.

The Calverts' lawyers subsequently subpoenaed Gilmour seeking to force him to disclose his source for the report. The lawyers had also sought to compel Lawson Phaby, a reporter for radio station KSD, to disclose his source for a similar story, which Phaby refused to do. The lawyers claimed the stories had prejudiced the grand jury in its deliberations.

Gilmour's lawyer moved to quash the subpoena. In an oral opinion April 26, U.S. District Court Judge N. Kenneth Wangelin granted the motion. According to news reports, he said the media have a constitutional right to protect their sources and can only be forced to tesify "when they are actual witnesses to the commission of a felony."

10. VIRGINIA COURT UPHOLDS LIMITED CONFIDENTIALITY RIGHT FOR REPORTERS

Helaine Patterson, a reporter for the Fredericksburg, Va. Free Lance-Star, wrote a story last year giving details about a murder. Citing a source in the county sheriff's office, she reported that the victim on the night of the murder had spotted two unknown men at the scene of the crime. At the trial, a county sheriff's detective denied making the statements attributed to a sheriff's "spokesman," but admitted talking with a woman reporter from the newspaper on the night of the killing.

Called as a defense witness, Ms. Patterson appeared at the trial, read her story to the jury, but refused to reveal the identity of her source in the sheriff's office, asserting a First Amendment privilege.

In affirming the murder conviction and the trial judge's decision not to require disclosure, the Virginia Supreme Court ruled in April that a reporter's privilege of confidentiality "should yield only when the defendant's need is essential to a fair trial."

The court said that reporters must divulge information in criminal cases when it is not otherwise available and is material to proof of the crime or a defense, or is material to reduction of the charge or mitigation of the penalty.

The court found that the information sought from the reporter in this case was "not material" and that the identity of the source was "irrelevant."

11. U.S. SUPREME COURT DENIES CHALLENGE TO OHIO NEWSMAN'S PRIVILEGE LAW (see this PCN, p.10)

12. CONNECTICUT REPORTER SUBPOENAED BY GRAND JURY

New Haven Journal-Courier reporter Andrew Houlding wrote an article June 21, 1974 containing an admission from a local political figure, William Fernandez, that he forged 150 to 170 signatures on absentee voting ballots used in municipal elections in 1973.

Fernandez later appeared before a one-man grand jury investigating election abuses but reportedly refused to testify. Subsequently, Houlding was subpoenaed to appear before the grand jury July 29 "with any and all papers related to interviews with William Fernandez which were utilized in the article entitled 'Vote Forgery is admitted by Fernandez'."

Houlding has said he "can and will affirm" any story in which "information and comment is directly attributed" but that he will resist attempts to elicit information about his sources.

13. SUPREME COURT SAYS FEDERAL GOVERNMENT HAS UNRESTRICTED ADMINISTRATIVE ACCESS TO CHECKING ACCOUNT RECORDS.

In view of the recent disclosures that the Nixon Administration used its administrative powers to conduct tax, FBI and other types of investigations of the news media, a recent Supreme Court opinion on government access to private bank records may be of some media interest.

The Bank Secrecy Act of 1970--which was primarily designed to stop the flow of organized crime cash to secret foreign bank accounts --contains a provision which requires banks to keep records of every checking transaction over $100 for five years, and permits the Secretary of the Treasury to obtain this information in his sole discretion, if he believes it would provide "a high degree of usefulness to further criminal, tax and regulatory investigations and proceedings."

In April, the Supreme Court, by a vote of 6-3, upheld the constitutionality of the act against a claim that the Treasury seizure power amounted to a "search" under the Fourth Amenment and must be accompanied by a warrant because a checking account is a "financial profile" of a person's political, social, economic and personal affairs.

14. REPORTER SUES FOR PLUMBER WIRETAPS

Former New York Times reporter Tad Szulc filed suit July 15 in U.S. District Court in Washington, alleging that members of the White House "Plumbers" group and the FBI illegally tapped his home and New York Times office telephones in 1971 and burglarized his home in 1973 after he had left the Times.

The suit alleges that the wiretap information was given to former Attorney General John N. Mitchell and White House aides Ehrlichman and H.R. Haldeman. Szulc also claims that unknown government agents broke into his home February 10, 1973, to examine his personal documents and files.

On June 22, 1971, a month before his phones were allegedly tapped, Szulc disclosed in a Times article reportedly based on classified documents that the United States was supplying military materials to Pakistan after the State Department claimed the shipments had stopped. In White House transcripts released in May, Ehrlichman singled out Szulc's reporting as one of the "very serious breaches" of "national security" prompting formation of the Plumbers unit.

Others named in the suit are former White House staff members H.R. Haldeman, David Young, and former assistant FBI Director Clyde Tolson, in his capacity as executor of the estate of former FBI Director J. Edgar Hoover.

Szulc is the first newsman to sue for the Plumber wiretaps under the 1968 Omnibus Crime Control Bill which provides for damages of $100 a day per person with a minimum of $1000. The total of known government wiretaps on newsmen is now at five (See box score).

15. BOX SCORE OF KNOWN GOVERNMENT WIRETAPS ON NEWSMEN

*William Beecher, former military affairs correspondent for The New York Times, now Deputy Assistant Secretary of Defense for Public Affairs.

*Henry Brandon, correspondent for The Sunday Times, London, based in Washington, D.C.

*Marvin Kalb, diplomatic correspondent for CBS News.

*Hedrick Smith, former New York Times diplomatic correspondent in Washington, D.C., now chief of the Times' Moscow bureau.

*Joseph Kraft, nationally syndicated columnist.

16. FEDERAL JUDGE ORDERS SALLY QUINN TO TESTIFY

In April the Department of Justice subpoenaed Washington Post reporter Sally Quinn to testify at the New York conspiracy trial of former Attorney General John Mitchell and Maurice Stans, former Commerce Secretary. Government lawyers wanted to question Ms. Quinn about the presence of Mr. Mitchell at a Washington political gathering she had covered and not about any statements Mr. Mitchell may have made.

Lawyers for the Post and Ms. Quinn moved to quash the subpoena on April 18, arguing that the Justice Department had failed to follow its own regulations limiting subpoenas of news personnel.

The regulation, issued in 1973, requires that the government "should have unsuccessfully attempted to obtain the information from alternative non-media sources" before issuing subpoenas to newspersons.

Post lawyers also claimed the subpoena was invalid under the New York shield law, which prohibits a journalist from being held in contempt of court for refusing to disclose "any news or the source of any such news" gathered for publication.

U.S. District Court Judge Lee P. Gagliardi rejected the motion on April 19 and three days later Ms. Quinn took the stand to testify about the same matters she had written about in the 1972 Post story on the political fundraiser.

According to a lawyer in the case, Ms. Quinn did not meet in advance with government prosecutors to go over her testimony. Such a tactic--the refusal of potential witnesses to preview their testimony--has in the past discouraged prosecutors from calling journalists to the stand, he said. (see PCN III, p.21 for Justice Department regulations; see PCN II, p.3 for state shield law application to federal proceedings).

17. LUCY WARE MORGAN CASE PENDING

Two criminal contempt of court citations carrying prison sentences of 8 months are still pending against St. Petersburg Times reporter Lucy Ware Morgan for refusing to identify a confidential news source in a grand jury probe (see PCN IV,p.16 & PCN III,p.9).

PROTECTION OF CONFIDENTIAL SOURCES AND INFORMATION: LEGISLATIVE

18. HOUSE GETS NEWSPERSON'S PRIVACY BILL

Rep. Edward I. Koch, D-N.Y., introduced legislation May 22 aimed at providing greater protection for the confidentiality of

news workers' telephone records. The bill (HR 14981) would require a federal court order before telephone or telegraph information could be disclosed. Such an order could only be issued after a court hearing in which the newsperson had an opportunity to participate.

The bill, the "Newsman's Right to Privacy Act," would permit disclosure only if it "will not reveal or threaten to reveal the identity of any source of information with respect to the member of the news media" involved or the court finds that disclosure would serve a "compelling and overriding national interest."

Introduction of the legislation followed disclosures that the American Telephone & Telegraph Co. had on several occasions turned over the records of reporters' long-distance phone calls to the government (see PCN IV, p.24).

19. SENATE CONCLUDES HEARINGS ON PROPOSED EVIDENCE RULES

The Senate Judiciary Committee has completed its hearings on a proposed revision to the Federal Rules of Evidence (H.R.5463) approved by the House in February (see PCN IV, p.28). A Committee report is expected by the end of August.

The revisions, as originally proposed by the Supreme Court, would have eliminated the application in federal courts of state created privilege laws, including newsperson's shield laws. The House rejected these provisions and instead voted to keep intact existing privilege laws.

20. FEDERAL SHIELD BILLS STALLED BY IMPEACHMENT INQUIRY

Federal newsperson's shield legislation appears stalled in this session of Congress. A spokesman for Sen. Sam Ervin's (D-N.C.) Subcommittee on Constitutional Rights said it is doubtful that a bill will be reported out of his committee this session. The committee is currently considering several shield bills, including S-1128 sponsored by Ervin and S-158 sponsored by Sen. Alan Cranston (D-CA) (see PCN IV, p. 27).

In the House, Rep. Robert Kastenmeier's (D-Wisc.) bill (H.R.5928) proposing a qualified shield is still pending before the Judiciary Subcommittee on Courts, Civil Liberties and Administration of Justice. A spokeswoman for the committee said it is not yet known what action will be taken on the bill. "It is just impossible to plan these things while the impeachment hearings are in progress," she said.

21. CONSUMER ACT ENDANGERS NEWS SOURCES

The proposed consumer protection act contains a provision which would permit the Consumer Protection Agency to apply to

a federal court for an order "requiring" any person engaged in a business in interstate commerce to divulge information deemed necessary "to protect the health or safety of consumers" or to discover consumer frauds.

Sen. James Allen (D-Ala.), an opponent of the bill, said it would permit the CPA to force a news reporter to disclose confidential information obtained during the course of an investigation into defective consumer products.

Sen. Abraham Ribicoff (D-Conn.), principal sponsor of the legislation (S.707), maintained the section "clearly prohibits" the CPA from requiring persons to submit information in violation of "any relationship privileged" by law. "If the law holds that a reporter's sources are privileged, the CPA could not obtain the information," he said.

A Ribicoff aide said the section would not apply to reporters because he said, they are not engaged in a "trade or business" within the meaning of the act.

PROTECTION OF CONFIDENTIAL SOURCES AND INFORMATION: EXECUTIVE

22. WHITE HOUSE OBTAINS STAR-NEWS REPORTER'S TAXES AND TELEPHONE INFORMATION

On February 1, 1972, White House Counsel John Dean III sent six administration high officials a memo saying it was not possible to "turn off" an upcoming news story by Washington journalist James R. Polk identifying presidential lawyer Herbert W. Kalmbach as a secret Nixon fundraiser, the Washington Star-News has reported.

Polk's story, which ran in the Star-News in February 1972, under the headline "The Covert Collector", was the first to link Kalmbach with Nixon fundraising efforts.

The memo, which the Star-News said it received in July, 1974, as part of the impeachment inquiry by the House Judiciary Committee said, "Chuck Colson informs me that there is nothing we can do to turn the story off or determine the contents of the article without escalating the matter because of White House interest."

An unsigned financial report of Polk, also dated February 1, 1972, and including confidential information obtained from Polk's income tax returns, was also unearthed by the Judiciary Committee, according to the Star-News. The report noted that a "discreet check" was being made of telephone calls placed from Polk's private home phone. It is not known who prepared the financial report or to whom it was sent. Recipients of the Dean memo included White House aide Charles W. Colson, Nixon advisors H.R. Haldeman and John D. Ehrlichman, Attorney General John N. Mitchell and Press Secretary Ronald L. Ziegler.

23. WHITE HOUSE STARTED TAX AUDIT OF NEWSDAY REPORTER WHO INVESTIGATED REBOZO

The Associated Press reported May 27 that John J. Caulfield, a former White House aide, secretly testified that he instigated a state tax audit of a Newsday reporter, Robert W. Greene, who wrote articles about the financial dealings of Charles B. Rebozo, a friend of President Nixon.

The AP said Caulfield told the Senate Watergate Committee that he discussed the matter with an assistant commissioner of the Internal Revenue Service, who suggested an anonymous letter be sent to state tax authorities. According to a Joint Committee on Internal Revenue Taxation investigation, Mr. Greene was then audited by New York state tax authorities under a federal-state exchange program, the AP said.

24. KISSINGER WIRETAP ROLE DISPUTED

The role of Henry A. Kissinger in the wiretapping of government officials and newsmen prompted a political controversy that brought a declaration from the secretary of state that he would resign unless his name was cleared.

Several newspapers reported June 12 that FBI documents contradicted Kissinger's denials that he had personally initiated the taps on 13 government officials and four newsmen. The newsmen were: Henry Brandon, Washington correspondent for The (London) Sunday Times; William Beecher, former reporter for The New York Times; Marvin Kalb, correspondent for CBS News; and Hedrick Smith, a New York Times reporter formerly based in Washington.

The stories said the documents indicated that Kissinger had phoned then-FBI director J. Edgar Hoover and set in motion the surveillance that led to the taps.

Kissinger has said his role was only to list subordinates with access to documents involved in four major news leaks early in 1969. The Senate Foreign Relations Committee conducted an extensive investigation and has indicated satisfaction with Kissinger's explanation. It voted August 6 to clear Kissinger of the allegations that he lied about his role in the wiretapping.

25. FBI ASKS NEWPORT NEWS REPORTER FOR UNPUBLISHED INFORMATION

Last January, Donald E. Santarelli, then director of the Justice Department's Law Enforcement Assistance Administration, delivered a speech in Williamsburg, Va. In a press release, the International Association of Chiefs of Police criticized a comment that appeared in an original draft of the Santarelli speech which the IACP had obtained from his office. That comment, which indicated support for civilian review boards, apparently was excised before the speech was given.

Reporter Gus Edwards of the Newport News Times-Herald covered the Santarelli speech. Two months later, an FBI agent in Newport News questioned Edwards about the speech, remarks Santarelli made to newsmen, if the official had deviated from his prepared text, and about audience reaction to the speech. Edwards said he referred the agent to his newspaper story.

The FBI said the inquiry was prompted by the IACP criticism of Santarelli's speech.

The agent's "only mission," an FBI spokesman said, was to determine if the reporter had a tape recording or transcript of the speech.

The FBI spokesman, George Quinn, said the bureau's actions represented neither an "inquiry" or an "investigation," but rather a "desire to clarify something for our own interest." He said, "our people wouldn't have hesitated to contact a friendly newsman in a matter like this." He disclaimed any FBI desire to "compromise" the newsman.

26. AP PHOTOGRAPHER FIRED FOR GIVING FBI UNPUBLISHED INFORMATION

In early 1971 James Mone, an Associated Press photographer, was covering the 71-day Indian takeover of Wounded Knee. Mone testified on April 15 in U.S. District Court in St. Paul, Minn. that he had given FBI agents manning a blockade outside the South Dakota town information about the number of persons inside the village, the number of weapons in their possession and details of statements the Indians had made.

The photographer was subpoenaed at a pre-trial hearing at the request of attorneys for defendants for two American Indian Movement leaders, Russell Means and Dennis Banks. They are charged with larceny, burglary and assault on federal officers.

Eight days after his testimony, Mone was fired from his job in the AP's Minneapolis bureau. Wes Gallagher, AP President and General Manager, said Mone "acted improperly as an impartial newsman," citing a policy forbidding AP staffers from being involved "in any way in any news story."

The Mone suspension drew immediate reaction from top Justice Department officials. Attorney General William B. Saxbe said the firing ran counter to the Justice Department's efforts to encourage citizen participation. Saxbe said the photographer "was not an informer he was a witness." The Justice Department's public information director, John W. Hushen, termed the firing "deplorable" and said news workers "have the same obligation as other citizens to cooperate with law enforcement authorities."

Gallagher responded with a statement acknowledging that "there are cases and circumstances where a journalist, like any other citizen, would have an obligation to report to authorities or testify about criminal events."

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said that the Wounded Knee episode represented a case where the FBI "sought to use a journalist to gather information which they should have been gathering themselves."

The FBI action, Gallagher contended, was in violation of a 1970 Justice Department policy statement that the department "does not consider the press an investigative arm of the government."

2. FBI OBTAINED WOUNDED KNEE INFORMATION FROM UPI PHOTOGRAPHER; UPI ISSUES POLICY STATEMENT

In a second incident involving the questioning of newsmen covering Wounded Knee, the FBI acknowledged in court documents that it interviewed UPI photographer Bruno Torres about what he saw while covering the occupation there last year.

The interview with Torres became known in May after federal prosecutors gave the defense in the Wounded Knee trial in St. Paul an FBI report containing information obtained in the interview.

According to the report, agents interviewed Torres in his St. Louis office about two weeks after he left Wounded Knee. Torres was quoted as saying he saw some Indians carrying automatic weapons and observed numerous Molotov cocktails inside the town. The report also said he told agents that he could identify only three American Indian Movement leaders at Wounded Knee and said one, Dennis Banks, was carrying a revolver.

Unlike James Mone, the AP photographer, Torres, now Chicago bureau manager of UPI Newspictures, did not lose his job. Torres, a UPI spokesman said, gave no information to authorities while at Wounded Knee, but answered FBI agents in St. Louis two weeks later.

F.W. Lyon, UPI Newspictures vice-president, said in a statement he was "convinced" that Torres "followed UPI's policy in connection with such matters to the letter." Lyon said Torres volunteered no information but "did reply to their questions concerning actual published photographs which he made at Wounded Knee."

"It is our policy that any photographs or news stories which have been distributed to UPI subscribers and are therefore in the public domain are proper subjects for official inquiry. However, our photographers and reporters are not authorized to act as informants or volunteer other information and we are satisfied that nothing of that type occurred in this case," Lyon added.

28. AT&T RELEASES MEDIA PHONE RECORDS TO IRS; VIOLATES ITS OWN NOTICE PROVISIONS

American Telephone and Telegraph officials, responding to an Internal Revenue Service summons requesting billing records of all Centrex phone systems, failed to follow its own guidelines which require "automatic notification" to subscribers within 24 hours following receipt of a summons or subpoena.

The guidelines were initiated in March following disclosures that AT&T officials had secretly turned over to law enforcement authorities toll call records of reporters and news media organizations. (See PCN IV, page 24).

Two of the media organizations affected, The Washington Post and The Associated Press, said their records were released to the IRS by local telephone companies on June 18, but they were not notified until June 25.

According to an IRS spokesman, the billing records did not include telephone numbers contacted by newsmen, but only contained descriptions of equipment used and total monthly billing charges. The IRS had initiated the audit of Centrex phone billings to determine whether all federal excise taxes on the equipment had been paid.

29. ATLANTA POLICE SPY ON BLACK NEWSPAPER STAFF; GRAND JURY APPROVES

In April, the Atlanta police department planted a policewoman, Marion Lee, on the news staff of the Atlanta Voice, Georgia's largest black newspaper. Lee stayed at the Voice for about two weeks before the newspaper discovered she was working for the police.

A Fulton County grand jury, said to be investigating the incident at Mayor Maynard Jackson's request, in June exonerated the police for its actions in the matter.

"We find justification for establishing an undercover agent to enter liaison with a subject having known radical connections," the grand jury said.

The grand jury did not specify the radical groups the police were interested in, nor did it outline any possible Voice connections with the radical community.

Voice editor J. Lowell Ware, who testified later, said the jurors "wanted to know if the Voice had acted responsibly in printing an article about the Symbionese Liberation Army and expressed the hope that the Voice would do nothing to polarize the community."

IV. PRESS ACCESS TO JUDICIAL PROCEEDINGS AND OTHER FREE PRESS-FAIR TRIAL PROBLEMS

STATE JUDICIARY: ACCESS AND FAIR TRIAL-FREE PRESS

1. VIRGINIA SUPREME COURT STAYS GRAND JURY PROCEEDING BECAUSE OF INVALID SECRET COURT HEARINGS (see this PCN, p.18)

2. LOUISIANA SUPREME COURT AFFIRMS ORDER EXCLUDING PRESS FROM PRE-TRIAL HEARINGS; JUSTICE POWELL ISSUES STAY (see this PCN, p.17)

3. SAN FRANCISCO MEDIA GAGGED ON COURT NEWS

A Municipal Court judge in San Francisco, Agnes O'Brien Smith, imposed a sweeping gag order on the press May 9, restricting news coverage of the so-called Zebra killings. The gag order barred the news media from reporting (1) the prior criminal record or reputation of the accused; (2) the existence or contents of any confession or admission; (3) the identity and testimony of prospective witnesses; (4) the possibility of a guilty pleas, "any opinion," as to guilt or innocence, and the results of any examination or tests or the accused's refusal to submit to such tests.

The gag order applied to lawyers, public officials, including police, and court employees, and to "any newspaper, TV or radio station," "any person connected therewith" and "any person connected in any way with the dissemination of news."

The order allowed the news media only to report the defendant's name, age, occupation and the circumstances of his arrest and nature of the charge. The press could also report from public records and open court proceedings, but not previously unreported convictions.

The gag order, issued the same day three men pleaded innocent to murder charges, was purportedly designed to assure a fair trial for the three.

A day later the San Francisco Chronicle and its broadcasting company appealed the order, claiming that it was a "direct and prior restraint" of free speech and press rights under the First and Fourteenth Amendments.

A three-judge state court panel ruled that the media could publish or broadcast information obtained from sources other than the police, attorneys in the case and other public officials. The order continued the prohibition against the news media reporting "statements, opinions or conclusions" obtained out of court from officials and others connected with the case.

On May 21 San Francisco Superior Court Judge Morton R. Colvin continued the gag order under the guidelines set down by the Court of Appeals. The three men are to be tried in Superior Court.

4. TEXAS MURDER CASE JUDGE EXCLUDES PRESS; REPORTERS CONTACT JURORS' HOMES

District Court Judge Preston Dial barred reporters and spectators from his San Antonio courtroom July 1 as jury selection for the Elmer Wayne Henley, Jr. Houston mass murder trial began. In addition, the judge issued a gag order barring attorneys and witnesses from making public statements about the case.

The defendant, 18-year old Elmer Wayne Henley, was accused of killing six teenage boys and participating in a homosexual torture ring responsible for 27 deaths in the Houston area in 1970.

The trial was moved to San Antonio after the prosecution agreed that Henley could not get a fair trial in Houston because of the extensive news media coverage there.

On July 2, Judge Dial, facing threats of legal action by five media groups including the Associated Press and United Press International, allowed reporters into the courtroom to observe the jury selection.

The gag order on attorneys and witnesses was not lifted and remained in effect.

On July 9, reporters for a San Antonio newspaper called the homes of jurors to interview their families. This caused Judge Dial to warn the 50 newsmen covering the trial not to attempt to talk with jurors or their families in the future or be held in contempt of court. The jury, however, remained unsequestered and motions for a mistrial because of what the defense called the "prejudicial and inflammatory atmosphere" caused by press contacts with the juror's families were denied.

Note: Henley was found guilty on six counts of murder.

(see Houston media coverage details, PCN IV, p.17)

5. PENN. SUPREME COURT VOIDS MURDER CONVICTION BECAUSE OF PRE-TRIAL PUBLICITY FROM PROSECUTION

In January, 1970, Alan D. Pierce was found guilty of the first degree murder of a seminarian in Media, Pennsylvania the year before. Area newspapers carried stories reporting that Pierce had admitted to police that he was the "trigger man" and relating his prior criminal record. One newspaper, the Delaware County Daily Times, published two pictures, one of which showed Pierce at the scene of the crime with police.

The Supreme Court of Pennsylvania reversed the conviction and ordered a new trial. It held that Pierce had been denied due process because the trial court denied his motion for a change of venue. "We hold that the nature of the accounts released by the police were so 'inherently prejudicial' that Pierce need not have shown a nexus between the publicity and actual jury prejudice..." the court said.

The court ruled that policemen and the staffs of district attorneys shall not release to the news media: (1) the existence or contents of any statement given by the accused or a refusal to give a statement or take tests; (2) prior criminal records; (3) "any inflammatory statements" as to the merits of the case of the character of the accused; and (4) the possibility of a guilty plea.

The state supreme court also ruled that authorities should not "deliberately pose the accused for photographs at or near the scene of the crime, or in photographs which connect him with the scene of the crime."

The state appealed to the U.S. Supreme Court, arguing that pre-trial publicity "was notof such a degree" as to preclude a fair trial. The Court refused to hear the case in November. Pierce is awaiting retrial.
(see p.51 for related issue in Abbott Labs case)

6. ATTORNEY SAYS HE HAS RIGHT TO TALK TO PRESS

Last January, Philip J. Hirschkop, an Alexandria, Virginia lawyer who frequently represents unpopular causes, was interviewed by reporters about his representation of a Virginia prison official who was under criminal indictment.

Hirschkop, who has frequently fought legal battles against prison officials, told reporters that the indicted officials "are good guys."

Four months later, the Virginia State Bar filed a complaint against the attorney, alleging unprofessional conduct in connection with the newspaper publicity. The state bar has said that it is "improper for an attorney to acquiesce in the publication of comments in a newspaper concerning causes in which he is engaged or to pose for newspaper pictures to be used in connection with a story about his client's case."

Hirschkop, in a suit filed in U.S. District Court in Richmond, challenged the policy as an unconstitutional prior restraint on freedom of speech and press.

The attorney noted that the rule against consultation with the press has been consistently and numerously violated "by numerous public prosecutors."

The policy, he charged, denied him equal protection and due process of law as well as his right to give effective assistance to his clients.

Hirschkop noted that he is frequently sought out by the press as a spokesman on social and legal issues and for comment on cases he is personally involved in and which generate much newspaper publicity.

The policy against consultation with the press, he alleged, violates both his "right to access to the press and the right of the press as guaranteed by the First Amendment to free access to plaintiff and material of public interest."

He is asking the court to void the policy as unconstitutional and to prevent the bar association and its ethics committee from applying it (see p.49 for related story).

7. CONN. SUPREME COURT SAYS MEDIA HAS RIGHT TO COVER TRIAL BUT ISSUES WARNING

George T. Marshall, in an appeal of his 1970 murder conviction, argued the lower court had erred in refusing his motion to bar from the courtroom, when the jury was excused, the only reporter covering the trial.

The Connecticut Supreme Court upheld the conviction July 9 and said the newspaper reporter had a right to be present at the entire

trial. The court, in an opinion by Chief Justice Charles S. House, said a trial is a public event.

The court quoted a 1947 U.S. Supreme Court decision:

"What transpires in the court room is public property...There is no special perquisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit, or censor events which transpire in proceedings before it."

But the court, quoting further from the 1947 decision in Craig v. Harney, said, "It is conceivable that 'a plan of reporting on a case could be so designed and executed as to poison the public mind, to cause a march on the court house, or otherwise so disturb the delicat balance in a highly wrought situation as to imperil the fair and orderly functioning of the judicial process' or that comment on pending cases could create a 'clear and present danger' to the administration of justice."

The court observed, however, there was "nothing to suggest that such a situation existed in this case."

8. N.J. JUDGE HOLDS SECRET HEARING AND THREATENS PROTESTING REPORTER

On June 5, 1974, Elizabeth, N.J. Daily Journal reporter James M. Dolan wrote Superior Court Judge Arthur J. Blake a letter "respectfully protesting" his decision to hear in camera arguments on a question concerning grand jury testimony.

Dolan's letter, which asked the judge to cite authority for his decision to hold a closed hearing, prompted Judge Blake to publicly rebuke Dolan in court for being "impudent". Blake then warned Dolan that he would be held in contempt if his orders were protested again.

The North Jersey Newspaper Guild has joined The Daily Journal in protesting the threatened contempt to State Supreme Court Justice Richard Hughes.

9. LUCY WARE MORGAN HELD IN CONTEMPT FOR GRAND JURY STORY (see this PCN, p.37)

EXECUTIVE-LEGISLATIVE: ACCESS AND FAIR TRIAL-FREE PRESS

10. WISCONSIN KILLS BILL RESTRICTING REPORTING ON GRAND JURIES

The Wisconsin State Senate in April defeated a bill that would bar the news media from reporting on grand jury proceedings (see PCN IV, p.20).

The measure, which passed the state assembly last October, would have required that all motions be made in secret and would have prohibited coverage of the coming and going of witnesses.

HAWAII LAW SEALS INDICTMENT RECORDS (see this PCN, p. 64)

FLORIDA LAW RESTRICTS COURT WIRETAP FILES (see this PCN, p. 25)

FEDERAL JUDICIARY: ACCESS AND FAIR TRIAL-FREE PRESS

13. FEDERAL COURT JUDGES TO HAND DOWN SECRET OPINIONS

The Judicial Conference of the United States, in an effort to reduce the time federal judges spend writing opinions, is expected to adopt a new rule this September that would severely restrict the availability of written decisions. The rule--in effect in several courts already--would probably discourage judges from writing opinions.

Under the rule, a judge could order the court clerk not to publicly post an opinion if he decided it presented no novel question of law. Only parties to the case would receive the opinion, which could not be cited as legal authority in federal courts.

The news media now generally learn about opinions by monitoring those handed out publicly in the clerk's office. But under the proposal, the media could locate the opinion only if they knew about the case and continually checked the docket sheets in case files.

There is strong opposition to the new rule by a representative of the American Bar Association and various law reporting services.

F. Trowbridge vom Baur of the ABA Committee said that the rule "encourages secrecy" and will "undermine public confidence in the court system" because the public and the bar expects "courts to explain their actions".

A Supreme Court spokesman indicated that Chief Justice Warren Burger favors the proposed rule. He said "it makes no sense to publish an opinion on an automobile negligence question when there are already a dozen opinions like it publicly reported." The Federal Judicial Center, headed by the Chief Justice, is now conducting seminars to persuade judges to accept the new rule, which is still in a committee.

The rule, as currently drafted, makes no distinction between routine negligence cases and cases with possible constitutional or political implications.

ACCESS AND FAIR TRIAL-FREE PRESS

14. SUPREME COURT PERMITS KUNSTLER IN TRIAL

Radical attorney, William Kunstler was barred from representing a black radical playwright, Arthur Banks, because Kunstler had given an interview to the Indianapolis Star accusing federal prison officials of racially harrassing Banks. Banks was to be tried on charges of assaulting a federal officer in Terre Haute, Ind. about 100 miles from the Star's circulation area.

Banks claimed he wanted his lawyer to tell the press his side of the story. Kunstler claimed, as an attorney, he had a right to explain his client's point of view to the press. The judge claimed a violation of fair-trial free press guidelines.

The Supreme Court agreed to hear the case and then in June took the unusual action of dismissing the case as improvidently granted. The Court of Appeals had ruled in favor of Kunstler and thus left the appeals court order standing. (see PCN IV, p. 14).

15. U.S. APPEALS COURT VOIDS COURTROOM SKETCH BAN (see this PCN, p. 19)

16. MARYLAND FEDERAL COURT HEARS SECRET WITNESS AND BARS FEMALE REPORTER

Two inmates at the Maryland penitentiary filed suit challenging conditions in the state prison's protective custody section. During a hearing in open court June 12, the plaintiffs' lawyers asked a federal court judge to allow a witness to testify without having his name revealed in open court. They maintained that anonymity was needed to protect the witness from "very very embarrassing publicity."

The witness, a 21-year old prisoner, testified that he sought assignment to the protective custody section after being raped through the steel grating of his cell door by his cellmate and five other men.

A lawyer for the plaintiffs also said that not having the witness' name revealed would encourage others to come forward and testify "about conditions that might be embarrassing to them."

A U.S. District Court judge granted the request and permitted the witness to write rather than state his name. Throughout the hearing he was addressed as "Mr. Witness" by attorneys.

Judge Herbert F. Murray said he allowed the arrangement "because of the fact that he may be called upon to testify to matters that are personally embarrassing to him.

Several days later, the trial formally convened in the Maryland penitentiary for an on-site inspection by the judge and the attorneys. On the recommendation of Maryland prison officials, the judge excluded Washington Post reporter Alice Bonner from the trial inspection tour.

Prison authorities told the Post that Ms. Bonner was barred because she was a woman and might be subjected to "verbal abuse" and the sight of men not fully dressed. "If it had been a male reporter we would have allowed it," one official said.

Ms. Bonner, who has toured several jails as a reporter, said she was told by two officials that she might suffer "psychological damage" if she were allowed to enter.

"My exclusion because I'm a female was just a front. I don't think they wanted a reporter in there," she said later. She was the only reporter covering the trial at the time.

17. WATERGATE JUDGE BARS PRESS FROM JURY SELECTION

U.S. District Court Judge Gerhard A. Gesell, presiding over the trial of former presidential assistant John Ehrlichman, excluded the press and public from some portions of the jury selection process. Gesell held general voire dire (questioning of prospective jurors) in open court with the press present. But in a departure from customary procedure, he next questioned the jurors outside the courtroom with the press absent. Final jury selection was then made in open court in full view of the press and public.

Although this particular procedure is not new--Judge John Sirica used it in the Watergate cover-up trial as did Judge Lee P. Gagliardi in the Mitchell-Stans trial earlier this year in New York -- it represents an increasingly popular method to bar the press from what could be an important segment of public court proceedings.

18. HALDEMAN SEEKS DISMISSAL FOR PRE-TRIAL PUBLICITY

Lawyers for former White House chief of staff H.R. Haldeman asked federal court Judge John J. Sirica on June 27 to dismiss the indictment against him in the Watergate cover-up trial because of massive pre-trial prejudicial publicity.

Haldeman defense lawyers John J. Wilson and Frank H. Strickler also asked permission to put newsmen and government officials on the witness stand to corroborate defense allegations that the pre-trial publicity originated from government sources.

Included in the Haldeman brief was a 123-item summary of news stories published or broadcast between last January 6 and May 20. Defense lawyers characterized the stories as prejudicial to their clients Sixth Amendment rights to a fair trial. Many of the articles were attributed to unidentified government sources and included stories from the three major broadcast networks as well as many large newspapers, with the exception of the Washington Post. The Post reported June 28 that Strickler said the omission "was nothing significant, nothing deliberate."

The brief also referred to the decision of the Senate Watergate Committee to televise its hearings last summer. Defense lawyers argued that the government had in effect given up their right to prosecute Haldeman as a result of that decision.

Judge Sirica has yet to rule on the dismissal motion but said on June 12 that he thinks a fair jury can still be chosen in the District of Columbia. Haldeman's trial is scheduled to begin Sept. 9.

NOTE: Attorneys for six men indicted in the Watergate cover-up case reportedly are planning to renew their efforts to have their client's cases dismissed or moved to a different location following President Nixon's August release of 64 tapes of White House conversations. The Washington Post has reported that the tapes contain information damaging to at least two of the defendants.

19. US APPEALS COURT TO DECIDE INDICTMENT DISMISSAL BECAUSE OF UPI DISPATCH

A U. S. District Court dismissed a criminal drug mislabeling indictment against Abbott Laboratories, Inc. and five current or former employees on the grounds that the Federal Government had conspired to deprive the defendants of a fair trial by giving out prejudicial publicity. The publicity involved was the reprinting by UPI of information from a Public Health Service report linking the mislabeled drug to nine deaths (later revised to 50) and an updated analysis of the drug's bad effects by the Food Drug and Administration (see PCN IV, p. 13).

The Justice Department opposed the dismissal of the indictment, the first reported action of its kind by any federal court. It said a judge could not determine if there was enough unfair publicity to warrant dismissal of the indictment until a jury had been polled. The appeal has been argued and is awaiting decision by the U. S. Court of Appeals for the Fourth Circuit.

20. TEXAS FEDERAL COURT SEALS DOCUMENTS SUBPOENAED IN AT&T CASE

Two years ago, four telephone equipment suppliers filed a civil antitrust suit in Texas against the American Telephone & Telegraph Co. and several of its subsidiaries.

In connection with the suit, the Waco, Texas law firm that represents the suppliers obtained, under court subpoena through pre-trial discovery, AT&T documents, which included transcripts, correspondence and presentations in connection with meetings of Bell System officials. The law firm filed the 87 documents with the clerk of the U.S. District Court in San Antonio where they could be examined by the public and the press.

Last spring, the Washington Star-News published several stories by staff writer Stephen M. Aug detailing the ways that AT&T and its subsidiaries had responded to the pressures of emerging competition. The stories were based, in part, on the documents AT&T had turned over in connection with the antitrust suit.

Lawyers for AT&T, following publication of the Star-News stories and after another company obtained some of the documents, filed a motion with the court to seal the papers, which the company claimed

should never have been placed into the public file until they were to be used at a later trial. The effect of the filing, AT&T claimed, "permits injurious and prejudicial publicity and other misuse affecting defendants' rights."

The company further maintained that the filing would make the documents available for examination by the press and others "for whatever publication or other use anyone might choose to make of them."

AT&T concluded that "businesses no less that individuals have the right to conduct their internal affairs with a reasonable degree of privacy..." The proper needs of parties in the case, the company said, are not served by moving the documents to the "front pages of newspapers."

A main thrust of the telephone company's argument was that the Federal Rules of Civil Procedure do not contemplate the filing of documents obtained through discovery.

In a May 1 order, U.S. District Court Judge John H. Wood, Jr. accepted AT&T's argument and directed that all documents filed in the court, including those already made public, be sealed and opened only as may be directed by the court.

U.S. SUPREME COURT GETS APPEALS IN PRE-TRIAL PUBLICITY PREJUDICE CASES

21. U.S. DISTRICT COURT REJECTS TRIAL PUBLICITY CLAIM

Three years ago Robert Porth was found guilty in a North Carolina court of the first degree murder of his wife and was sentenced to life in prison. Porth filed a writ of habeas corpus in federal district court claiming he was denied a fair trial because of pre-judicial pre-trial publicity.

The Court rejected the claim and observed that "at all times the news media made a special effort to point out" the defendant's contention of innocence. "The mere fact that there was substantial pre-trial publicity is not enough, in and of itself, to give rise to a presumption of prejudice," wrote Judge Eugene Gordon.

The U.S. Court of Appeals for the Fourth Circuit dismissed an appeal and last year the U.S. Supreme Court refused to hear the case.

22. U.S. SUPREME COURT REJECTS PREJUDICIAL PUBLICITY CLAIM

During the Seattle narcotics conspiracy trial of Humphrey Ross, the key government witness who was to link Ross to the other defendants in the case failed to appear. The government said it was because of illness, but an article in the Seattle Post-Intelligencer reported that the witness was afraid of reprisals. (There had already been a mistrial in the same case when the witness had shown too much fear on the stand.)

In generalized questioning only one juror admitted to having seen the headline of the story. He claimed, however, that another six jurors had seen the headline and skimmed the story. Defense counsel declined to poll the jurors individually and instead moved immediately for a mistrial.

The motion was denied and Ross was convicted. The U.S. Court of Appeals for the Ninth Circuit affirmed the conviction, stressing the trial judge's wide discretion in this area. Furthermore, the court said, the headline of the story ("Dope Case Witness Refuses to Testify") was not in itself prejudicial because the jury already knew from the prosecutor's opening statement that the witness was scheduled to testify. The Supreme Court declined to hear the appeal.

23. LOUISIANA SUPREME COURT SAYS JURORS MAY KNOW FACTS OF CRIME

Robert Leichman Jr. was tried and convicted of murdering two deputy sheriffs in Union Parish, Louisiana, in April, 1973. On appeal to the Louisiana Supreme Court, Leichman claimed that three articles printed in two parish newspapers over a two-month period prior to the trial were "spectacular and inflammatory" and that because of the small population (18,000) of the rural parish, the papers' impact (circ. 3,500) was enough to deny him a fair trial.

The court rejected his contention, however, on the grounds that the newspaper articles and other media coverage contained only factual accounts of the killings and subsequent judicial proceedings and under Louisiana law mere knowledge of the facts is not enough to disqualify potential jurors. An appeal is pending before the U.S. Supreme Court.

24. U.S. APPEALS COURT REJECTS MAFIA PRE-TRIAL PUBLICITY AND SAYS JUROR MEMORIES ARE SHORT

In April, 1972, several reputed members of the New York mafia were arrested and charged with conspiracy to sell drugs. Two weeks before the trial, two nephews of one of the defendants, Joseph Manfredi, were killed in a New York vacant lot. Local newspapers carried extensive accounts of the "gangland" executions and referred to Manfredi as a member of "organized crime."

Manfredi moved for a continuance because of the publicity. Although only one juror had even a vague recollection of having read something about the case, Manfredi asserted that under Sheppard v. Maxwell such extreme and inherently prejudicial publicity obviates the need for a showing of actual prejudice in the jury box.

A federal district court judge denied the motion and on appeal was sustained by the U. S. Court of Appeals for the Second Circuit. The appellate court noted that the publicity did not deal with the question of guilt or innocence and that none of the jurors had any recollection of the 10-day old stories.

FREEDOM OF INFORMATION/FEDERAL

Short memories, said the court, are increasingly plausible in this era of "fast moving" news events. The court also stressed that a higher standard of proof of prejudicial impact is required in cases of pre-trial rather than in-trial publicity. The Supreme Court refused to hear the appeal.

ACCESS TO JUDICIAL PROCEEDINGS; LEGISLATIVE DEVELOPMENTS

25. SENATE BILL WOULD SEAL CRIMINAL COURT RECORDS (see this PCN, p.61)

26. JUSTICE DEPARTMENT TO SEAL CRIMINAL COURT RECORDS (see this PCN, p.62)

V. PRESS ACCESS TO EXECUTIVE & LEGISLATIVE FUNCTIONS/FREEDOM OF INFORMATION ACTS

FEDERAL DEVELOPMENTS

1. SUPREME COURT RULES PRESS HAS NO RIGHTS TO INTERVIEW INMATES

Rules in both the federal and California prison systems forbid face-to-face interviews between reporters and inmates. The rules allow the press to tour institutions and converse with inmates met on tours.

The Washington Post and one of its former editors, Ben Bagdikian, challenged the rule, which was struck down as a violation of the First Amendment by a federal appeals court in Washington. The California rule was attacked by Earth magazine and that too was held to be unconstitutional.

But in a 5-4 decision June 24, the Supreme Court ruled that the news media had no constitutional right to conduct the interviews. The court said the constitution does not require the government to give the press "sources of information not available to members of the public generally."

The requirements of prison discipline, the court said, justify the ban because "conspicuously publicized" inmates "tend to become the source of substantial disciplinary problems" for the prisons.

The dissenters argued that prison officials were restricting the free flow of vital information. "For most citizens, the prospect of personal familiarity with newsworthy events is hopelessly unrealistic. In seeking out the news, the press therefore acts as an agent of the public at large," wrote Justice Lewis F. Powell, Jr., one of the dissenters.

FREEDOM OF INFORMATION/FEDERAL

In a companion case, the Supreme Cour. said that inmates had no freedom of speech rights to talk with the news media. Here, Justice Powell, a dissenter in the Washington Post case, joined the majority.

NOTE: The two decisions appear to give prison administrators almost total discretion to ban media interviews with inmates; and would appear to indicate that state and federal legislation is needed if there is to be meaningful media investigative reporting of prison conditions.

2. SUPREME COURT SAYS PRISON OFFICIALS MAY READ INMATE MAIL

The Supreme Court has ruled unanimously that prison inmates have constitutional free speech rights which bar prison officials from stopping or censoring inmate mail merely because it contains "inflammatory political" or "racial" views.

The opinion, however, did give prison officials the right to read inmate mail for such items as plans to escape, and to inspect it for contraband.

The news media have claimed in a series of prisoner interview cases, that prisoners are discouraged from communicating freely to the press because of a fear that mail to reporters is read by prison authorities.

3. BUREAU OF PRISONS REVISES INMATE INTERVIEW POLICY

The Bureau of Prisons, in a policy change announced just before the Supreme Court heard arguments in the prison access cases, said it will allow talks with inmates of minimum security prisons. The revised policy "will permit press interviews subject to reasonable regulations as to place, time and number", said Solicitor General, Robert H. Bork.

A detailed statement of the new policy, released June 10, permits prison officials to disapprove an interview if it "would probably cause serious unrest or disturb the good order of the institution."

The policy also provides for inspection of incoming mail from the news media for contraband "and for content which would incite conduct which is illegal."

4. HOUSE AND SENATE APPROVE FOI ACT AMENDMENTS

The House of Representatives approved in March a series of amendments (H.R. 12471) designed to make the 1966 Freedom of Information Act more useful and accessible to the press and public (see PCN IV, p.35) On May 30, the Senate approved its version of the bill (S. 2543) introduced by Sen. Edward Kennedy (D-Mass.). Although substantially similar, the Senate and House versions have differences that will have to be resolved in conference committee later this year.

The most important amendment of both bills affecting the press requires agencies to respond to information requests within 10 days and appeals of denials within 20 days. The Senate version, however, includes a 10 day time extension for "unusual circumstances".

Under both bills, once the administrative response period is exhausted and the information requested is not forthcoming, the person seeking the information can sue in federal court under an expedited hearing schedule to force disclosure. Both bills make provision for in camera court review to determine whether information withheld falls within the nine categories of exemptions established under the 1966 Act. These include national defense matters, foreign policy affairs and investigatory files compiled for law enforcement purposes. The Senate, however, passed an amendment introduced by Sen. Philip A. Hart (D-Mich.) aimed at increasing access to agency investigative files exempt under the original act.

Another important change suggested in both bills provides that requests for information "reasonably describe" material sought rather than request "identifiable information records".

In addition, the Senate bill requires agencies supplying information to make portions of accessible information available even if other portions are exempted from disclosure. Disciplinary action,--including up to 60 days suspension without pay --against agency officials for improperly withholding information is also provided in the Senate measure. The bills are expected to go to conference committee in August.

5. WHITE HOUSE CLAIMS TOTAL DISCRETION TO BAN ANY REPORTER

The Department of Justice in June filed a motion to dismiss the suit brought by journalists Robert Sherrill and Thomas Forcade challenging the refusal of the White House and the Secret Service to grant them accreditation to use the White House press facilities (see PCN IV, p.33). According to the White House,there are currently about 1500 active press passes.

The motion, filed in U.S. District Court in Washington, said the two journalists have been denied White House press passes because "they constitute a potential threat to the physical safety of the President." No facts were offered to back-up this assertion.

The government argued that the case involved no First Amendment right because it concerned "an inhibition of action," not of speech.

The government said the Secret Service has full discretion to control access to the White House and to exclude all persons, including reporters, considered potential threats to the President. There should be no published criteria for applying this standard, the government said, "because each case is individually assessed and each determination is based upon the protective experience and expertise" of Secret Service officials.

Lawyers for Forcade, a reporter for the Alternative Press Syndicate, and Sherrill, a freelance writer and Washington correspondent for The Nation, claim the denial of accreditation violates the First

Amendment guarantee of members of the press to use publicly supported press facilities on an equal basis unless the government can publicly justify the exclusion.

They also maintain that the government has failed to demonstrate that Sherrill and Forcade are in fact a threat to the President and that they were denied procedural due process because they were granted no hearing on and no facts about the accreditation denial.

The case is still pending.

6. WHITE HOUSE SEALS FILES OF NIXON'S FOREIGN GIFTS

In 1966, Congress passed a law forbidding American officials and members of their families from keeping any gifts from foreign governments worth more than $50. The law requires the President to promulgate regulations for implementing the act. President Johnson delegated the authority to the Secretary of State who in turn authorized the U. S. Chief of Protocol to maintain a list of such gifts.

The gifts must ultimately be turned over to a museum or other public repository or turned over to the General Services Administration for sale.

Washington Post reporter Maxine Cheshire reported in May that Mrs. Nixon and her daughters had received jewelry, including a $52,400 set of emeralds and diamonds, from the Saudi Arabian royal family.

The White House did not report the gifts to the Chief of Protocol. It has taken the position that the President and his family are probably exempt from the regulations. As a result, the White House maintains its own "Gifts Unit" but has refused to let reporters inspect unit records on the grounds that disclosure might embarrass foreign donors and cause "diplomatic problems." Ms. Cheshire reported that in one instance the gifts unit did not receive and record a jewelry gift to the First Family until the day she made inquiries. Following Ms. Cheshire's inquiries, the State Department received several gifts, including a 7.9-carat diamond valued at $100,000 given to the wife of former Vice-President, Hubert Humphrey in 1968.

Another aspect to the story involves the General Services Administration, which has a number of cartons from Vice-President Agnew. GSA has refused to give Ms. Cheshire access to these cartons or to compile an index of the items on the grounds that some of the property may be personal property of the former vice-president and some may be gifts worth less than $50. GSA has refused to permit a General Accounting Office auditor to have access to the property for an inventory.

7. CIA SUIT SEEKS ENFORCEMENT OF BOOK BAN RE NATIONAL SECURITY (see this PCN, p.20)

8. NADER GROUP CHALLENGES SECRECY RULE IN NIXON PAPERS

On March 27, 1969, President Nixon signed a chattel deed giving the United States about 600,000 documents he accumulated as Vice-President. The deal contained the provision that "no person shall have the right to access" without Nixon's permission during the term of his presidency.

The Tax Reform Research Group, a Ralph Nader related organization, has filed suit in Federal Court to gain access to the papers, now in the custody of the General Services Administration, on the grounds that they are public property available for public inspection. The law suit claims that:

(1) most of the papers were government property to begin with;

(2) that, with the numerous restrictions in the deed, the deed is void because the President is treating the papers as if they were still private property; and

(3) the deed is void because it was signed by the President's attorney and not by the President.

9. WRITER BARRED FROM FBI FILES OF KENNEDY ASSASSINATION

The Freedom of Information Act provides for broad access to government files with several exceptions including an exception for "investigatory files compiled for law enforcement purposes."

Author Harold Weisberg filed suit under the act to obtain the FBI spectrograph results of the bullets used in the Kennedy assassination.

The FBI argued that the files should be kept secret under the "investigatory file" exemption. Weisberg said that the investigation was finished and that, under the FBI interpretation, every department in the government could claim that its files were for some "law enforcement purposes" since every federal agency has some law enforcement powers under federal laws.

A U. S. Court of Appeals upheld the FBI and said "it is unthinkable that the criminal investigatory files of the Federal Bureau of Investigation are to be thrown open to the rummaging writers for some television crime series..."

10. SUPREME COURT SAYS NO CITIZEN CAN SUE TO DISCOVER HOW PUBLIC MONIES ARE SPENT

The Constitution requires that "a regular statement of account of the receipts and expenditures of all public money shall be published from time to time."

Under this provision, the Treasury regularly publishes a statement of expenditures and income for each federal department. Congress, however, has exempted the CIA from this requirement so that no notations--even as to total amounts spent--are listed by the Treasury.

A taxpayer filed a suit requiring some minimal information about the CIA under the public reporting provisions of the constitution. The Supreme Court ruled that the Federal Government cannot be conducted "like a New England town meeting" or an "Athenian democracy" and concluded that "no one can" file this type of law suit because public reporting of public monies is a "political question" for Congress, not the courts.

The decision would seem to restrict the ability of investigative reporters to go to court to obtain public expenditure information.

11. CIA SEEKS INJUNCTIONS AGAINST MEDIA

The CIA has sent, for final administration approval to the Office of Management and Budget, proposed legislation which would authorize the federal courts to enjoin publication of any news article containing information which the director of the CIA, in his absolute discretion, deems as classified.

The proposal provides for the issuance of the injunction without any evidentiary showing by the CIA that release of the information would constitute a "clear and present danger" to the national security. The bill, amending Section 102 of the National Security Act of 1947 (50 U.S.C.A. 403), also has new criminal provisions applicable to government employees who disclosed unauthorized information.

This proposal appears to be yet another Administration attempt to legislatively void the Pentagon Papers decision which requires an evidentiary showing of a "clear danger" to the national security before any prior restraint can issue against the media.

Its prior restraint provisions would complement the now pending Administration bill (S-1400), Sen. John L. McClellan's (D-Ark.) bill (S-1), and Sen. Barry M. Goldwater's (R-Ariz.) memo (see p.) which would provide for criminal penalties against the media for publishing national security information without any evidence of harm except an affidavit by an administration official.

Also pending is Rep. Lucien Nedzi's proposed amendment to the National Security Act, H.R. 15845 (see below).

Colby's proposals were disclosed June 3 as part of the CIA's legal battle against authors Victor L. Marchetti and John D. Marks (see p.20, and PCN IV, p.43).

12. HEARINGS CONCLUDE ON "OFFICIAL SECRETS ACT"

Senate subcommittee hearings ended July 22 on S. 1400, a proposed administration-sponsored reform of the Federal Criminal Code (see PCN IV, p.35). A committee report on its findings is expected to be completed by late August.

Media groups have opposed the bill in testimony before the Senate Subcommittee on Criminal Laws and Procedures arguing that the bill would threaten the press' newsgathering capabilities by making it a crime to publish certain broad categories of government information --- including "national defense information" and government "intellectual property" (see PCN II, pp. 1-3 for legislative analysis).

13. HOUSE INTELLIGENCE SUBCOMMITTEE BILL

The House Armed Services Subcommittee on Intelligence, considering its bill (H.R. 18545) amending the National Security Act, heard Colby describe his proposed amendments in testimony before the Committee in July.

Introduced by subcommittee Chairman Rep. Lucien Nedzi (D-Mich.), the bill would require the director of the CIA to "develop appropriate plans, policies and regulations" for the dissemination of information.

Violations of the regulations would then be turned over to the Attorney General for "appropriate action". Justice Department representatives testified that the bill lacked penalties for violations of the regulations and that the department was powerless to take action unless existing criminal laws were broken.

Asked if further hearings were planned, a subcommittee spokesman said, "Obviously we are going to have to have more hearings in the Fall if we are going to put some teeth in this bill."

14. GOLDWATER CLAIMS IT'S A CRIME TO PUBLISH FBI DOCUMENTS

The Washington Post reported June 12 that classified FBI documents contradicted Secretary of State Henry Kissinger's denials that he initiated wiretaps on government officials and newsmen.

The day the stories were published, Sen. Barry M. Goldwater (R-Ariz.), took aim at the Post, charging that the newspaper had committed an "act of treason" by printing the secret FBI documents.

Post executive editor Benjamin Bradlee called Goldwater's charge "outrageous" and said the newspaper neither "stole the documents nor bought them."

Seven days later Goldwater asserted that the Post could be prosecuted under at least five federal criminal statutes for publishing the "top secret" government documents.

The Arizona Republican inserted into the Congressional Record a 38-page legal memorandum by his counsel outlining the five laws that Goldwater said would apply to the Post. At the same time, he withdrew his earlier charge of "treason," saying that his lawyers doubted "that the act I complained about would come under this term."

Bradlee rejected the allegations of criminality. He said the materials in question were "lawfully" acquired and disclosed.

The legal memorandum listed the following possible felonies: communicating documents relating to the national defense; conversion of federal property to one's own use; retaining national defense documents; and two conspiracy charges (see related stories, pp.59-60).

15. HALPERIN TO STUDY NATIONAL SECURITY INFORMATION POLICIES

Morton H. Halperin, former member of the National Security Council and Brookings Institution fellow, will undertake an 18-month study of government information restrictions.

The study, financed by Twentieth Century Fund, will analyze government restrictions on national security information; prio restraints on the publication of secret information; the withholding of information from Congress; and ways to protect covert government operations while at the same time keeping the public informed.

16. SENATE HEARINGS HELD ON BILLS TO RESTRICT DISSEMINATION OF CRIMINAL RECORD INFORMATION

The Senate Judiciary subcommittee on Constitutional Rights has concluded hearings on administration backed bill (S.2964) sponsored by Sen. Roman Hruska (R-Neb.). The bill, entitled the "Criminal Justice Information Systems Act of 1974", regulates all criminal justice banks operated by federal, state and local governments.

It would bar all dissemination of arrest information if the individual arrested were acquitted or if the charges were dismissed or the prosecution abandoned. Indictment and conviction information could be distributed only for criminal justice purposes and not to the press unless authorized by federal or state statute or executive order (see PCN IV, p.33).

A committee report on S. 2964 and S. 2463, a similar but more restrictive bill introduced by Sen. Sam Ervin (D-N.C.), will be completed by mid-August, according to committee sources.

17. JUSTICE DEPARTMENT TO SEAL ARREST RECORDS

Administrative regulations proposed by the Law Enforcement Assistance Administration severely restricting the dissemination to the media of public arrest information were published in February and scheduled to take effect in July (see PCN IV, p. 34). The regulations are similar to the administration proposal. They have not been approved to date, however, and a spokesman for the LEAA estimates final okay by the Justice Department is "months away".

18. FCC DENIES REPORTER ACCESS TO AT&T INFORMATION

Last December, Washington Star-News reporter Stephen M. Aug sought Federal Communications Commission permission to inspect minutes it had of American Telephone & Telegraph Co.'s executive policy committee. The minutes, which covered more than two years of meetings of the high-level group, were turned over to the commission in connection with its investigation of rate-making.

Aug, who has written numerous stories about the telephone company, wanted the information to aid him in an analysis of the Bell System's decision-making process touching upon such areas as rate changes and the company's response to competition.

AT&T opposed disclosure of the minutes, which it said were "privileged and confidential" and thus protected by a provision of the Freedom of Information Act which exempts from disclosure "trade secrets and commercial or financial information" that is "privileged or confidential."

AT&T had provided the documents under an agreement with the commission which gave the company the right to oppose disclosure of information designated "proprietary."

On June 26, the Commission denied Aug's request to inspect the minutes. The FCC based its decision on another provision of the Freedom of Information Act which exempts from mandatory disclosure "investigatory files compiled for law enforcement purposes."

19. WASHINGTON STAR-NEWS REPORTER SUES FOR AMTRAK FILES

Amtrak's board of directors refused in March, 1973, to supply minutes of its meetings to Washington Star-News reporter, Stephen M. Aug. Amtrak, a congressionally-chartered corporation, is subject to the Freedom of Information Act.

Amtrak officials said they withheld the minutes and other corporate documents sought by Aug under their interpretation of an exemption allowing the non-disclosure of inter-agency memorandums. In July, Aug filed suit in federal court in Washington claiming that he was entitled to the documents under the Freedom of Information Act. His suit seeks an order enjoining the further withholding of the documents.

20. JUDGE ORDERS TREASURY DEPARTMENT MEETINGS OPEN TO PRESS

Food Chemical News, a Washington-based trade journal, tried earlier this year to send a reporter to two meetings where officials of the Treasury Department's Bureau of Alcohol, Tobacco and Firearms discussed regulations on ingredient labeling with representatives of distilling companies and consumer groups.

Treasury officials said the meetings were closed to the press and the trade weekly sued under the 1972 Federal Advisory Committee Act.

The act regulates the more than 1,500 committees composed largely of industry specialists who advise various government agencies. The law provides for public access to all committee meetings and records.

On June 21, a U.S. District Court judge ruled that the meetings should have been opened under the 1972 law and prohibited the bureau from closing future meetings to Food Chemical News.

Judge Charles R. Richey emphasized that the press has a statutory right as well as a First Amendment privilege to report on government affairs. That right is "among this nation's most sacred protections against tyranny and oppression at the hand of the Executive and, accordingly, the Court will do all that is within its power to safeguard the public's right to know," he said.

21. FTC BARS REPORTER FROM CONSUMER MEETING

A reporter for Advertising Age, John Revett, was denied entrance to a closed-door meeting between the Federal Trade Commission and consumer representatives in Washington July 26.

According to Advertising Age, FTC information director Arthur Amolsch said the FTC "extends the courtesy of secret meetings to any group which requests them."

FTC chairman Lewis Engman promised to make available minutes of the meeting and was quoted as saying he regretted that the "last-minute nature of the request did not allow the commissioners and guests to give full consideration" to the reporter's request to attend.

Stanley E. Cohen, Advertising Age Washington editor, cited the decision in the Food Chemical News case (see above) and said the FTC action was contrary to "the spirit of the most recent court and legislative views upholding the public's right to know."

The trade weekly is contemplating possible legal action.

22. FEDERAL OPEN MEETING LAWS PROPOSED IN CONGRESS

The House and Senate are both considering bills to make publicly available more information on government decision-making by opening Congressional committee and federal regulatory agency hearings to the public.

The Senate bill, (S.260), titled "Government in the Sunshine Act", was introduced by Senator Lawton Chiles (D-Fla.) in January 1973 and is currently before the Committee on Government Operations where hearings are in progress. The Chiles bill would open all meetings of government agencies and congressional committees to the public.

Consideration is not expected during the current session on the House bill (H.R. 10000), introduced by Rep. Dante Fascell (D-Fla.), aimed at opening regulatory agency meetings and eliminating secret ex parte communications and testimony to them.

Although both bills are designed to expose the decision-making processes to the public by making them more open, exceptions allowing closure are provided for national security affairs, "personnel matters" and "excessive invasions" of individual privacy. Neither proposal allows the broadcast media live coverage from the committee hearing room.

In addition, both bills call for public announcement of the date, place and subject of meetings one week in advance and provide that complete transcripts be furnished including the lists of all persons testifying and their affiliation.

23. STROUT ADMITTED TO CONGRESSIONAL PERIODICAL GALLERY

Richard L. Strout of the Christian Science Monitor lost his membership in the Congressional (newspaper) Press Gallery for refusing to agree to a rule forbidding gallery members from appearing for money on government-sponsored broadcasts, including Voice of America (see PCN III, p.32). On May 30, Mr. Strout, who had been a gallery member for 50 years, found a new home on Capitol Hill.

The Periodical Correspondents' Association, which controls access to the Congressional Periodical Galleries, issued a membership card to Mr. Strout, who writes a weekly column under the byline TRB for The New Republic.

Mr. Strout says he still wants to regain membership in the Press Gallery but for the time being will delay efforts to win readmission.

PRESS ACCESS TO EXECUTIVE & LEGISLATIVE FUNCTIONS/FREEDOM OF INFORMATION ACTS

STATE DEVELOPMENTS

24. HAWAII SEALS CURRENT ARREST & INDICTMENT RECORDS

Last May, the Hawaii Legislature passed a law limiting public access to various criminal justice information, supposedly to prevent abuse of this information by employers, credit firms and others.

Act 45 states "all law enforcement records relating to the questioning, apprehension, detention, arrest or charging of persons for or in connection with a criminal offense against whom no conviction is secured, shall be deemed confidential." Citing the new law, the Honolulu Police Department on June 6 closed all its arrest files formerly available to the press.

According to news executives, the state prosecutor's office in Honolulu subsequently refused to release the names of persons indicted by grand juries. Media representatives also said police refused to make public, for example, the name of a restaurant that had been robbed or details about a fatal automobile accident.

On June 12, the Honolulu Advertiser, the Star-Bulletin, several radio and TV stations, the AP and UPI asked the First Circuit Court of Hawaii to enjoin enforcement of the act which they claimed deprived the public of its "right to be informed" about police activities.

The news organizations also sought relief in U.S. District Court where Judge Martin Pence ordered the police to release information on crime and police operations but allowed them to keep confidential information about newly-arrested persons.

On June 20, State Circuit Judge Norito Kawakami issued a preliminary injunction against the police department preventing any enforcement of the act. The press thus regained the same access to police information, including arrests, as it had prior to the act's enforcement. The ruling applied only to the city of Honolulu and the island of Oahu.

On July 1, Circuit Judge Ernest Kubota declined to issue a preliminary injunction against the act for the island of Hawaii. The act has not been challenged on the other islands.

25. CITIZEN SEEKS DESTRUCTION OF ARREST RECORDS

C. Bryan Codray, an Alexandria, Va. man falsely arrested for indecent exposure in 1973, has asked federal and state courts to destroy all records of the arrest.

In suits filed in U.S. District Court and Alexandria Circuit Court, Codray also asked that the arrest information be removed from the FBI's nationwide computerized criminal history file. The charge against him was dismissed after the court concluded it was a case of mistaken identity.

FLORIDA LAW PROHIBITS PUBLICATION OF WIRETAP INFORMATION (see this PCN, p.25)

27. JUDGE BLOCKS TV APPEARANCE BY SLA DEFENDANTS

Two prisoners in California, Joseph Remiro and Russell Little, asked to appear on national television, claiming they had suggestions that could lead to freedom for Patricia Hearst, the kidnapped newspaper heiress. The two are charged with the assassination of the Oakland school superintendent and the attempted murder of a policeman.

In March, their request was denied by a Superior Court judge who said a television appearance could create an atmosphere that would make it impossible for the defendants to receive a fair trial in California or in the United States.

28. PENN. COURT SAYS POLICE PAYROLLS ARE PUBLIC INFORMATION

Last March the Pennsylvania Crime Commission issued a report on alleged police corruption which questioned the honesty of 400 Philadelphia policemen. The report contained only first names, last initials and badge and payroll numbers.

The Philadelphia Inquirer and city hall reporter Aaron Epstein filed suit to compel the city to make payroll records--which would identify the policemen--available to reporters.

On June 18, a Common Pleas judge ruled in the newspaper's favor. He said that governmental agencies had no right to withhold a public record because of what might be done with the information.

The decision apparently paves the way for the newspaper to obtain and publish the names of the policemen identified in the commission report.

29. NEW YORK ENACTS FREEDOM OF INFORMATION LAW

New York in May adopted a "sunshine" law that opens up to the press and public state and local government documents. The law covers a wide variety of documents, including agency policy statements and opinions; minutes of meetings; and all police blotters and booking records.

The law, which goes into effect September 1, requires each government agency to publish regulations covering the "availability, location and nature of the records to be made available." Confidential personal information is excluded from disclsoure.

Agencies must also make available a current list of available information and documents.

30. MEMPHIS COMMERCIAL-APPEAL LOSES OPEN MEETING LAW DECISION

Earlier this year, attorneys for the City of Memphis, Tenn. challenged the state's open meeting law claiming that its requirement of "adequate public notice"--without specific time limitations--was unconstitutionally vague. Shelby County Chancellor (judge) Wil V. Doran agreed and declared the law void for vagueness on May 6.

The Memphis Publishing Co., publisher of the Commercial Appeal and the Press Scimitar, appealed to the Tennessee Supreme Court arguing that the open meeting law need not set out specific time periods of public notice. Their attorneys contrasted the Tennessee law with the forty other state open meeting laws currently in effect, including 29 statutes stipulating only "reasonable" or "timely" notice periods.

The State Supreme Court reversed the lower court decision in July, thus upholding the validity of the open meeting law.

31. PENNSYLVANIA PASSES "SUNSHINE LAW"

A new "sunshine" law in Pennsylvania requires open meetings for all state and local governing bodies, including school boards, the state legislature and the governor's cabinet.

The statute, enacted on July 19, requires that the schedules and minutes of all meetings be public information. Excluded from the open meeting requirement are discussions in "executive sessions" concerning possible disciplinary action against public officials and labor negotiations. These sessions cannot last longer than 30 minutes.

32. ARIZONA EXPANDS OPEN MEETING LAW

Arizona broadened the scope of its open meeting law in May by requiring open meetings for all state and local government bodies, agencies and committees whenever a "collective decision, commitment or promise" is to be made.

The law requires that notice and minutes of meetings be made available to the public. The statute does not cover certain "executive sessions" and judicial proceedings and political caucuses.

33. UTICA MAYOR IN BATTLE WITH LOCAL MEDIA

Since last March, Mayor Edward Hanna of Utica, N.Y. has been involved in a running battle with the Utica news media, especially the city's two Gannett newspapers, The Observer-Dispatch and The Daily Press. The mayor barred reporters from the newspapers from his office and ordered city employees not to talk with reporters.

In June, after a second incident in which reporters were kept out of Hanna's office, the newspapers asked a federal district court to enjoin the mayor from such actions as violations of the Civil Rights Act and of the First Amendment. The court ordered the mayor not to pass any regulations which would discriminate against the Utica papers or their reporters.

Mayor Hanna also filed a $100 million lawsuit in late June against Observer-Dispatch Editor Gilbert Smith, and a $500,000. lawsuit in July against the Observer-Dispatch, charging "common law harassment".

Then at a July press conference, he refused to recognize Utica reporters but answered questions from a New York Times reporter. The U.S. District Court subsequently ordered the mayor to show cause why he should not be held in contempt of the court's earlier directive.

34. WISCONSIN JUDGE ORDERS TOWN COUNCIL MEETING OPENED TO PRESS

In December, 1973, West Bend News reporter, Jack Anderson was denied admission to two meetings of the West Bend, Wisconsin Common Council study committee. Anderson claimed the meetings were convened to discuss the feasibility of establishing a city administrator. Council representatives claimed the meetings were held to discuss "personnel matters".

In response to legal action initiated by The West Bend News, Inc. alleging that the meetings were closed in violation of the Wisconsin open meeting law, Washington County Circuit Court Judge Milton L. Meister issued a restraining order forbidding the committee from meeting again in closed session while considering the administrator position. The Judge later ordered the city to release a portion of the transcripts of the two closed meetings relating to the administrator question.

35. VIRGINIA BANS DISRUPTIVE TAPING OF MEETINGS

The Prince Edward County, Virginia Board of Supervisors barred Farmville, Virginia radio station WSVS from taping its meetings. Andrew Miller, the state's attorney general, acknowledged that while the state freedom of information law neither expressly authorized nor prohibited the taping ban, such action could have an "indirect impact" on the First Amendment.

However, he upheld the county board decision, saying that such bans may be imposed if it is shown that taping would disrupt a meeting.

36. SAN FRANCISCO REPORTER ARRESTED AT COMMISSION MEETING

San Francisco Examiner reporter Richard L. Revenaugh was arrested April 16 when he refused to leave a closed meeting of the California Public Utilities Commission.

Revenaugh, who was charged with disrupting a public meeting, was protesting the commission's long-standing policy of closing its "decision conferences" to the public. Two state policemen lifted the reporter from his seat and marched him out the door.

Subsequently the commission, bowing to pressure from politicians, began opening up its meetings. The State dropped the charges against Revenaugh in July.

37. ACLU CHALLENGES CLOSED POLICE MEETING

A committee of the Portland, Oregon police bureau began an inquiry last April into an incident involving the shooting of an innocent man. The Firearms Investigation Committee, which investigates all instances in which police fire their weapons, met in executive (closed) session to consider the matter and excluded an Oregon Journal reporter.

The state's open meeting law states that newspersons "shall be allowed to attend executive sessions under such conditions governing the disclosure of information as may be agreed to by the governing body" and the press prior to the meeting.

The American Civil Liberties Union, in a suit filed June 3 challenging the exclusion, claimed it violated the open meeting statute. The ACLU asked an Oregon circuit court to enjoin the committee from holding future meetings without letting the press attend.

The Oregon Journal, whose reporter was kept out of the meeting, is not a party to the suit because, according to editor Don Sterling, its editors believed the incident did not represent a clear violation of the statute. Sterling said reporters might be compromised if they attended closed meetings subject to reporting restrictions.

In seeking dismissal of the suit, the defendants (the mayor, police chief and committee members) asserted the closed session was justified because the group was reviewing criminal investigatory information and records that relate to possible future litigation.

38. MAYOR BARS NEW HAMPSHIRE REPORTER FROM PRESS CONFERENCE

The mayor of Rochester, N. H., John Shaw, barred a reporter from a small New Hampshire weekly, Publick Occurrences, from attending a May 29 press conference called to discuss the possibility of building an oil refinery in the town. The reporter, Judy Jarvis, asked the mayor for an explanation and was told she was excluded because she had accused him of lying.

While Ms. Jarvis waited outside, reporters from four other newspapers, two radio stations and a Boston television station were allowed in. None protested her exclusion.

On at least one other occasion, the mayor had prevented a Publick Occurrences reporter from covering a press conference. Ms. Jarvis has since left the newspaper.

39. TWO TEXAS CAMERAMEN ARRESTED

Early this year, the Collin County Commissioners' Court, which

handles governmental affairs in the Texas county north of Dallas, banned the use of cameras "of any kind to take any kind of pictures" during its meetings.

The ban provoked protests from journalists and the Dallas chapter of Sigma Delta Chi, the journalism society.

On February 15, the commissioners had a confrontation with the news media that resulted in the arrest of two cameramen from Dallas television station KDFW. The two, Jim Carroll and Bob Phillips, defied a directive not to film the meeting. They were held in contempt and ordered to pay immediately a $25 fine, which they refused to do. Carroll and Phillips went before the 199th District Court and were released, pending a hearing.

On March 15, the two men pleaded guilty to the contempt charges and paid the fine.

The Commissioners' Court subsequently repealed the camera ban and in its place substituted a rule prohibiting any acts "which would disrupt, disturb, interfere or hinder" its meetings. But the commissioners also adopted guidelines which, according to newsmen, virtually end television coverage and some still photography.

40. EL PASO TV REPORTER FILES OPEN MEETING SUIT, IS FIRED, AND THEN FILES LICENSE CHALLENGE

In January, KTSM-TV (El Paso) city hall reporter Richard Wheatley tried unsuccessfully to convince KTSM management officials that city Mayor Fred Harvey and Alderman Ruben Schaeffer had violated the Texas Open Meeting statute by discussing public business with state officials in closed session. The open meeting statute requires public business to be discussed in public.

Following the station's decision that no violation had occurred, Wheatley filed a criminal complaint against the city officials Jan. 28 in his own behalf alleging a conspiracy to circumvent the recently enacted open meeting statute.

The night Wheatley filed his complaint, KTSM news editor Jeff Gates removed Wheatley from his city hall beat and assigned him to office work. Gates said Wheatley had compromised his objectivity as a reporter by filing a criminal complaint against the officials. Two weeks later, Wheatley was fired by KTSM.

A jury acquitted the city officials June 7 after a three day trial. However, Wheatley filed a petition with the FCC July 1 to deny the license renewal of KTSM charging management officials with censorship and alleging five incidents of news distortion. Wheatley also claimed that news facilities at KTSM were used to cover business activities of station sponsors at their request. He also petitioned the FCC for back pay and compensatory damages for his dismissal at KTSM.

41. INDIANA EDITOR ARRESTED AT SCHOOL BOARD MEETING

The editor of The Reporter in Gas City, Ind., Bill Ormsby, was arrested May 28 after he refused to leave a closed meeting of the Mississinewa School Board.

Two recently-elected members, who had not yet been installed, were invited to attend the meeting. Ormsby, a long-time foe of closed public meetings, argued he had as much right as they did to attend.

He pleaded not guilty July 29 to a charge of unlawfully staying inside a public building "for the purpose of interfering with the lawful use of such building by others."

42. RHODE ISLAND REPORTER BARRED FROM SCHOOL MEETING ON DRUNK DRIVING

Gregory Smith, a reporter for The Providence Journal-Bulletin, was ejected June 18 from a Scituate (R. I.) School Committee meeting concerning charges that a school bus driver was drunk while driving a group of kindergarten children. After a discussion in open session, the committee convened a closed meeting with parents and drivers and Smith was ordered to leave. When he refused, a police officer escorted him out of the room.

The committee chairman, Ronald J. Whitford, claimed the closed session was justified because a "personnel matter" was to be discussed. If the reporter had been allowed to remain, he said later, parents might have been reluctant to speak.

The secret meeting was in apparent violation of a state law covering school committee meetings which provides that "closed executive sessions may be permitted only to consider matters of a strictly personal nature which do not affect (sic) educational policies and/or general operation of the school system."

43. NEWARK STAR-LEDGER FILES BRUTALITY CASE ON ACCESS

Newark Star-Ledger reporter, Charles O. Finley, and photographer, Thomas Herde, accompanied New Jersey state assemblyman, Byron Baer on a July 16 inspection tour of migrant farm workers conditions on a farm owned by Fred J. Sorbello. Finley and Thomas alleged in a federal suit filed against Sorbello July 24 by the Newark Morning Ledger Co., publisher of The Star-Ledger, that Finley was "roughed up" and denied access to the farm by migrant worker supervisor, Marcus Portalatin.

Baer, who is sponsoring legislation concerning migrant workers, identified himself to Portalatin and several other farm employees as a state legislator and proceeded toward the migrant workers housing area. The suit says that Finley and Herde stayed behind

but soon heard shouts and screams from behind a barn before seeing Baer run out holding his left arm, later found to be broken in three places. Finley and Herde say that they then retreated from the property with Baer, chased by club-wielding individuals who smashed their car windows.

The suit alleges that Sorbello and Portalatin "maliciously conspired, planned and agreed" to conceal the condition of migrant workers on the Sorbello farm from the public, thereby depriving Finley and Herde of their First Amendment right to engage in investigative reporting of the conditions.

The suit seeks a preliminary and permanent injunction against Sorbello restraining him from denying reporters access to migrant laborers on the Sorbello farm. In addition, the suit seeks $100,000 in compensatory damages and $150,000 in punitive damages.

NOTE: Sorbello filed trespass actions against Finley and Herde July 16.

MISC. GOVERNMENT HARASSMENTS

44. POLICE ARREST STAR-NEWS PHOTOGRAPHER

On June 14, Washington Star-News photographers Geoffrey Gilbert and Ken Heinen ran out of the Star-News offices to shoot pictures of a police arrest in progress in front of the building. Gilbert, who was photographing the arrest of a motorcyclist after a high-speed chase, was himself arrested following a pushing incident with a police sergeant, according to police inspector Richard Tilley.

Gilbert claimed the sergeant hit him in the chest with a nightstick before being "spun around, grabbed from behind and wrestled to the ground."

As Gilbert was arrested, Heinen took pictures with one of Gilbert's two cameras. He said police pushed him over a motor scooter causing him to drop the camera. Police denied the charge and said Heinen fell. Police confiscated both cameras and returned them after Gilbert posted $10 bond on disorderly conduct charges.

The Star-News reported that both cameras were badly damaged and unusable. In addition, all the film in the cameras had been exposed to light, leading Star-News managing editor Charles B. Seib to conclude that the film was "deliberately" exposed.

Tilley explained the exposure saying that "in the process of examining (one) camera for damage it apparently inadvertently opened." A police investigation of the matter is underway in preparation for an August 14 hearing on disorderly conduct charges pending against Gilbert.

45. SHERIFF ARRESTS TWO BIRMINGHAM REPORTERS

Last spring The Birmingham News reported that Shelby County sheriff C.P. Walker had passed bad checks in Las Vegas. After publication of the story, readers began calling the newspaper with other charges against the sheriff and two reporters were assigned to investigate.

The reporters were questioning Sheriff Walker May 28 about allegations of illegal drug sales inside the county jail, when he arrested them on the spot on charges of conspiracy to murder him. The two reporters, John I. Jones and Ron Casey, were among seven charged in the conspiracy, including the sheriff's opponent in a June 4 election. The newsmen spent about two hours in jail before being released on bond.

The Birmingham News published a story on alleged liquor and drug sales the next day.

On June 3, a circuit court judge dismissed the charges against the reporters and the five other men after the local district attorney and Alabama Attorney General William Baxley moved for dismissal on the grounds of insufficient evidence. "It is my firm conviction," district attorney Harold Walden of Columbiana said after the court hearing, "that these charges were conceived in politics and executed in politics."

The day after the charges were dropped, Sheriff Walker won re-election by a 256-vote margin.

46. STATE POLICE POSE AS NEWS PHOTOGRAPHERS

Two agents of the North Carolina State Bureau of Investigation posed as photographers from the Raleigh News and Observer during a protest march against capital punishment on July 4. One agent had worked as a News-Observer photographer about eight years ago.

The episode brought an apology from the bureau director, Charles Dunn, who told the newspaper, "it won't happen again."

47. FORMER L.A. FREE PRESS EDITOR ARRESTED AND RELEASED

Law enforcement officials have dropped all obscenity charges against Art Kunkin, former L.A. Free Press publisher and editor. The charges stemmed from a 1971 publication of the San Francisco Ball, which Kunkin's publishing company printed. Attorneys for Kunkin argued he was the victim of "discriminatory law enforcement" because Kunkin had previously published a state-wide list of California undercover narcotics agents.

The California Supreme Court in 1973 reversed Kunkin's conviction on charges stemming from that story. (see PCN II, p. 17).

GOVERNMENT HARASSMENTS

48. KOREA BARS CHRISTIAN SCIENCE MONITOR REPORTER

Last May, Elizabeth Pond, then Tokyo correspondent for the Christian Science Monitor, wrote a story raising a question about a link between South Korean President Park and Communist North Korea. Her story quoted American observers as discounting such a link.

The government of South Korea announced June 6 the revocation of Ms. Pond's entry visa into the country. It said in a press release that she had written "a vicious attack on President Park," justified neither by fact "nor by a sense of objectivity and fairness."

The government asserted its belief that it "in no way is interfering with the freedom of the American press," but said there must be a "minimum of courtesy" afforded a foreign head of state. It said any other Monitor correspondent, but not Ms. Pond, would be welcome in Korea.

49. BRADLEE ON HARRASSMENT

Washington Post executive editor Benjamin C. Bradlee warned that freedom of the press in America was in trouble because of government's attempts to sabotage it.

Speaking at graduation ceremonies at Franklin and Marshall College on June 2, Bradlee said the government "talks of freedom of the press in terms of a sappy Norman Rockwell poster and thinks of freedom of the press as an unnecessary evil."

He noted that government criticism of the press was not novel but added that in the last five years, there has been a "consistent, energetic, inventive, often subversive harrassment of newspaper and journalists by government."

50. WHITE HOUSE AIDE SUGGESTED PRESIDENTIAL CRITICISM OF NEW YORK TIMES AND PARADE MAGAZINE

The Washington Post reported that presidential assistant Patrick J. Buchanan discussed in a 1971 memorandum a White House plan, apparently never used, to publicly criticize The New York Times.

The memorandum, sent to former chief domestic adviser John D. Ehrlichman, was quoted as saying "Remarks drafted for the President on several occasions, which would have been an implied and unmistakable rebuke to The New York Times, and created a President-Times collision,were rejected time and again."

The memorandum also suggested that consideration be given to criticizing Parade Magazine, the Sunday newspaper supplement, and its editor-at-large, Lloyd Shearer, because of its "anti-Vietnam positions in the Personality Parade section."

I. THE BROADCAST MEDIA

1. FCC TO BAN SOME CROSS-MEDIA OWNERSHIPS

Since 1970 the Federal Communications Commission has had under consideration a proposed rule that would prohibit single ownership of a newspaper and television or a radio station in the same town.

The commission, under pressure from the Justice Department to move on the issue, held public hearings on the proposal.

The rule would require owners of media combinations in more than 100 cities, including Washington, San Francisco and Chicago, to sell or exchange their broadcast properties within five years if they continued to own newspapers.

The proposed ban on cross-ownership is strongly supported by the Justice Department's antitrust division, which in recent months has filed opposition with the FCC to joint newspaper-station ownerships on a city-by-city basis. (see related story p. 76). Also lined up against cross ownership are a collection of citizen groups which argue that breaking up the combinations would diversify media voices throughout the country.

Typical of their position is that of the American for Democratic Action. The ADA, in testimony before the FCC, said "freedom of the press and expression guaranteed by the constitution depends upon open, diversified and competitive media systems for public communication."

Sidney Dean, chairman of the ADA's communications committee, said cross ownerships "suppress editorial and commercial diversity" in the community.

Other groups who support divestiture rule include the National Citizens Committee for Broadcasting, the National Black Media Coalition and the Alabama Civil Liberties Union.

The black groups particularly want to create an opportunity for minorities to buy more broadcast stations.

Opposed to the cross ownership ban are the American Newspaper Publishers Association, the National Association of Broadcasters and individual newspaper publishers and broadcasters.

The ANPA argued that the Justice Department's antitrust division had no right to ask the FCC to ban cross ownership since newspapers "are not a controlled medium."

The FCC is expected to decide the issue in late October. An administration-sponsored bill, which has passed the House and is now before the Senate Commerce Committee, would prohibit the commission from using the license renewal process to eliminate cross-ownership.

In early August, John Carmody of The Washington Post reported that sources within the FCC have reported that at least four of the seven commissioners are ready to issue a rule which would ban cross-media ownership in those areas where one company owns both the dominant morning-afternoon newspaper and the dominant television station, and where there is no strongly competing alternative outlets. This would apply to about 14 rural markets. The story said the FCC also has enough votes to institute a rule requiring complete separation of news operations of the newspaper and the television station if a single company owns both in the other cross-media ownership areas.

2. JUSTICE DEPT SAYS AD RATES HIGHER IN CROSS-MEDIA OWNERSHIP AREAS; MOVES AGAINST TOPEKA LICENSE

The Justice Department has released a major policy statement urging the Federal Communications Commission to ban common ownership of daily newspapers and television stations in the same city.

The department's antitrust division recommended that the FCC require dual owners to dispose of either their newspapers or television stations within a five to eight-year period.

Owners would be free to exchange stations or papers with those in other cities. The action would affect about 83 joint newspaper-television ownerships.

"...The perpetuation of existing commonly-owned co-located daily newspapers and television stations is inconsistent with the policies of the Communications Act and the antitrust laws," the department said.

It said studies show that advertising rates charged by jointly-owned stations and newspapers average 10 to 15 per cent higher than in cities with competitive ownership.

During recent months the Justice Department has attacked joint newspaper-station ownerships on a case-by-case basis by filing challenges to license renewals in five cities. (see PCN IV, p.40).

In the latest challenge, the department contested the renewal of radio and television outlets in Topeka, Kansas owned by Stauffer Publications, which also owns the city's two daily newspapers.

The department maintained that renewal of the Stauffer licenses would not be in the "public interest" because of what it termed was a "high" concentration of media ownership in the city. The argument is similar to those raised in earlier renewal challenges in St. Louis, Des Moines, Milwaukee and Minneapolis-St. Paul. (see related story, p.75)

3. CBS & ABC CHARGE ILLEGAL POLITICS IN ANTI-TRUST SUIT

Two years ago the Antiturst Division of the Justice Department filed suits against the three major television networks to force them to give up their financial interests in the production and syndication of prime-time entertainment (non-news) programs.

In May, CBS and ABC charged in a massive brief filed in U.S. District Court in Los Angeles the government brought the action "for the unconstitutional purpose of harassing, intimidating and inhibiting them in their exercise of First Amendment rights." The institution of the suits for that purpose, the networks maintain, represents "an impermissible use" of the constitutional powers given the President and the Attorney General.

The networks contend some of their representatives, including CBS White House correspondent Dan Rather, were "quietly and privately threatened" by administration officials. Those named by the networks include Press Secretary Ronald L. Ziegler, former presidential adviser John D. Ehrlichman and former special counsel Charles W. Colson.

Rather, in a sworn affidavit, said Ziegler told him in February, 1971 that the networks were "anti-Nixon" and that "they are going to have to pay for that, sooner or later, one way or another." Rather further stated that "on at least one and perhaps two occasions" Ehrlichman told him "'the networks will get theirs, of that you can be sure.'"

Also included was an affidavit from former CBS president Frank Stanton recounting a number of meetings and calls from administration officials expressing displeasure with CBS News broadcasts. Stanton quoted Colson as warning him in substance, in November, 1972, "you didn't play ball during the campaign...We'll bring you to your knees in Wall Street and on Madison Avenue."

The networks also cited a 1969 memorandum from former Nixon aide Jeb Stuart Magruder to H.R. Haldeman, former White House chief of staff, proposing that in order to stifle network criticism of the administration the government should, "utilize the anti-trust division to investigate various media relating to anti-trust violations. Even the possible threat of anti-trust action I think would be effective in changing their views in the above matter."

The legal documents constitute the networks' answer to government motions seeking to strike as network defenses the allegations of intimidation. The Justice Department argued that the network charges were "prejudicial, immaterial and insufficient in law."

On July 17, U.S. District Court Judge Robert J. Kelleher denied the government's motions and ordered it to identify documents relevant to the case. ABC now plans to question former attorneys general Richard G. Kleindienst and John N. Mitchell.

4. TV COMMENTATORS LOSE COURT OF APPEALS DECISION ON MANDATORY UNION MEMBERSHIP

Three years ago two conservative broadcast commentators, William F. Buckley Jr., editor of National Review, and M. Stanton Evans, editor of the Indianapolis News, filed a law suit challenging a requirement that they join and pay dues to the American Federation of Television and Radio Artists.

The two argued that their constitutional rights of free speech

were being violated by a provision in AFTRA's contract with broadcasters requiring that all persons regularly on the air must join the union. Buckley is host of his own national public television program, "Firing Line," and Evans participates on the CBS radio series "Spectrum."

In January, 1973 a U.S. District Court in New York ruled that the requirement of compulsory union membership and payment of dues was void because of the "chilling effect" it had on First Amendment rights.

That decision was reversed on April 30 by the U.S. Court of Appeals for the Second Circuit. The court held that the district court was without jurisdiction to rule on the issue of compulsory union membership and compulsory compliance with union orders because the proper forum for a decision on those issues was the National Labor Relations Board. The court also ruled that the requirement that Buckley and Evans pay union dues does not abridge free speech rights.

"Where there is a proper governmental purpose for imposing a restraint and where the restraint is imposed so as not to 'unwarrantedly abridge' acts normally comprehended within the first amendment, there is no abridgment of first amendment rights," the court said.

The Appeals Court denied a petition for rehearing and lawyers for Buckley and Evans plan to file an appeal with the U.S. Supreme Court.

5. PUBLIC TV TO GET FINANCIAL SECURITY FROM POLITICS

President Nixon has endorsed a bill prepared by the White House Office of Telecommunication Policy proposing long term federal financing of public broadcasting. The bill was introduced in the House (H.R. 16130) by Rep. Harley O. Staggers on July 25 and in the Senate (S. 3825) by Sen. Warren G. Magnuson July 28.

The measure would establish a Public Broadcasting Fund to be doled out by the Department of the Treasury. Basic annual grants would be given to all public television stations and non-commercial radio stations meeting public interest standards.

The bill would authorize funding for five years with a maximum of $70 million to be distributed in fiscal 1976 and a maximum of $100 million for the fiscal year ending in 1980.

The bill would appear to insulate public TV from some administrative political control which has been used in the past to withhold annual appropriations based on the political content of some programming. Litigation is pending on this issue (see PCN II, Page 24).

6. SUPREME COURT TO REVIEW BROADCAST BAN ON LOTTERIES

The Federal Communications Commission ruled in 1971 that the broadcast of winning state lottery numbers on news programs would

violate a federal law that prohibits the broadcast of any advertisement or information about any lottery. Newspapers routinely publish such information without restrictions.

Last January, the U.S. Court of Appeals for the Third Circuit ruled that lottery information was "hot news" and therefore protected by the First Amendment.

The ruling came on the appeal of the New Jersey Lottery Commission, which had asked the FCC to reconsider its decision. New Jersey stations WCMC-AM-FM-TV had sought to broadcast the winning numbers on newscasts.

By banning any broadcast of the winning number, the appeals court said, the FCC is imposing a "small prior restraint" upon the dissemination of information of interest to most New Jersey adults. The broadcast media "should be left free to make their own editorial decisions as to what news will best serve their public," the court declared.

The court said, however, that broadcasters may not accept paid advertisements for lotteries.

The FCC appealed and on May 28 the Supreme Court agreed to review the case. The government argues that the broadcast of lottery numbers --- like commercial speech or obscenity --- falls within "certain narrowly defined categories of communication" not broadly protected by the First Amendment.

7. MICHIGAN TV LICENSE OPPOSED BECAUSE OF NEWS BIAS CHARGE

The ACLU of Lansing, Michigan has challenged the license renewal of Lansing television station WJIM-TV in part because of allegations that the station owner used news coverage to further his personal economic and political interests.

The license challenge followed publication of a story last year in the Detroit Free Press which said that Gross Telecasting, Inc., licensee of the television outlet and its radio affiliates, and its principal stockholder and board chairman, Harold F. Gross, ordered newsmen to exclude from broadcasts city councilmen who wouldn't vote for Gross's requests for the cable television franchise in Lansing. Gross was also reported as ordering a blackout of a 1968 Democratic candidate for Congress because he objected to the candidate's anti-war views.

In April, the Federal Communications Commission ordered a hearing to consider whether Gross ordered the distortion or supression of news.

Attorneys for Gross in May filed an opposition with the FCC. They said the hearing order "raises serious legal and policy questions under the First Amendment" and the no-censorship provision of the Communications Act, and that the matters to be reviewed "relate to a few, scattered instances," all allegedly dating back more than 15 years to the 1950's.

In June, the FCC dismissed on procedural grounds Gross's petition opposing the hearing.

8. TEXAS TV LICENSE OPPOSED BY NEWSMAN FIRED AFTER FILING OPEN MEETING SUIT (see this PCN, p.70)

9. NIXON TAPES SHOW POLITICAL HOSTILITY TO WASHINGTON POST; BROADCAST LICENSES NOW BEING CONTESTED; KATHERINE GRAHAM AFFIDAVIT FILED

President Nixon's antipathy toward The Washington Post for its intense coverage of the Watergate scandals became more evident in May with the disclosure of a White House discussion of retaliation against the Post-Newsweek broadcast stations. House Judiciary Committee transcripts of an edited-out portion of taped White House conversations on Sept. 15, 1972 revealed the following conversation:

The President:"...(the) main thing is The Post is going to have damnable, damnable problems out of this one. They have a television station...and they're going to have to get it renewed."
H.R. Haldeman: "They've got a radio station, too."
The President: "Does that come up too?..it's going to be goddam active here...Well, the game has to be played awfully rough..."

Less than four months after Mr. Nixon's threat, license renewal challenges to Post-owned television stations, WJXT in Jacksonville and WPLG in Miami, were filed. The challengers included individuals with close political ties to the Nixon administration:

George Champion Jr., Florida finance chairman for Nixon's 1972 re-election campaign, headed a group seeking the Jacksonville license. The Miami group included law partners of Nixon friend, former Sen. George Smathers.

The White House, following the disclosure, denied any intent to use the Federal Communication Commission to revoke the licenses. Former FCC chairman Dean Burch, now a White House adviser, said the President was letting off steam and "...the only palpable facts are the FCC was not leaned on by anyone at the White House."

Post Company president Larry H. Israel charged that the challenges were "conceived and inspired by the White House" and called the disclosures "deeply disturbing."

In another development, the Miami challenger, Tropical Florida Broadcasting Co., petitioned the FCC May 16 to enlarge the issues to determine "what, if any" basis Post chairman Katherine Graham had for asserting during a 1973 television interview that the challenge was prompted by White House resentment of The Post.

Tropical Florida also asked the commission to determine Mrs. Graham's motivation for making the charge and the "effect her conduct may have" on the Post station's qualifications to hold the television license. Tropical Florida president Cromwell A. Anderson said in an affidavit filed with the May 16 petition that his company's application "was not and has not been encouraged in any way by the Nixon administration or any person connected therewith..." Anderson "categorically" denied that Tropical Florida's application "resulted" from The Post's role in Watergate.

In a sworn affidavit filed June 21, Mrs. Graham said she believed the challenges "were part of a White House-inspired effort to injure The Washington Post Company in retaliation for its Watergate coverage."

The affidavit was attached to Post-Newsweek's opposition to the Tropical Florida petition to enlarge the issues to include an examination of Mrs. Graham's comments, which she made in a July 30, 1973 interview on the NBC "Today" show. Post-Newsweek lawyers said Tropical Florida did not offer any explanation as to what the "Today" issue has to do with the case. The challenges to The Post licenses are still pending.

10. TWO HOUSE COMMITTEES TO LOOK AT POLITICAL HARASSMENT CHARGES

The House Judiciary Committee is investigating whether President Nixon tried to carry out his prediction of trouble for the Post-Newsweek stations. According to Rep. Jerome Waldie (D-Calif.), the investigation began before the public disclosure of the Sept. 15 conversation.

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The Sept. 15 disclosure prompted another congressman, Rep. Torbert H. Macdonald (D-Mass.), chairman of the House Communications Subcommittee, to suggest the possibility of holding hearings on attempts to mix politics and broadcast control.

11. BILL PERMITTING LOTTERY BROADCASTS PROPOSED

Sen. Hugh Scott (R-Pa.) introduced a bill in May that would lift the ban on broadcasting lottery results in states with legal lotteries. The bill (S.3524) would also permit the mailing and televising of lottery information and the transportation, mailing and advertising of lottery tickets in interstate commerce. An identical bill was introduced in the House by Rep. Paul Findley (R-Ill).

Action on the legislation is not expected during this session of Congress. (see p.78 for related story)

12. PROXMIRE CALLS FOR REPEAL OF FAIRNESS DOCTRINE

Sen. William Proxmire (D-Wisc.) said he favored abolition of the Fairness Doctrine in a July 9 speech on the Senate floor and argued that "broadcasters should have the same First Amendment rights de facto as publishers."

"We cannot have a First Amendment that is qualified. By definition, freedom cannot be shackled," Proxmire said.

He also said he plans to give a series of speeches showing why the First Amendment should protect broadcasters as much as the print media.

13. SENATE VOTES TO MODIFY "EQUAL TIME" LAW

The equal time provision of the Federal Communications Act (section 315(a)), requires that broadcasters give equal air time to political candidates for the same office.

The Senate voted in April to repeal the equal-time broadcast provision as it applies to presidential and congressional elections if congressional candidates are given five free minutes of broadcast time.

To avoid the equal-time obligation, broadcasters would be required to notify political candidates for the Senate and House at least 15 days before election day of the availability of the free time.

Repeal of section 315(a) was introduced by Sen. Walter D. Huddleston (D.Ky.) as an amendment to S.3044, the Federal Election Campaign Act Amendments of 1974 which the Senate passed in April. Currently, there are no bills in the House proposing equal-time repeal.

14. ABC NEWS FREED FROM 7-MONTH BAN ON CRIB DOCUMENTARY (see this PCN, p.)

15. CBS & ABC REFUSE MOBIL OIL ADS; NBC CARRIES AD; MOBIL: OIL CRITICIZES NETWORKS & RUNS NEWSPAPER ADS

Last spring ABC and CBS refused to carry Mobil Oil Corp's television commercials dealing with the energy crisis. One commercial rejected by the networks but aired by NBC asked viewers for their opinions on the subject of off-shore drilling for oil and gas.

CBS and ABC turned down the commercial for essentially the same reason: that it dealt with a "controversial issue of public importance." CBS noted that it has a general policy of only accepting paid commercials "for the promotion of goods and services" and not accepting ads for the presentation of controversial public issues. ABC maintained those issues are best discussed in news and public affairs programs.

A spokesman for NBC, which ran the commercial, said his network did not regard it as "controversial."

Mobil chairman Rawleigh Warner Jr. in a June 3 speech, said, "since network broadcasting is among the most concentrated of U.S. profit making industries, it would appear that our country may be facing a danger of monopoly censorship."

He said, "the real issue seems to be whether the commercial networks should have total control over what is broadcast to the American people."

Mobil has taken out full-page magazine advertisements criticizing the networks for their refusal to carry the ads.

BROADCAST MEDIA

Mobil has recently tangled with ABC over another issue: a March 20 ABC News documentary on the oil crisis. In April, Mobil issued a 22-page criticism of the program, which it said was inaccurate and "shoddily" researched. The National News Council subsequently dismissed Mobil's complaint against ABC News.

16. PALEY CALLS FOR REPEAL OF FAIRNESS DOCTRINE

CBS Chairman William S. Paley called for the elimination of the Fairness Doctrine, which he termed "a tempting device for use by any administration in power to influence the content of broadcast journalism." The Fairness Doctrine requires broadcasters to present each side of a controversial issue of public importance.

In a speech May 31 at the dedication of the Newhouse Communications Center at Syracuse University, Paley criticized the Nixon Administration for a "systematic effort" to discredit journalists "whose treatment of the news it disapproves." Broadcast journalism, he said, "has been subjected to unprecedented direct threats to inhibit, weaken and disable it."

17. WASHINGTON POST BARS CAMERAS FROM ANNUAL STOCKHOLDERS MEETING

The Washington Post Co. refused to permit a camera crew from Post-Newsweek television station, WTOP in Washington, from covering its annual stockholders meeting May 8 in Washington. Also barred was a photographer from the Washington Star-News. Reporters were allowed into the meeting.

Katherine Graham, Post chairman, later said it was inconsistent for a news company to block coverage of its own meeting and the next day a company spokesman said, "It will never happen again."

18. HOUSE PASSES BILL EXTENDING BROADCAST LICENSES TO FIVE YEARS

The House of Representatives passed in May a bill (H.R. 12993) which would amend the Federal Communications Act by extending the licensing period of broadcasters from three to five years. The bill is currently before the Communications Subcommittee of the Senate Commerce Committee. Broadcasters support the bill while some citizen access groups oppose it as giving, in effect, a permanent license.

19. IMPEACHMENT DEBATE MARKS BROADCASTING FIRST

The televised impeachment debates in the House Judiciary Committee represented the first time the House of Representatives has allowed live broadcast coverage of its committee meetings.

In the past, only committee hearings---and not deliberations---were allowed to be broadcast. The way was opened to televise the impeachment debates on July 22 when the House voted, 346-40, to

permit the live broadcast of the historic debates. The Judiciary Committee vote to open up the impeachment proceedings to the public and electronic media was 31-7.

It was expected that impeachment proceedings in the full House and a trial in the Senate would also have been televised. That possibility was removed by President Nixon's resignation Aug. 8.

20. CBS EXECUTIVE DEFENDS WATERGATE COVERAGE & DAN RATHER

CBS News President Richard S. Salant has rejected contentions that CBS had "overplayed" its Watergate coverage. Using the term Watergate generically, Salant told a meeting of network affiliates May 15 that Watergate is the "major peacetime story of the generation," bound to be the subject of entire history books.

Salant also defended White House correspondent Dan Rather, who has come under criticism for his verbal exchange with President Nixon at a March press conference in Houston. Saying he wished the incident never happened, Salant praised Rather as a "superb journalist" who has the "deep respect of the vast majority of his professional peers."

VII. LABOR

U.S. SUPREME COURT GIVES SPECIAL LIBEL PROTECTION TO UNION DISPUTES

A Virginia local of the National Association of Letter Carriers published a newsletter calling non-union letter carriers "Scabs" and listing their names. The non-union members filed a libel suit under Virginia law and were awarded $165,000 damages. The judgment was upheld by the Virginia Supreme Court.

On June 25, the U.S. Supreme Court reversed the judgment, holding that the National Labor Relations Act pre-empted state libel laws to the extent that a labor dispute libel must be shown to be issued "in reckless disregard for the truth" (the New York Times v. Sullivan standard).

The Court also said that words like "scab" and "traitor" are mainly "perjorative" classification which should not be actionable under state laws for labor disputes. An official of the Letter Carriers said that the decision was "one of the most important ever made for the entire labor union movement."

TV NEWSMAN FIRED AFTER FILING OPEN MEETING LAW SUIT (see this PCN, p.70)

WILLIAM BUCKLEY LOSES AFTRA MEMBERSHIP SUIT (see this PCN, p.77)

NOTES

URGENT NOTE

The Reporters Committee has tried not to solicit funds from the rank and file reporters, news editors and photographers and others whose freedom to do their jobs it was organized to protect. Instead, we have relied on donations from a few major publishers and broadcasters.

Now, however, we face a real danger that we may have to curtail this Newsletter because of a lack of funds. Therefore, we are asking for contributions.

Will you please make your check payable for at least $10--more if you wish--and please show this appeal to others who might contribute to the continued existence of The Reporters Committee. Donations are tax deductible and entitle you to become a Sponsor of the Committee.

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(Please return this coupon)

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