

# Supreme Court To Decide on Prior Restraint

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The Supreme Court yesterday agreed to decide, for the first time whether the news media can be stopped by courts from publishing or airing stories that link defendants to the crimes for which they await trial.

In a brief order that disclosed a deadlock on a major issue already raised in the case, the court called for a full hearing, with a decision to follow by June, on the constitutionality of a pretrial "gag" order in a Nebraska murder prosecution.

On a tie 4-to-4 vote the justices rejected the request of Nebraska publishers, broadcasters and news agencies to block enforcement of the prior restraint order while the First Amendment dispute is being settled in the high court.

Under the order, which the Nebraska media have obeyed, no news stories about confessions or other incriminating evidence against Erwin C. Simants, accused of murdering six members of a family in Sunderland, Neb., may be printed or broadcast before the jury is chosen for his trial. The trial is to begin Jan. 5.

Three justices — William J. Brennan Jr., Potter Stewart and Thurgood Marshall — voted to block the press restraints approved by Nebraska's highest court. A fourth, Byron R. White, voted to permit pretrial publication of information — including seriously damaging con-

essions — disclosed in public at the preliminary hearing Oct. 22 at which Simants, 29, was bound over for trial.

White is the author of the court's 4-to-1 decision last March 3 upholding the right of a broadcaster to disseminate accurate information from a court's public record.

In that case, however, the conflict with the First Amendment's free press guarantee was made by a parent seeking to preserve the reputation of a dead rape victim after a guilty verdict had been rendered.

In the Nebraska case, both the prosecution and defense are asserting that another constitutional right — the Sixth Amendment's safeguard of a fair trial by an impartial jury — may be irreparably lost unless press restrictions are imposed.

The high court refused over the dissents of Brennan, Stewart and Marshall, to expedite the decision process, setting the stage for an oral argument no earlier than March.

White said this course was wise because "these questions should be decided only after adequate briefing and argument and ample time for mature consideration."

One major result of this action was to ensure that John Paul Stevens, the nominee whose confirmation as the ninth justice is expected next week, will participate.

Stevens, who dodged questions about prior restraint controversies during his Senate confirmation hearings this week, has been nominated to replace retired Justice William O. Douglas, who repeated in the March 3 broadcasting case his long-held view that there is no power on the part of government to suppress or penalize the publication of news of the day.

The nominee testified that the "very serious" conflict between fair trial and free press might best be resolved by restricting the flow of pretrial information from official sources, rather than by placing direct restraints against the press. Otherwise, he said, the potential jurors may hear premature accounts

of evidence that may be inadmissible at the trial. Such methods are not available in the Nebraska case, however. Incriminating testimony against Simants already has been divulged in open court. Witnesses who testified that they heard Simants admit or discuss the crimes included the defendant's father, his nephew and a detective.

The preliminary hearing was held in open court pursuant to state law, which requires court proceedings to be open to the public.

The Nebraska gag order, sustained in part by Justice Harry A. Blackmun, is an earlier state of the case. It is represented as being a restraint bearing the same name as the approval.

The gag order is a restraint by the federal courts on the press.

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