3 Cases for the High Court

THREE LANDMARK cases involving a newsman's right to protect his news sources will come before the U.S. Supreme Court this session — perhaps this month.

The cases (cover) are those of Earl Caldwell, a New York Times reporter; Paul Pappas, reporter-cameraman for WTEV in New Bedford, Mass., and Paul M. Branzburg, a reporter for the Louisville Courier-Journal.

In each case, the subpoena powers of law enforcement agencies have come into conflict with the news gathering process. In each case, the reporters have refused to disclose to grand juries investigating crimes the information they have received from confidential sources.

Such disclosures, the reporters contend, would destroy their sources and obstruct the free flow of information to the public. Press spokesmen argue that the issuance of subpoenas is little more than a fishing expedition on the part of governmental agencies, that it's improper to rummage through reporters' notes on the off chance of finding evidence of crime. It is argued further that compliance by reporters to government demands forces newsmen to become instruments of the government.

Thus, the broad questions of state and federal "shield laws" seems likely to come to the attention of the Supreme Court.

Caldwell's is the most celebrated of the three cases. The San Francisco-based reporter for the New York Times was subpoenaed in February 1970 with directions to bring to court the tape recordings and notes he had taken during Black Panther interviews. Caldwell not only objected to producing the material, he objected to appearing at all.

His reasoning is understandable. Caldwell didn't enter the Panther's inner circle without working at it. He was received initially with distrust, and only through a sincere show of respect for confidences did he finally earn the trust of party members. His effectiveness as a reporter would evaporate, he argued, if he were required to testify in grand jury proceedings. Even an appearance in court, he added, would cause his sources to fear that he had violated their confidence and good faith.

Caldwell asked the U.S. District Court in San Francisco to quash the subpoena on the ground that he was protected by the Constitution. The district court refused and ordered him to appear, minus the requirement to disclose confidential sources or to answer questions about information that was not given to him for publication.

Caldwell still refused to appear, so the court found him guilty of contempt and sentenced him to jail. The sentence was suspended pending the outcome of appeals. The U.S. 9th Circuit Court of Appeals reversed the decision, holding that the lower court's order did not adequately protect Caldwell's First Amendment rights. According to this latter decision, Caldwell could still be subpoenaed, but only if the government could succeed in proving a "compelling need" for his tapes and notes.

Enter the Justice Department and its appeal of the case to the U.S. Supreme Court. Does the First Amendment give a reporter an absolute privilege to refuse to answer any questions "unless the government first shows a compelling need for the information"? This, says the Department, is the principal question for the Supreme Court to answer.

The Paul Pappas case is somewhat similar. While covering racial disturbances in New Bedford, he had been invited by the Black Panthers to enter local headquarters of the party when a police raid was expected. The invitation was made with the stipulation that he could take pictures but could not report anything else from inside the headquarters. The raid didn't occur, so Pappas reported nothing.

Pappas, like Caldwell, refused to answer a grand jury subpoena, and the high court in Massachusetts granted him no constitutional newsman's privilege.

In the case of Paul Branzburg, two county grand juries in Kentucky subpoenaed him after he wrote two articles on the use of marijuana, hashish and other drugs in the Louisville area. Where Caldwell and Pappas got close to the Black Panthers, Branzburg gained the confidence of hippie sources.

A state "shield law" comes into play with the Branzburg case. He cited a Kentucky law that grants newsmen immunity from disclosing confidential sources while at the same time refusing to testify. But the state rejected his argument, which means a Supreme Court hearing may ultimately decide the fate of "shield laws" in Kentucky and 18 other states, as well as a proposed federal "shield law" that has been endorsed in principle by SDX and other media organizations.

THE FOLLOWING ARTICLE was written by University of Michigan law professor, Vince Blasi, who received a Field Foundation grant in 1970 to examine the legal rights of journalists faced with government orders to disclose their sources.

Professor Blasi is well prepared to speak to the question. As a specialist in constitutional law, he has a special interest in the subject of freedom of expression and association. He authored a 93-page article, "Prior Restraints on Demonstrations," which appeared in the August 1970 issue of the Michigan Law Review. Blasi was a member of the University of Texas law faculty for two years before moving to Michigan. He has been a visiting law professor at Michigan and Stanford universities. He graduated in 1967 from the University of Chicago law school, where he was a law review editor and member of Order of the Coif.

J. Anthony Lukas of the New York Times says Blasi is perhaps the most qualified man in the country for exploring the history, legal theories, proposed legislation and litigation procedures concerning the issue of "newsman's privilege." The aim of Blasi and those working with him on the Field project is to develop materials helpful to lawyers litagating these problems. →