

Village Voice Loses Court Test to Protect Source

By LESLEY OELSNER

In one of the first judicial tests of the state's "newsman's privilege" statute, The Village Voice has just been overruled in its attempt to avoid a subpoena directing it to turn over the original manuscript of an article it had published.

The article was purportedly written by an inmate who was later indicted for his alleged role in the 1970 riots at the Manhattan House of Detention for Men, called the Tombs, and the Manhattan District Attorney's office wants it for use in his trial.

The case has far-reaching significance because the decision, by State Supreme Court Justice Harold Birns, sets forth specific limits on the newsman's right to claim his newly won privilege—limits which, according to lawyers for The Voice and other media, are inconsistent with the purpose of the law.

Justice Birns, in an opinion published yesterday, said reporters may claim their privilege to withhold information they have gained on the job or the sources of that information only when they obtained it "under the cloak of confidentiality"—when the information has been given the reporter with an "understanding" that the "information or its sources not be disclosed."

As the manuscript given to the Voice reporter, Mary Breasted, was subsequently published under the byline of the purported author, Ricardo de Leon. There was no "cloak of confidentiality" at all, Justice Birns reasoned.

The prosecution wants the original manuscript because it could be far better evidence against Mr. de Leon than the printed article. The printed article would have to be verified by the Voice, which could cause additional legal battles, whereas the original manuscript, if submitted along with evidence by a handwriting expert that it was written by Mr. de Leon, would be clearly admissible.



The New York Times

Justice Harold Birns set specific limits on "newsman's privilege" law.

State Law Cited

The state law, which went into effect in May, 1970, makes no mention of the word "confidentiality." It simply says that no "professional journalist may be held in contempt for refusing "to disclose any news or the source of any such news coming into his possession in the course of gathering news" for publication or broadcast.

And thus, media lawyers argued yesterday, the statute was meant to have a broader reach than yesterday's decision would allow. "The words of the statute are that all news is protected," said Nathaniel J. Bickford, attorney for the Greenwich Village weekly. "We feel the Legislature knew what it was doing," he went on, in a view echoed by attorneys for several other press groups yesterday. "If they wanted the word 'confidential,' they would have put it in."

The effect of Justice Birns' interpretation of the statute, such lawyers feel, would be to allow the Government to inter-

fere, with the "internal operations," as one lawyer put it, of the media.

As for the man who sponsored the bill in the Legislature, he said he did not know if the lawmakers had intended "confidentiality" to be a factor or not—"I'll have to study the memos and read the opinion," said Assemblyman Emeel Betros, Republican of Dutchess County.

"I will say, though, it was at the time considered a very broad law," he said. It was "intended—and in fact it—one of the broadest," a characterization echoed by those who have studied the newsman-privilege laws of the 18 states that have them.

The case comes at a time when courts from the United States Supreme Court on down are considering suits raising various aspects of press freedom.

And though there have been a scattering of other opinions on the New York law—lawyers interviewed yesterday cited three others—Justice Birns' decision, the lawyers said, was the first in-depth interpretation of the law. The Voice—which

considers the decision, as its editor, Daniel Wolf, put it, "thoroughly regrettable"—is now reviewing the matter to decide whether to appeal.

In its opposition to the subpoena, as Mr. Bickford noted yesterday, the Voice had made such points as these: that sources would not give information to the media if they thought the media would be playing the "double role" of aiding the prosecution as well as reporting news; that if the media had to worry about endangering a person who gave them information, they would not publish it, and thus would be giving the public less information than it should.

The Voice, though it relied largely on the new state law, also argued that it was protected by the First Amendment. Several lawyers on both sides of the free speech debate, however, suggested that as the amendment was now interpreted in the courts, that argument would not be upheld by printing the article, they said. The Voice could be held to have waived its first amendment rights.