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The Goodman Jailing MAR 6 1972

Judges at all levels, up to the United States Supreme Court, are wrestling with the immensely difficult task of determining what limits, if any, can be imposed on the right of the press to protect its sources of information. That task would have been needlessly confused had Federal Judge Marvin Frankel not acted yesterday to order the release from jail of the imprisoned manager of radio station WBAI.

No defensible judicial purpose was served by the refusal of the state courts to fix bail for Edwin A. Goodman, the WBAI chief, pending appeal of his contempt sentence for rejecting the court mandate to turn over tapes of a broadcast of a 1970 uprising by prisoners in the Tombs. In this state, the broad guarantees of press freedom contained in the First Amendment to the United States Constitution are supplemented by a statute explicitly prohibiting contempt judgments for "refusing or failing to disclose news or the source of any such news." Unlike many approaches to press freedom, which draw an artificial line of distinction between print and electronic journalism, the New York statute protects newscasters as well as newspaper reporters and editors.

Our belief that there never was any warrant for court denial of bail or parole to Mr. Goodman is not meant to imply a belief that the WBAI case is necessarily sound. The basic question of infringement on the freedom of the press seems less than totally clear-cut. It is certainly debatable that a station, which offers its tapes for sale to anyone who is willing to pay the fee, is on solid ground in refusing to sell them to the District Attorney or in defying a court order to make them available. Also decidedly debatable is the WBAI contention that comments in a broadcast are not matters of public record but are "public only for the fleeting moment during which they are actually broadcast."

But the very fact that there are still no trustworthy judicial guideposts by which to operate in this field would have made it grossly unfair to withhold from Mr. Goodman the same access to bail pending appeal that is the right of persons found guilty of major crimes of violence or betrayal of trust.