

NYTimes

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WBAI and the Law: To Preserve a Free Press

To the Editor:

Your March 6 editorial "The Goodman Jailing" misses the main issue in the conflict between the Manhattan District Attorney and radio station WBAI-FM. While you correctly assess the indefensibility of the court in jailing station manager Edwin A. Goodman for his refusal to surrender subpoenaed materials relating to the city's investigation of the 1970 Tombs riots, your editorial dwells too heavily on legal distinctions of dubious applicability.

At issue here is a question of major public policy: whether the police function of government may coerce the press into performing an auxiliary role. Essentially, the District Attorney is attempting to obtain journalistic materials for use in criminal prosecution. If he succeeds, every newsman becomes a potential witness for the prosecution. What could produce a more "chilling effect" upon the First Amendment?

State law prohibits the court from finding in contempt any member of the press who refuses to reveal news or news sources. This is not because our legislators just enjoy inconven-

iening the police; it is because they recognize that any compromise of the freedom and integrity of the press must result in greater social harm than that compromise could prevent. Securing additional criminal convictions is not worth the sacrifice of a free and independent press.

Further, the present technology of voice-printing from tape recordings poses special problems for the electronic media. Surrendering a tape of a man's voice is the equivalent of surrendering his thumbprint or his signature.

In our time, the press is the eyes and the ears of the public. These public facilities have suffered impairment from both weakness within and injury from without. I will not attempt to diagnose the pathology of your editorial myopia in this issue; I will call upon you to consider whether the subordination of press rights to police functions is not an essential attribute of the police state.

FRANK MILLSPAUGH
New York, March 6, 1972

The writer is former manager of WBAI-FM.