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WBAI Chief Ruled Freed Too Quickly

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The United States Court of Appeals here ruled yesterday that Federal District Judge Marvin E. Frankel had acted too quickly when he freed Edwin Goodman, the general manager of radio station WBAI, from jail 10 days ago.

But although the court reversed Judge Frankel's action, thus requiring the jailing of Mr. Goodman again, it stayed its own order for 48 hours to permit Mr. Goodman to take his case back to the state courts.

The state courts, the Court of Appeals said in effect, were improperly interrupted in their handling of the Goodman case by Judge Frankel.

Mr. Goodman was sent to jail on Friday, March 3, by State Supreme Court Justice Gerald P. Culkín to serve a 30-day sentence for contempt of court. The sentence had been imposed after Mr. Goodman refused to comply with Justice Culkín's order that he turn over to the Manhattan District Attorney's office the tape recordings and broadcast materials made during an uprising in the Manhattan House of Detention For Men in October, 1970.

The prosecution had wanted these for its case against several men who were then in the institution, also known as the Tombs, and Mr. Goodman contended that the subpoena was a violation of the rights of a free press.

Immediately after Justice Culkín imposed the sentence, Mr. Goodman's lawyers asked him for a stay pending appeal of the basic question of whether or not the subpoena was valid.

Justice Culkín refused, and the next day the lawyers for WBAI made the same request to Justice James B. M. McNally of the Appellate Division of State Supreme Court.

Jurisdiction Cited

Justice McNally also refused, saying, according to yesterday's opinion by the Court of Appeals, that as a single justice he lacked jurisdiction over the matter.

He said, however, that the question could be heard by a full panel of the Appellate Division, and set the next Tuesday, March 7, as the date for legal papers to be filed.

That same Saturday, though, Mr. Goodman's lawyers went to Chief Judge Stanley H. Fuld of the New York Court of Appeals, asking him to stay the jail sentence or release him on bail or parole.

Judge Fuld also refused, "apparently," according to yesterday's Federal court ruling, "because of the absence of any final order from the Appellate Division."

Petition Heard on Sunday

Then the lawyers turned to Judge Frankel, who agreed to hear a habeas corpus petition Sunday morning at Town Hall in Larchmont, N.Y. It was this action—as opposed to the specifics of Judge Frankel's order, in granting the writ—that the Court of Appeals found improper.

"The decisive element here," said the court, in an opinion by Chief Judge Henry J. Friendly, "is that the Federal court intruded before the state courts had a reasonable time to act."

Yesterday's decision noted that the Appellate Division, when it met last week as originally scheduled to consider Mr. Goodman's request for a stay of the jail term, had ruled that the question was now moot, in view of Judge Frankel's order.