

Reporter's Safeguard

Bridge Case Raises Doubts About The Status of Privilege of the Press

By LESLEY OELSNER

Six days into his jail term, Peter J. Bridge of Newark is already journalistic history: His case is being billed by many in the media as the first direct fallout of the United States Supreme Court's decision last June in the Caldwell case, and hence, as an omen of bad times to come for the country's press.

Mr. Bridge's jailing arose from his refusal to answer some of the questions of a grand jury relating to a news article he wrote. Yet to legal experts, the jailing is not technically a direct result of Caldwell. And that, they say, may mean that the Bridge case is an even worse omen.

For the Caldwell decision, involving Earl Caldwell of The New York Times and two other newsmen, held that the First Amendment did not give newsmen an automatic right or privilege to refuse to testify before grand juries about their work. But it did not require the jailing of all newsmen who refuse to testify; instead, it left two openings:

In a concurring opinion Justice Lewis F. Powell Jr. specified that in determining whether to uphold subpoenas of newsmen, the courts must balance the interests of a free press against the interests of the grand jury investigation to which the newsman is being asked to contribute.

And because Justice Powell's vote was necessary to carry the majority, his opinion must be considered as a limit on the "majority" opinion of four of his colleagues.

In the majority opinion itself, the court explicitly said that the states and Congress were free to create whatever "newsman's privilege" they see fit—including, it said, an "absolute" privilege.

Mr. Bridge, at least pending appeal in the Federal courts, has apparently lost the "balancing" test. And while New Jersey does have a newsman's privilege statute, the state courts held that under the facts of the case, the statute did not protect Mr. Bridge.

Double Lesson

The lesson to working press, legal experts say, is thus twofold: First, that the lower courts, in interpreting the Caldwell case, may be even tougher on newsmen than the Supreme Court was, and that newsmen will have little success in arguing that they have a constitutional protection; second, that the media will thus have to rely more and more on newsman's privilege statutes, and that unless these statutes are carefully drawn they will not be much help either.

"There is a combination of sloppy draftsmanship and hostile judges," says Prof. Vincent Blasi of the University of Michigan Law School, who is now drawing up a model newsman's privilege for the Council of Commissioners on Uniform State Laws.

"You have this sort of fallout to a Supreme Court decision," he says. "We can read it as an invitation to state legislation, state judges can read it as a declaration of principle."

The current case started with an article that Mr. Bridge wrote

for the now-defunct Evening News of Newark about corruption in that city's Housing Authority. As it turned out, the outcome of the case appeared to hang on one particular section of the article, in which he quoted one of the Housing Authority commissioners, Mrs. Pearl Beatty, as saying she had been offered a bribe.

What He Refused

Mr. Bridge was thereupon summoned by an Essex County grand jury. He answered a number of its questions bearing on what he had written; he affirmed that the article that had appeared in the paper.

But then he refused to answer five other questions concerning what he might or might not know aside from what he wrote in his article. For that he was held to be in contempt.

New Jersey's statute specifies that a newsman need not disclose the "source, author, means, agency or person from or through whom any information" was obtained. But it also specifies that the newsman can waive his privilege, and though the wording is a bit unclear, it appears to say that if the reporter discloses any part of the confidential material, he was waived his privilege.

Superior Court Judge H. Curtiss Meanor, in a decision affirmed by the state's Appellate Division, ruled that under the circumstances Mr. Bridge had no First Amendment protection. He also said that Mr. Bridge waived his statutory privilege when he named Mrs. Beatty.

Mr. Bridge argued, to no avail, that if he had answered the five questions in dispute, he might necessarily have revealed other sources besides Mrs. Beatty, and that the statutory privilege thus protected him.

Back to High Court

Mr. Bridge's lawyers plan to raise the First Amendment question, in an appeal to the United States Supreme Court, which last week decline to stay the execution of Mr. Bridge's jailing pending appeal. But the question of the statutory privilege, being a matter of state law, has been resolved, and to most lawyers, interviewed given the wording of the statute, Judge Meanor's decision was no surprise.

State Senator James H. Wallwork, who has introduced a bill to expand the statutory privilege, said: "It would seem to me that the statute does need clarification."

The bill provides that a newsman need reveal neither the source nor other confidential information; it would thus create a privilege more like that in New York State. Yet even in New York a series of recent cases has cut into what was originally described as an exceptionally broad privilege.

For as Prof. Blasi puts it, "the key battleground now is in the interpretation of statutes." The lower courts may be overstrict in their application of the Caldwell decision, but to Mr. Blasi and other constitutional specialists, the Supreme Court is unlikely to consider the matter again for a few years.

The Court, they say, like the press, wants to see the effects of the Caldwell case.