THE QUILL PRESS DEC 72

The William Farr case

in and out of jail — and in again

By BEN CUNNINGHAM

IN SINCLAIR LEWIS' novel, "It Can't Happen Here," it was the ignorance of the people on matters pertaining to a free press that made it possible for the government to arrest for printing "seditious" matter a decent, small town, conservative New England newspaper editor and put him in a concentration camp. Only a novel — strictly fiction — nonsense — preposterous — maybe, but William Farr, a 37-year-old ex-Marine and "law and order" Republican, and presently an investigative reporter for the conservative Los Angeles *Times*, doesn't think so. It has happened to him in what is one of the strangest cases in modern American journalism.

It all started when Farr, then a Los Angeles *Herald-Examiner* reporter, was assigned to cover the Charles Manson trial. On Dec. 10, 1969, Superior Court Judge William B. Keene, who presided over the preliminary proceedings of the Manson trial before he was challenged and removed, imposed a gag rule. The rule prohibited the news media from talking to a witness *before* a witness testified. It was not considered by the working press as an unusual gag rule. The trial began in June, 1970, with Superior Court Judge Charles H. Older presiding.

Sometime in July, 1970, Farr obtained information about a bizarre plot by Manson and his "family" to murder Frank Sinatra, Elizabeth Taylor, Richard Burton, Tom Jones and Steve McQueen. He wrote the story, but told his editor he could not release it until Susan Atkins' cellmate, Virginia Graham, had testified. This was the usual arrangement under a gag rule — after the testimony the press could talk to whoever had testified.

However, on Oct. 1, Judge Older cautioned all the attorneys in the trial that the gag order as far as he was concerned would pertain to all witnesses *before, during* and *after* their testimony. This was considered unusual. Most veteran trial reporters complained about the order. Farr would challenge it.

Farr was concerned that his story based on Graham's testimony received off the record would place her in danger of affecting her parole. He also thought there was a possibility she would have to face a hearing in which she would have to admit she had talked to Farr or perjure herself if she said no. In order to circumvent Older's gag order, Farr obtained trial transcripts of Graham's testimony from several of the defense attorneys. Then he suggested that Graham's attorney tell

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More than $2,000 has been contributed to the Sigma Delta Chi Legal Fund by SDX chapters and individual members, reports national headquarters.

The fund has been established to aid in the legal defense of Peter Bridge, William Farr and other newsmen who may be jailed for refusing to reveal confidential news sources.

Members and chapters are urged to forward contributions to Sigma Delta Chi, 35 E. Wacker Dr., Chicago, Ill. 60601.

Judge Older that Farr had a copy of the Graham transcript.

When Judge Older learned of this he called Farr into his chamber and asked him if he did have the transcript, and Farr admitted he did. Judge Older asked him if he would say who had given him the transcript. Farr said he would not. When asked if he was invoking the statutory privilege of a reporter's immunity to protect a news source under Section 1070 of the State Evidence Code, Farr replied that he was. Then he told Judge Older his newspaper was going to run the story. He said he told the judge this so the windows would be covered on the bus that brought the sequestered jury to and from court. The windows were covered and the jurors later said they never saw the front page story about the bizarre plot. No further proceedings against Farr by Judge Older were conducted, and this seemed to be the end of another clash between a trial judge and a trial reporter over the use of a gag rule. But it wasn't and what happened next at first seemed to Farr to be a joke. Many California reporters thought it was not only a joke, but absurd. It was neither.

Judge Older, still upset about how Farr got the transcripts, wanted to know who gave them to him. He believed the defense attorneys or attorney who gave Farr the transcript should be punished for violating the court's gag rule. He wanted the name or names, but Section 1070 prevented him from finding out. The attorneys who gave Farr the transcripts faced possible disbarment if he named them. He said he promised the attorneys he would not reveal their names. "I gave my word and I intend to keep it. I promised them no harm would come to them, and I'm not going to let them down. I have not even given their names to my attorney."

On March 1, 1971, Farr left the *Herald-Examiner* and became executive assistant for Los Angeles District Attorney Joe Busch, and on May 5, 1971, he was served with an order from Judge Older to show cause why he should not be compelled to answer essentially the same questions he had been asked seven months earlier. Farr thought the order was ridiculous because he believed he was protected by the California shield law. Not so, said Judge Older. The shield law protected only newsmen, so Farr could no longer rely upon its protection. Many of Farr's court reporter friends said Judge Older couldn't get by with this ploy. Farr agreed, and he was not too concerned. Meanwhile, Farr returned to journalism, joining the Los Angeles *Times* as an investigative reporter.

After a series of three hearings, Farr was found guilty on July 28, 1971, on 13 counts of civil contempt. A contempt charge normally carries a 5-day sentence and a $500 fine, which means Farr could be sentenced to 65 days and a $6,500 fine. Farr said he would serve such a sentence and pay the fine, but Judge Older says Farr is guilty of *civil* contempt and this type of contempt carries an indefinite sentence, that is, the person remains in jail until that person answers the questions. Farr's attorney, Grant Cooper, told Judge Older on the day the sentence was imposed against Farr, "Considering Mr. Farr's belief that he must keep his promise to his sources, you have just given him what could be a life sentence." Farr has said he will not answer the questions. Judge Older says Farr will stay in prison until he does. During the hearings, the attorneys, suspected by Judge Older of having given the transcript to Farr, denied having done so under oath. Farr decided to appeal the decision. Older allowed him to remain free to make the appeal. Many California reporters and editors assured Farr he was still protected by the shield law even though the law did not specifically say he was. In other words, the privilege did not evaporate when he took a non-journalism job.

WILLIAM FARR

"I was in effect ordered to go to jail for forever and a day or until I divulged the sources of my information. Groups like Sigma Delta Chi are going to have to better convince the public of the public's right to know." (Photo by Angela Curcuru)

The Second District Court of Appeals on Dec. 17, 1971, ruled against Farr (upholding Older's action). However, the Court did not rule on whether the privilege did not evaporate, but rather ruled that Section 1070 was unconstitutional because the California legislature had no right to pass a law that interfered with a judge's ability to govern the proceedings in his own court. Some critics claim this decision was a "cop out" by the court.

Prior to the appellate decision some interest in the Farr case was aroused among the local news media and it received some play, but not *one* of the many area newspapers, radio and TV stations tried to explain to the public what was really at stake. Although several editorials appeared in print, and a few radio and TV editorials were aired following the appellate court decision, the story still needed to be told in its entirety. It wasn't. In the meantime, while Farr was deciding on whether to request a California Supreme Court hearing, some of the members of the Los Angeles area news

media were still arguing whether Farr's story was worth all the fuss. Farr is the first to admit his story was not an important story that involved any public good. Some complained he had worked for a Hearst-owned newspaper and was a "scab" to boot, so let him go to jail. Still some quibbled about the tactic he used in having Judge Older tipped off that he had the transcript, thus creating the mess he was in. This is not unusual behavior for some Southern California news media people. Freedom of information matters are generally ignored or, if possible, dodged. In a meeting of professionals in Los Angeles it was argued by some it would be a waste of money as well as time. It was suggested by one that it would be best to save the big ammunition for a later day and "better" case. John Peter Zenger (who had a "weak" case) was fortunate he wasn't in Los Angeles at the time. One newsman referred to his Los Angeles colleagues on press freedom matters as "the reluctant dragon." Regardless of description, the Los Angeles area performance seemed to lack conviction and commitment.

In spite of the general timidity and the often petty bickering, attorneys from the Los Angeles *Times, Herald-Examiner,* the Los Angeles Professional chapter of Sigma Delta Chi, KNXT-TV (CBS), the California Newspaper Publishers Association, Twin Coast Newspapers, Inc. (Ridder), the LA Press Club, and the Newspaper Guild of Los Angeles, entered amicus briefs for the California appellate hearing. The "reluctant dragon" was stirring.

Finally Farr, now very concerned, requested a California Supreme Court hearing which was denied on March 20, 1972. The court said the question of whether the privilege evaporated was now moot. The California legislature had recently amended Section 1070 to make the immunity in perpetuity. The Farr case had done some good, but not for Farr. He still faced prison.

By now Farr was convinced that Judge Older meant to get those names or else, and time had just about run out. He had one more chance, go to the U. S. Supreme Court. But it would be expensive, and, although he "had a good paying job with the *Times,*" he found out he couldn't buy on credit. To enter into a contract a person must show he can fulfill that contract, and, since he could go to prison any day, he could not legally sign a contract. He found this out shortly after he became a *Times* reporter and tried to buy a new car. The salesman recognized his name and said he was sorry but he was a bad credit risk under the circumstances. He rented an unfurnished apartment in downtown Los Angeles, but could not get furniture. He slept in a sleeping bag on the floor for five months until some friends found out about his situation and bought him some furniture.

In the meantime, F. Lee Bailey and Mark Hurwitz offered their services to Farr, and an appeal was filed in the U. S. Supreme Court on June 19, 1972. They asked the high court to issue a writ of certiorari. Forty copies of the brief are required and must be presented to the court (28 go to law schools). They must be printed. The printing bill costs $3,670. Farr is nearly broke.

He admits he has not pushed the news media to cover the story as hard as he should have. He is an un-

'I was scared out of my wits'

Early in October a reporter in New Jersey became the first newsman to be sent to jail since the U.S. Supreme Court's historic 5-4 ruling last June that journalists have no guaranteed constitutional protection against having to reveal confidential sources of information to a grand jury ("A Career in Jeopardy — Peter Bridge Goes to Jail," November QUILL*). He was released from custody on Oct. 24.*

PETER BRIDGE has been making the rounds since his release from jail a month and a half ago. Twenty-two days behind bars have made him a newsmaker, and he now keeps busy by trying to squeeze in as many public appearances as possible. They have included an appearance at the Sigma Delta Chi national convention in Dallas last month, as well as visits to SDX campus and professional chapter meetings around the country.

During a visit sponsored by the University of Illinois campus chapter, Bridge spoke with student Paul Bargren about the particulars of his case.

"I don't recommend jail as a place to spend much time," Bridge said, "but I went because of the principle involved. I don't think the public prosecutor has a right to even know whether I have the information, let alone the right to have access to it."

The former Newark *Evening News* reporter said he refused to answer "50 or 60" questions out of over 100 posed to him by the prosecutor at the investigation.

"I could've perjured myself out of that thing real quickly simply by saying 'I don't know' or 'I don't remember,'" Bridge said. "But that would have been giving in on principle. The prosecution had no right to ask me what I knew, other than what had appeared in the paper."

Bridge feels one of the reasons his case ended in a contempt citation was because "I had the audacity to challenge the authority of the prosecutor's office by asking the subpoena be quashed."

"I knew from the time I got the subpoena in May that I was eventually going to jail," Bridge told Bargren. "I was scared out of my wits. I was really frightened when I was on my way to the jailhouse. I had heard so many stories about the bad things that supposedly happened in jail. I was afraid of mental and physical intimidation. And, I was afraid of being alone."

Although he has received extensive press coverage since jailed, there was little coverage during the summer months while the hearings, trials and appeals took place.

"I don't know why the press didn't realize the issues involved. Forced revelation of privileged material or confidential sources is in direct conflict with the public's right to know." Private sources are an absolute necessity to any good newsman."

A law granting newsmen complete immunity from revealing their sources to any investigative body has been passed by the upper house of the New Jersey legislature and is now being considered by the lower house. New Jersey is the first state to consider such an "absolute" law.

Bridge says it was a loophole in the present New Jersey immunity law which allowed him to be cited for contempt and jailed.

"I'd go to jail again, if I had to," Bridge said. Then he smiled and told Bargren, "Except the next time, I won't bother to appear in court, I'll just take the contempt charge automatically. Why spend four-and-a-half months messing around getting ready to go to jail. What the hell, I'll just go and get it over with."

assuming man. When he speaks to groups it is with such a soft voice he is frequently asked to speak louder. "It is an awkward thing. Especially when you're involved, because it seems as though it is self-promotion," said Farr. "But, I feel I have a right to urge the news media to give it more notice because I feel that my best chance of getting out of jail after a short time, if I go, and it doesn't look good, is geared to how much public furor there is. I think the judge may think twice if the news media gave it more coverage." He is critical of the Los Angeles *Times* and *Herald-Examiner* for not giving more extensive coverage of his plight before the U. S. Supreme Court rejected his appeal on Nov. 13, 1972. He includes the Southland news media, too.

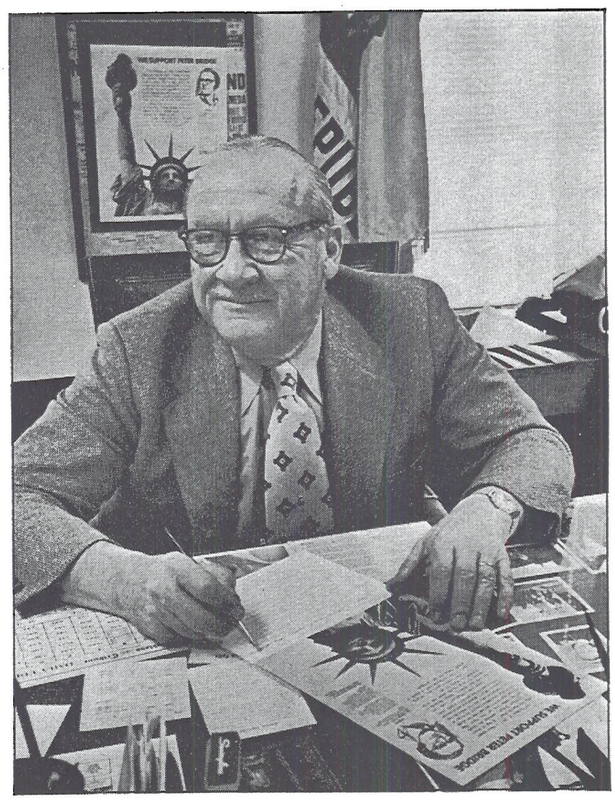
Two days after the Supreme Court announcement, Farr was notified by Judge Older that he was to appear in his court the next day. Farr was stunned. He said he understood he would get at least two weeks' time to arrange his personal affairs. On Thursday afternoon, Nov. 16, Farr stood before Judge Older and was sentenced to an indeterminate jail term for contempt. The news media finally had a story. Three and a half hours later the California Court of Appeals ordered Farr's release on his own recognizance, pending the outcome of a petition for a writ of habeas corpus. Ironically, two of the three appellate judges ordering his release were two of the judges who had concurred in the original appellate decision upholding Older's contempt order against Farr.

On Nov. 21, the California Court of Appeals denied Farr's petition. Farr went back to court on Monday, Nov. 27. The six attorneys on the Manson case all testified under oath that they did not give Farr the transcript, and they also said under oath that they did not hold Farr to his promise to protect his sources. However, in his testimony, Farr said two of the attorneys had asked him not to reveal their identities. Farr refused to tell Older his sources, and he was returned to jail.

The day the Supreme Court handed down its decision was the biggest news day for the Farr story. It was a major news story with good play, but it was played like many of the earlier big stories out of Vietnam. It was crisis reporting all over again.

In addition, he is disturbed by the failure of the national news media to recognize how seriously his case affects all reporters. "I think we're going to have to do a better job of selling the public on what our role really is. We really need to convince, that is, educate the public that they are best served by the freest press possible."

There was an article in *Newsweek* (Aug. 9, 1971) and a recent story by New York *Daily News* reporter Theo Wilson (A "Farr-Out Fund" steering committee member) and possibly a few others, but up until the day the U. S. Supreme Court rejected his appeal, there had been little attention given to the case. Network radio and TV coverage came on the day Farr's U. S. Supreme Court appeal was turned down. It appears that Farr will get the same kind of coverage Peter Bridge got. Big coverage (and superficial at best) the day *before* he went to jail, and the day he *went* to jail, and then his *post* jail remarks. Then — gone.



WILLIAM F. KNOWLAND, editor and publisher of the Oakland Tribune, was the first person to sign Sigma Delta Chi's "We Support Peter Bridge" petition and first to contribute to the society's nationwide fund drive to raise money for the legal defense of reporter Bridge and others like him.

Knowland, a former U.S. senator, is remembered as the publisher who lent his support to University of Oregon student editor Annette Buchanan in 1966 when she was prosecuted for refusing to reveal the source of a story she wrote on marijuana. (Photo by Lonnie Wilson)

This raises the question, why has the Bill Farr case (and other press freedom cases) received such inadequate national and local coverage? Is there an unwritten code among print and broadcast editors that stories that involve reporters are to be treated as so many libel and slander stories are handled — minor play or no play? Is it because editors really believe the public is not interested in media problems? (How often do we read or hear about the internal problems of newspapers, magazines, radio and TV stations as well as networks? The attitude seems to be that whatever happens within *our* little family is *our* business, not the public's). Is it because editors and reporters believe that the news media's job is to *report* the news, not to *make* it? Or, is it something much more serious in American journalism? — and, that is the news media experts and professionals really do not know *how* and *when* to educate the public on *why* a free press is necessary to preserve a democratic society and why the public's right to know is more vital to the public than it is to the news media.

It seems that once a year every October (Newspaper Week) and every December (Bill of Rights Week) is hardly the way to protect these freedoms and

to educate the public; yet, obviously many editors appear to be willing to settle for this kind of educational program. The end result has been the news media's inept handling of the recent attacks on them from President Nixon, Vice President Agnew, on down to the man-in-the-street. With only a few courageous exceptions, it has been a miserable and disgraceful performance. Instead of telling the public its side of the story, the news media seemed to hesitate and then with reluctance tried to tell its story. Far too many members of the news media allowed their personal political biases to interfere with their responsibilities and their efforts to defend a free press. It was sickening to observe some publishers and broadcasters on the side line either applauding Mr. Agnew's remarks or cowering under the attack. A few fought back. When Agnew "ripped" the broadcasters, the print media tended to hold back (a bit smugly), but then he "hooked" the eastern liberal newspapers and magazines, and it seemed that too many midwestern and western folks nodded approvingly at what many Southerners had always known about the effete conspiracy. It was a pathetic performance, one that hardly commands respect or adulation.

Since the news media bungled its opportunity in "The Selling of the Pentagon" flap, the Pentagon Papers affair, the Caldwell and Peter Bridge cases, some on the West Coast hoped that maybe it would recognize that it had an excellent opportunity to educate the public in the Farr case, but they were apparently wrong. The media cannot tolerate much longer many more missed or bungled opportunities. Is its handling of the Farr case symptomatic of how soft and sick it has become?

Somehow the way the Farr case was handled on the Walter Cronkite Evening News maybe sheds some light on that question. Cronkite covered the story in something less than a minute in what is known as a "reader" with a visual of the U. S. Supreme Court building on the screen behind him. The evening newscast ended with a film report by Charles Kuralt (on the road) on a parade of live turkeys in a small town in Texas which ran nearly three minutes. Which leads one to conclude that maybe none of these recent attacks on the news media *really* happened and are really important, that is, until Walter Cronkite is arrested on camera and taken off to jail while delivering his closing lines "And that's the way it is. . ." ■

Meanwhile, Joseph Weiler Waits

By CAROL TERNOVESKY

JOSEPH WEILER is another newsman in trouble with the law.

The Memphis *Commercial-Appeal* reporter was ordered to appear before a Tennessee state senate investigating committee and divulge his sources for a story on child abuse. He was cited for contempt when he refused to do so.

Angus McEachran, assistant managing editor of the *Commercial-Appeal,* related the experience . . .

The newspaper received an anonymous phone call about child abuse at Arlington Hospital, a state hospital for retarded children. The lead was given to Joseph Weiler, and he was instructed to investigate for story possibilities.

"Weiler said he thought it would be a good story, but that people's jobs were at stake, and he would not be able to divulge any names," McEachran explained. "He had been given the names of persons fired for child abuse, and he also checked with those presently employed."

As a result of the publicity, a state senate committee was called into session to investigate the charges of child abuse.

McEachran quoted Congressman Dan Quy Kendalle as he testified before a House Judiciary Subcommittee. "Curiously, the state senators zeroed in, not on the child beaters, but on the reporter, who dared to bring this condition to public light. They hauled Joe Weiler in front of them and told him to bring his notes and correspondence with him. The entire investigation seemed to be concentrated on their effort to find out which state employe had tipped off the newspaper to what was happening at the hospital."

When Weiler refused, he was asked to show cause why he should not be held in contempt. McEachran said Weiler will defend himself on Dec. 14, arguing the First Amendment, since there is no shield law in Tennessee.

Contrasting Weiler's plight with another newsman, who was also called before the same senate committee and threatened with a contempt citation if he did not reveal the sources of his information, McEachran told of Joe Pennington's experience.

"The newsman, of WRIC Radio, went into a closed session with the committee — while it is contrary to the rules of the senate — and divulged his source. The session was promptly reopened to the public and the source's name disclosed. The source, when called before the senate, denied that she was a source. The case was immediately turned over to the grand jury for investigation of perjury."

McEachran is in favor of a freedom of information law on the national or state level. However, he warned, "When you start to define the rights of the press, you run a great risk of limiting those rights. I see a great danger in the misconception of such a bill. I think we ought to stop referring to it as a 'Shield Law' or 'Newsman's Privilege Law.' We aren't really talking about the newsman's privilege, but the people's right to know."

As a result of these events, McEachran pointed out, "Should child abuse become a problem at Arlington again, it would take a small miracle for someone to pick up the phone and call the *Commercial-Appeal.*

Weiler faces a possible prison term, if the senate finds him in contempt and if he continues to refuse to divulge his sources. ■

Carol Ternovesky is a journalism student at Wayne State University, Detroit. She interviewed Angus McEachran at the recent SDX national convention in Dallas.