

PRESS

Court in Civil Case Backs Right Of Reporter to Withhold Source

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By ARNOLD H. LUBASCH

A journalist's right to refuse to disclose a confidential news source was affirmed in a civil case yesterday by the United States Court of Appeals for the Second Circuit.

The affirmation vigorously supported a lower court's decision in the case of Alfred Balk, now editor of The Columbia Journalism Review, who refused to identify the source of a magazine article that he wrote in 1962 about racial discrimination in real estate.

In a decision written by Judge Irving R. Kaufman, with the concurrence of Judge J. Joseph Smith and Judge William H. Mulligan, the Court of Appeals emphasized "a paramount public interest in the maintenance of a vigorous, aggressive and independent press."

"It is axiomatic, and a principle fundamental to our constitutional way of life, that where the press remains free, so too will a people remain free," Judge Kaufman declared.

"Freedom of the press may be stifled by direct or, more subtly, by indirect restraints. Happily, the First Amendment tolerates neither, absent a concern so compelling as to override the precious rights of freedom of speech and the press."

Author's Name Sought

The case grew out of an article in The Saturday Evening Post entitled "Confessions of a Block-Buster—A Chicago Real-Estate Agent Who Moves Negro Families Into All-White Blocks Reveals How He Reaps Enormous Profits From Racial Prejudice," signed by Norris Vitchek as told to Alfred Balk.

Mr. Balk said that "Norris Vitchek" was the fictitious name of a real person who had provided information on the condition that his identity remain confidential, but the black plaintiffs in a Chicago lawsuit wanted the journalist to identify his source to help their civil case against real-estate operators.

Testifying in a deposition here last year at the request of the plaintiffs, Mr. Balk refused to disclose the confidential news source, although he agreed to verify the information in his article.

The plaintiffs sought an order in Federal Court here to require Mr. Balk to name the source, but District Judge Dudley B. Bonsal rejected their request. They then appealed to the Court of Appeals, which ranks just below the Supreme Court.

Judge Kaufman cited the district judge's reliance on the First Amendment as well as state laws in New York and Illinois that protects newsmen's rights to retain confidential sources.

The civil case involving Mr.

Balk was unlike the criminal issues in a recent Supreme Court decision that required journalists to answer grand-jury questions concerning criminal investigations, Judge Kaufman observed.

Even in criminal cases, he added, the concurring opinion of Justice Lewis F. Powell Jr. in the Supreme Court decision said that each newsmen's "asserted claim to privilege should be judged on its facts by striking of a proper balance between freedom of the press and the obligation of all citizens to give relevant testimony with respect to criminal conduct."

Judge Kaufman said that compelling the disclosure of confidential news sources threatened the journalist's ability to obtain information and the public's need to be informed.

"While we recognize that there are cases—few in number to be sure—where First Amendment rights must yield," he said, "we are still mindful of the preferred position which the First Amendment occupies in the pantheon of freedoms."

"Accordingly, though a journalist's right to protect confidential sources may not take precedence over that rare overriding and compelling interest, we are of the view that there are circumstances, at the very least in civil cases, in which the public interest in nondisclosure of a journalist's confidential sources outweighs the public and private interest in compelled testimony."

Lawyers for the plaintiffs in the civil case said in Chicago last night that they would decide whether to appeal to the Supreme Court after they had an opportunity to review the decision by the Court of Appeals here.