

THE RECORD

More Newsmen Go to Jail; Others in Danger

SINCE A U.S. Supreme Court 5-4 ruling in June of last year: First there was Peter Bridge of the defunct Newark *Evening News*, then William Farr of the Los Angeles *Times*.

Now two others have also been in jail: a Tennessee broadcaster and a Washington, D.C., bureau chief.

As of late December, reporter William Farr (lead story, December QUILL) was still in a jail cell described by him as solitary confinement. Farr, who has refused to divulge the source or sources of information given to him in relation to the Sharon Tate murder trial, was ordered to a second jail term on Nov. 21. Since then, he has been living in an 8-by-12 room adjoining the infirmary at Los Angeles County Jail. Farr said he is not allowed to watch television, listen to the radio or communicate with other prisoners.

Jonathan Marshall, chairman of the National Newspaper Association Freedom of Information Committee, compared the treatment of Farr with policies of dictatorships, "cruel and inhuman punishment . . ." Farr has been serving an indeterminate sentence.

Three other Los Angeles *Times* reporters with the *Times'* Washington bureau were issued subpoenas requested by defense attorneys representing the seven men indicted in the Watergate bugging case. The attorneys were seeking tape recordings of interviews Jack Nelson and Ronald Ostrow of the *Times* had with Albert C. Baldwin III, the government's chief witness. The subpoena named Nelson, Ostrow and *Times* Washington bureau chief John Lawrence.

Lawrence was jailed for two hours when he refused to surrender tape recordings to U.S. District Judge John J. Sirica in Washington. Lawrence was freed when the U.S. Court of Appeals stayed the contempt of court order handed down by Sirica. Further court action is pending. Sigma Delta Chi and the American Society of Newspaper Editors immediately joined in an amicus brief on the appeal.

The Tennessee broadcaster who has served time in jail for refusing to name his source of information is Harry Thornton, host of a morning show on WDEF-TV in Chattanooga. He was jailed for several hours Dec. 5 for refus-

ing to tell a county grand jury the identity of a caller whose voice was aired on Thornton's show. The source, allegedly a member of the grand jury, told Thornton while on the air that the jury had "whitewashed" a case involving a former city judge.

"The court doesn't have the right to direct me to give the name," Thornton said. The Middle Tennessee Professional chapter of SDX threw its support behind Thornton, saying he was "protecting a basic freedom of the press."

Harvard Prof. Lewis Popkin was also sentenced to a jail term (18 months) for refusing to answer questions posed by a federal grand jury. He thus becomes perhaps the first American scholar to be jailed for protecting his sources of information. In sentencing Popkin, Federal Judge W. Arthur Garrity Jr. said neither scholars nor newsmen have First Amendment immunity from answering a grand jury's questions. Popkin had likened his "scholar's right" to that of a newsmen's.

Meanwhile, an attempt is being made in Kentucky to return to that state through extradition proceedings Paul Branzburg, whose case, along with two others, formed the basis for last June's Supreme Court decision affecting news sources. Branzburg, now a reporter for the Detroit *Free Press*, was found guilty of contempt of court by a Kentucky grand jury five years ago for his refusal to disclose the sources of news stories he wrote while working as a reporter for the Louisville *Courier-Journal*. Michigan AFL-CIO President William Marshall has asked Michigan Gov. William Milliken to deny Kentucky's request. Branzburg is a member of the American Newspaper Guild, which is affiliated with the AFL-CIO.

In Maryland, David Lightman, a reporter for the Baltimore *Evening Sun*, has also been charged with contempt. Lightman refused to tell a county grand jury the identity of an Ocean City sales clerk who offered to sell him marijuana. The Maryland courts hold that because he didn't identify himself as a reporter to the salesclerk, he can't claim a reporter's privilege. Maryland has had a state shield law for several years. Lightman and the *Evening Sun* were preparing an appeal to the U.S. Supreme Court. A second appeals court

in Maryland last fall refused to reverse the charge against him.

In a recent civil action, however, a journalist's right to refuse to disclose a confidential news source was affirmed. A federal circuit court of appeals in New York gave strong support to a lower court's decision in the case of Alfred Balk, editor of the *Columbia Journalism Review*, who refused to identify the source of a magazine article he wrote in 1962 when he was a free-lance writer. The article about racial discrimination in real estate, "Confessions of a Block-Buster. . .," appeared in the *Saturday Evening Post*. Balk used a fictitious name in the article to hide the identity of the person who provided information on the condition his identity remain confidential. Black plaintiffs in a Chicago lawsuit wanted Balk to identify his source to help their civil case against real estate operators. Balk refused, and the courts have now ruled in his favor. The appeals court in its decision last month emphasized that this civil case was unlike the criminal issues involved in the Supreme Court's June decision.

The appeals ruling in the Balk case was written by Judge Irving R. Kaufman, with the concurrence of two other judges. "While we recognize that there are cases — few in number to be sure — where First Amendment rights must yield," Kaufman wrote, "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."

A significant footnote in the Supreme Court's landmark ruling is a statement by Justice Lewis F. Powell Jr. He said, while agreeing with the majority opinion, that "no harassment of newsmen will be tolerated," that the high court stood ready to protect newsmen against fishing expeditions or other breaches of reporters' confidential relationships



(Paul Conrad in the Los Angeles Times)

“without a legitimate need of law enforcement.”

“Yet the Court sat silently by when Peter Bridge was thrown into jail,” wrote the *FOI Digest*, publication of the Freedom of Information Center at the University of Missouri. “Bridge had only declined to answer questions concerning material he had *not* written about, partly because the state had shown no compelling need.” The *Digest* asked, “Where’s Justice Powell’s assurance?”

Joseph Weiler, a reporter for the Memphis (Tenn.) *Commercial Appeal*, had been waiting out the possibility of going to jail over refusal to reveal sources of a story concerning alleged child abuse at a hospital and school for the mentally retarded. He learned, however, through a statement by a state senator on Dec. 7 that contempt charges by the state senate against him were being dropped. A hearing in the case scheduled for Dec. 13 was cancelled. Questions had been raised within the senate of the legality of the hearing, and several Tennessee senators said they would support a freedom of information act.

U.S. SEN. Lowell P. Weicker (R-Conn.) has offered a bill which he said was written to satisfy the objections voiced against the 20 or more bills sub-

mitted in the last session of Congress. Weicker’s recommendation would create two levels of protection for newsmen’s sources: an “absolute” immunity from forced disclosure before grand juries, legislative committees and government agencies, and a severely limited immunity before open courts trying major criminal cases. The other bills don’t make these two distinctions.

Weicker said this legislation is not a newsman’s privilege law, “because it’s not for newsmen, it’s for you — the American public. We do not need to protect newsmen. Rather, we must protect a constitutional right we all have in the free flow of news.”

The Joint Media Committee, noting a “hardening” of position by some of its members toward absolute privilege, said it believes that under present circumstances the objectives stated in its proposal last July remain valid. At that time, the committee had agreed on the basic language of proposed legislation calling for “qualified” privilege for newsmen, placing the burden of approval of any subpoena upon those seeking it. A statement issued by the committee last month said it “will continue working with sponsors of *all* types of shield legislation toward the ultimate goal of a strong protection of the First Amendment against intrusion by representatives of governmental bodies.”

Texas State Rep.-elect Luther Jones is one who plans to introduce legislation granting newsmen in his state the right to keep confidential the sources of news. Jones said his bill would specify that no newsman “may be required to testify in any judicial, legislative, executive or administrative proceeding or investigation concerning the source of any information obtained in the news-gathering process.” He said he had modeled his bill on those of New York and Pennsylvania, which he called the best in the country.

The board of directors of the American Newspaper Publishers Association has voted support for proposed federal legislation to grant newsmen unqualified privilege from subpoena. The same position was adopted earlier by the board of directors of the American Society of Newspaper Editors; and Sigma Delta Chi resolved at its national convention in Dallas to seek enactment of absolute privilege laws in all 50 states and at the federal level (December, page 21).

HERBERT G. KLEIN, President Nixon’s communications director, changed course within only a few days regarding his thoughts on shield legislation. On Nov. 27 he appeared on NBC’s “Today” show as part of a panel on press freedom. Klein said he has “serious doubts for the need of a federal shield law.” He said the problem — if one existed — was up to the states to solve. He also dismissed the “feeling that the press thinks it has been bullied” by President Nixon or the Administration. “I have not met an intimidated reporter yet and I don’t think I will . . .,” Klein said. “I think the press has the last word.”

But on Dec. 1, Klein took a harder position. At his request, he spoke at the Radio Television News Directors Association convention in Nassau where he criticized the jailing of Peter Bridge and William Farr and urged journalists to work to strengthen state laws protecting reporters’ rights. He also suggested a review of broadcasting’s fairness doctrine to see if it “is being interpreted too rigidly.”

“I fully concur with those who believe that a free press requires confidentiality of sources and the least regulation possible,” Klein said. “What the press is running into is a major legal maze involving the constitutionality of the interpretation of state and federal statutes.” Regarding the jailing of Bridge and Farr, Klein said the “courts have done a disservice to the logical pursuit of basic issues concerning the

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rights of newsmen and the judiciary process."

U.S. Sen. Walter F. Mondale (D-Minn.) said Klein's statement about having doubts whether federal legislation is needed to protect reporters "is merely a continuation of the Administration's cavalier attitude toward press freedoms." Mondale was reported as saying he plans to introduce a shield bill in the next Congress, modified from one he offered last August.

A Gallup Poll on Dec. 3 revealed that the public backs the right to keep news sources secret. The vote was 57 to 34 per cent in favor of protecting reporters from testifying in court about their confidential sources.

The latest national leader to take a stand on the subject is New York Gov. Nelson Rockefeller. Speaking before an Anti-Defamation League dinner in Syracuse, Rockefeller said "serious investigative reporting will simply dry up" unless reporters have the right to protect the confidentiality of their sources. "The kind of resourceful, probing journalism that first exposed most of the serious scandals, corruption and injustice in our nation's history would simply disappear," he said.

Rockefeller's speech was described as a rare, strong statement for a public official. His position appeared to put the governor in disagreement with what Nixon Administration spokesmen have been saying about the relative dangers or intimidation toward newsmen.

"I've enjoyed the benefits of a free press for 14 years as governor," Rockefeller said. "And let me tell you, reading about one's failings in the daily papers is one of the privileges of high office in this free country of ours. . . Public confidence in the news media is vital to an effective democracy. This confidence grows from two sources: First, from free governments, mature and confident enough to accept the rigorous scrutiny of a free press, and second, from mature self-responsibility on the part of the media in gathering and reporting the news."

Rockefeller noted that he supported and signed a strict freedom of information bill in New York in 1970, and added that 17 other states also have shield laws. "All 50 states should have similar guarantees," he said.

No 'Unfit News' For Singapore Prime Minister Lee Kuan Yew told some 400 journalists, news executives and others in Singapore recently that he will be the judge of what news should be printed on his

island. He said he agreed with United States Vice President Spiro Agnew that "wiseacre" journalists are unqualified to question the decisions of elected politicians. It was Lee's first encounter with the press since May, 1971, when two newspapers were closed and four executives from a third were jailed without trial. Lee said in a speech last month there are limits of information he will allow published about his government.

TV Rules Proposal Draws Media Fire

Media spokesmen voiced immediate opposition to an Administration proposal to make local stations accountable for the objectivity of network news shows and other programming. Clay T. Whitehead, director of the White House Office of Telecommunications Policy, described the proposed legislation Dec. 18 before the Indiana Professional chapter of SDX.

National SDX President William C. Payette called the proposal "an effort to blind the public eye. It's another step in a pattern of government efforts to control the news," Payette added. "Government control always appeals to the government in power, but never has there been such a combined onslaught as now."

An NBC spokesman said the plan is "another attempt to drive a wedge between television stations and networks," which must have "a close and cooperative association . . . particularly in the area of news and information, without government interference."

In his speech, Whitehead referred to bias and "ideological plugola" in network news reporting, adding: "Station managers and network officials who fail to act to correct imbalance or consistent bias in the networks — or who acquiesce by silence — can only be considered willing participants to be held fully accountable . . . at license renewal time."

Michigan Newsmen In Glass Cages?

The Michigan State Senate decided recently to spend from \$8,000 to \$10,000 to build glass enclosures for separating capitol correspondents from the senators during sessions. Blueprints call for two "cages," one on each side of the front of the Senate. Each cage will be 17 feet, 2 inches long and will be on a raised platform. They reportedly are already under construction.

The Michigan Capitol Correspondents Association has voted to ask the senators to rescind their decision, and State Atty. Gen. Frank J. Kelley said he was trying to determine the legality of the glass

cages. Kelley said if the cages are designed simply to regulate movement on the Senate floor, "then that's one thing; but if it's an attempt to restrict the access of the press to its news sources, then that's quite another thing." He added that the construction looks to him like "an act of isolation and an act of recrimination. . . The Senate is setting a dangerous precedent."

Keogh New USIA Head

James Keogh, who left his job as chief speechwriter in the White House to write a book criticizing the allegedly unfair press coverage of President Nixon, has been selected by the President to be director of the U.S. Information Agency. He succeeds Frank J. Shakespeare Jr., who is expected to return to the television industry where he once was a CBS executive.

Keogh, formerly executive editor of *Time* magazine, is author of "Nixon and the Press," a book published last year which argues that the news media have been biased against Nixon and his administration.

Judge Bans Press From Murder Trial

The public and the press were ordered removed last month from the heavily guarded murder trial of four Hell's Angels in the Alameda (Calif.) County Courthouse. The exclusion order by Superior Court Judge Richard J. Hayes applied only to the hearing of an informant who served time with the defendants in jail. The judge also issued a "gag" order, forbidding attorneys or court attaches from talking to the press.

"I am aware of the problem of a free press and a fair trial," the judge said before clearing the courtroom, "but when conditions arise that may affect a fair trial, it is within the discretion and authority of this court to clear the courtroom. . . The public will be excluded." Three bailiffs escorted the spectators from the court while four reporters continued to take notes. The judge then specifically ordered the four to leave.

RTNDA Hears Sig Mickelson

Radio Television News Directors Association convened in Nassau, Bahamas, recently and elected Travis Linn, executive news director of WFAA-TV, Dallas, as vice president and president-elect. Charles Harrison, manager of news for WGN Continental Broadcasting, Chicago, is the new president.

Keynote speaker for the RTNDA convention was Sig Mickelson, the former head of CBS News and now a professor of journalism at Northwestern University.