

James Reston

Behind the Nixon Crackdown on The Press

Washington

AT SOME POINT, Oliver Wendell Holmes or some other philosophic after-dinner speaker must have said that there was more to life than the law, and this may be what the courts have overlooked by trying to compel newsmen to disclose the sources of their information and turn over their notes to the legal authorities.

In its 5-4 decision in the Caldwell case, the majority of the Supreme Court said: "These courts have . . . concluded that the First Amendment interest asserted by the newsman was outweighed by the general obligation of a citizen to appear before a Grand Jury or at trial, pursuant to a subpoena, and give what information he possesses . . . We are asked . . . to grant newsmen a testimonial privilege that other citizens do not enjoy. This we decline to do."

So this is now the law, but it leaves out of account some of the practical problems of life. The Supreme Court majority opinion seems to rest on two assumptions: first, that newsmen keep notes that make sense to anybody but themselves, and second, that reporters would rather disclose their sources than go to jail.

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HAVE YOU ever seen a reporter's notes? Would any serious judge really accept most of them in evidence? They are a jumble of phrases, home-made shorthand, disconnected words, names, wisecracks by press-table companions, lunch dates, doodles, descriptions of somebody's necktie or expression, and large and apparently significant numbers, probably reminding the reporter of nothing more than his next deadline.

This is not quite as casual or irresponsible as it sounds. By his notes, the reporter is sending signals to himself. For a few hours, he knows what the squiggles on his paper mean. By putting them there, he puts them in his mind. Ask him a week later what they mean, and he'd probably be totally lost.

And no American judge, even with the wisdom of Holmes or Brandeis, or the experience of Chief Justice Burger, could possibly figure out the mysteries of reporters' notes, even with the help of all the cryptographers in the Republic.



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ON THE QUESTION of going to jail rather than disclosing the sources of information, the chances are that the newspaper tradition of keeping promises, of being faithful to the people who have faith in them, will probably prevail long after the present Administration and the present controversy over the First Amendment have passed.

The democratic tradition hasn't gone on for over 200 years in this country for nothing. There are still a lot of people in government here who will insist on telling the truth, even if they are hounded out of Washington for doing so, and most reporters will go to jail rather than squeal on them because they were faithful to the larger interests of the nation.

Besides, jail for serious reporters, trying to investigate the corruption of power, in either party, is not the worst thing that can happen to them. There is so much corruption, and they chase it under such unequal circumstances, even to the point of physical exhaustion, that many of them would almost welcome a little relief from the tyranny of the deadline in order to have a chance to think and read, even in the pokey.

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BESIDES, THE White House and the courts, in this controversy with the press and the television and radio networks over the last couple of years, have made their point and won most of the battles. They have created an atmosphere of anxiety, if not fear, among the Washington civil servants, who are the real source of information in this city.

The Nixon Administration lost the Pentagon Papers case in the Supreme Court, and the Watergate bugging case in the Federal District Court, but they won the Caldwell case, and the word has gone out to the civil servants and the press to be very careful about talking too much or exposing too much. And this is probably the signal the Administration wanted to get over in the first place.

But American life and tradition are still too strong to be overwhelmed by intimidation of the civil servants or orders by the Supreme Court to hand over all the information reporters possess about their sources and in their notes. The reporters won't break their promises to their sources, even if they have to go to jail, and most of them won't turn over their notes, though it would be a puzzle to the judges and the juries if they actually did.

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