

Absolute Immunity for Newsmen Urged

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WASHINGTON, March 5 —

The President of the American Newspaper Publishers Association, the managing editor of The New York Times and the president of the New York State Trial Lawyers Association strongly recommended today a Federal law to grant newsmen absolute privilege to refuse to disclose confidential sources and unpublished information in judicial proceedings.

The lead-off witness in a new round of hearings on the subject by a House Judiciary subcommittee was A. M. Rosenthal, managing editor of the Times. He was followed by Standford, Smith, the publishers' president and Melvin Block, president of the Trial Lawyers Association.

The three witnesses made almost identical arguments in support of legislation that they contended had been made necessary by a "rash" of subpoenas of reporters in the last few years in an effort by United States and District Attorneys and private lawyers to compel newsmen to reveal confidential sources.

Inconsistency Cited

Mr. Rosenthal began by saying he recognized the "inconsistency" in the strong advocacy of a cause by a "professional nonadvocate". He said he accepted the inconsistency because "I believe that if the erosion of the First Amendment continues that in time there may not be a press worth being philosophically consistent about."

He and Mr. Smith dealt at some length with the argument of those who believe that in the long run it would be better if the press relied on the courts and public opinion to protect its First Amendment guarantees rather than on legislation that might raise more questions than it solved.

"It is too late for that," Mr. Smith said. "Only the Congress can deal with this problem now."

He emphasized that the board of directors of the publishers' association had decided to support unqualified protection from subpoenas for reporters on what the directors had taken to be the specific invitation of the Supreme Court in its 5-to-4 decision last year in the Branzburg, Caldwell and Pappas cases.

While holding that the First Amendment in no way automatically shielded newsmen from subpoena, the Court majority said:

"Congress has freedom to determine whether a statutory newsman's privilege is necessary and desirable and to fashion standards and rules as narrow or broad as deemed necessary to address the evil discerned and, equally important, to refashion those rules as ex-

perience from time to time may dictate."

Conditions Held Vital

Mr. Rosenthal said that from his experience as a reporter in Communist and other authoritarian societies, all of which, he said, "had lovely constitutional guarantees" of press freedom, he had decided that these guarantees meant nothing unless "the conditions" existed for exercising them.

"Most journalists," he continued, "believe that the right to maintain confidential sources and information is an essential condition for the exercise of the First Amendment. We also believe that the very process of subpoenaing reporters, trying to get them to testify, attempting to use them as branches of government investigation by examining them even on published information has created an atmosphere in which sources of news are losing confidence in reporters' pledges, not because of the reporters but because the source are aware of increasing court pressures on the press."

Peril to Reporting

"I say flatly," Mr. Rosenthal told the subcommittee, "that without the guarantee of confidentiality, investigative reporting will disappear. The erosion of confidentiality will mean the end of the exposure of corruption as far as the press is concerned."

The importance of confidentiality goes beyond investigative reporting, he said, because much that the people need to know about their government often comes from "dissident" officials who are unwilling to put "their name tag on it."

"Need the price of disclosure be martyrdom?" he asked.

In what he called "one final personal word," Mr. Rosenthal recalled that in 1959, after a year and a half as a foreign correspondent in Warsaw, he had been expelled "on the charge of probing too deeply into the internal affairs of the government, the party and the leadership."

Poles Protected

He said that "every bit of information I received came from Poles who trusted my word that I would protect them."

"I was lucky," Mr. Rosenthal said. "The Polish Communist Government did not put me on trial; they just threw me out. If I had been called into a Polish court and asked to reveal who told me what, I believe that every member of Congress would have supported my refusal to testify, had I had the strength to do so."

"I never dreamed in Warsaw that the day would come when I would be arguing this point in Washington," Mr. Rosenthal said.

Mr. Block stated forcefully what the two other witnesses also stressed: That the First Amendment had not been devised by the framers of the

Constitution as a special privilege for the press, but as a privilege and protection for the public and that "no government should interfere with the trustee relationship" between press and public.

Qualified Bill Opposed

The three witnesses were questioned closely by the subcommittee chairman, Robert W. Kastenmeier, Democrat of Wisconsin, on whether they would accept a bill providing qualified rather than absolute immunity. Without saying so, they indicated that they would prefer no bill at all.

Mr. Smith said, "I fear that to start down the road of itemizing exceptions will be worse than no bill at all."

Mr. Rosenthal said, "I'm afraid of qualifications. One man's qualification is another man's restriction."

The three also agreed that a shield law should cover not

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only newsmen but also magazine writers and authors.

Representative Robert F. DRinan, Democrat of Massachusetts, asked Mr. Rosenthal what he meant by saying the problem of protecting confidential sources had come up "suddenly." Mr. Rosenthal said he meant in the last three or four years.

In reply to a question by Representative George E. Danielson, Democrat of California, Mr. Rosenthal said he had changed his mind about reporters' replying to subpoena for the purpose of verification of their articles.

'Confidential Areas'

He had done so, he said, because "nobody knows what a reporter may say before a grand jury" and "under cross-examination, the questioning gets into difficult, confidential areas."

"We have reached a point where subpoenas are issued of

a fishing nature," he said. He cited those served recently on reporters and executives of The Washington Post, The New York Times and Time magazine on behalf of the Committee for the Re-election of the President in its civil suit against the former Democratic national chairman, Lawrence F. O'Brien.

The subpoenas called for the reporters to turn over all articles, drafts of articles and notes on the bugging of the Watergate headquarters of the Democratic National Committee last June.

Today Walter Sheridan, a Time reporter, complied with the order, but a spokesman for Time Inc. said the company would give full assistance to Dean Fisher, a reporter in its Washington office, in filing a motion to quash his subpoena.

Last Friday The Post and The Times said they would fight the subpoenas.

"Mr. Sheridan, who was incorrectly identified in yesterday's New York Times as a reporter for Time ... " Story is by Walter Rugaber, filed Watergate, 7 Mar 73.