

WBAI HEAD JAILED IN CONTEMPT CASE

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Court Overrules Station's
Argument in Refusing to
Give Up Tapes of Riot
NYTimes

By LACEY FOSBURGH

Edwin A. Goodman, general manager of radio station WBAI, was sentenced to 30 days in jail yesterday for contempt of court for refusing to turn over to the Manhattan District Attorney's office the tapes of its broadcast of the uprisings in the Manhattan House of Detention for Men in October, 1970.

He was immediately remanded to the Civil Jail at 437 West 37th Street.

In one of the first judicial tests of the state's "newsman's privilege" statute, the FM station lost its week-long battle to convince the court that the tapes should be considered "privileged" because they held the same significance for broadcasters as original material and information gathered by a newspaper. At stake, the station's lawyers said, is the trust of its news sources.

The subpoena directing the station to turn over the original tapes was almost identical to one issued recently by the District Attorney's office against The Village Voice, which was also upheld by the court.

That subpoena directed the newspaper to turn over the original manuscript of an article written by Ricardo DeLeon, indicted for his role in the prison uprisings. That decision was stayed, however, pending the

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outcome of an appeal.

John Fine, assistant district attorney, refused to agree to bail or parole for the 31-year-old station executive. Besides the subpoenas against WBAI and Village Voice, Mr. Fine has also subpoenaed tapes of the riots at the House of Detention from radio station WLIB and other material from Channel 13.

WLIB turned over its tapes, he said, and channel 13 has not yet complied.

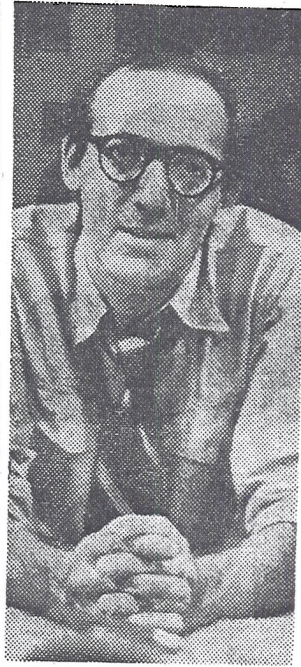
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Supreme Court Justice Gerald P. Culkin, in issuing his order yesterday against Mr. Goodman, said the radio station had forfeited its rights to consider the communications "privileged" under the New York State law once they were broadcast to the general public. He also fined the radio corporation \$250.

In its arguments against his ruling, WBAI asserted that because of the "unique characteristics of the radio air waves, it had not lost this privilege. To deny it, the station's lawyers said, would have "a drastic chilling effect upon the news-gathering capacity of the press."

The station maintained that, unlike publication in a newspaper, which automatically makes a communication a matter of public record, broadcasting does not.

"The mere fact comments are broadcast makes those comments public only for the fleeting moment during which they are actually broadcast," the argument contended. "Beyond that, the public record exists only in the minds and recollections of the listeners. Indeed, if the information broadcast were truly a matter of public record, the District Attorney



Edwin A. Goodman

would not need to obtain it by subpoena."

"Moreover," it added, "it is precisely the transitory perishable quality of broadcast news that encourages news sources to speak freely and spontaneously over the air waves."

To force the station to comply "will have a severe self-censorship effect upon broadcasters themselves because cause they will tend not to broadcast incriminating, embarrassing or simply unpopular communications by news sources in order to avoid confrontation for the news sources with the state."

WBAI's argument centered on a concept of people free to

communicate their "ideas, opinions and experiences" directly to the public over the air.

This is violated, Mr. Goodman asserted in a separate affidavit to the court, as soon as "any arrangement" is made "under which words spoken on the air become the equivalent of testimony given in a court of law."

The case comes at a time when many courts, including the United States Supreme Court, are considering a number of suits that raise various aspects of press freedom. Essentially at issue is the relationship between the media and any law-enforcement agency seeking to obtain the identity of an anonymous news source.

Limits of Encroachment

The issue raised by both the WBAI and The Village Voice cases is how far a law-enforcement agency can encroach, in its quests for evidence, upon the confidence and trust by a newspaper or radio station and its new sources.

In each case, the judges ruled that such trust was not at stake since the material in question had been publicized.

In return, however, lawyers in each case argued that the "privilege" statute embodied in the New York State Civil Rights Law, Section 79-H, provided specifically that "no professional journalist or newscaster . . . shall be adjudged in contempt of court . . . for refusing or failing to disclose news or the source of any such news coming into his possession in the course of gathering or obtaining news."

Rhonda Copelon Schoenbrod, a lawyer for WBAI, said Justice Culkin's ruling would be appealed as soon as possible to the Appellate Division.