

1972

Post
12/25/72

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DEC 25 1972
Senator Cranston on Freedom of the Press Under the First Amendment

12 The Washington Post of Dec. 14 printed excerpts from an editorial in that week's issue of *The New Republic* in which the magazine accused the editors of the now defunct Newark News and the Los Angeles Herald-Examiner of irresponsible journalism for having printed, respectively, the stories for which reporters Peter Bridge was jailed and William Farr is still in jail.

The New Republic deplored the fact that "both cases have been used to wave the banner for investigative reporting—which neither represents."

As a former newsman and author of the only Senate bill that would grant absolute protection to investigative reporters' confidential news sources, I would like to comment briefly.

Whether or not the Farr and Bridge articles were responsible journalism is quite beside the point. The two reporters were punished not because of the stories they wrote but because they refused to break their word by revealing information given to them in confidence. Surely The New Republic does not wish its readers to infer—as well they might from reading the editorial—that the imprisonment of these men

is somehow less reprehensible because their papers may (or may not) have been guilty of sloppy or sensational journalism.

What is to the point is that courts in California and New Jersey, following the lead of the U.S. Supreme Court, have further circumscribed press freedom under the First Amendment. Unfortunately, the press can no longer "only put its trust in the First amendment pure and clear" (as the magazine recommends) rather than look to Congress for help. Thanks both to the Supreme Court's decision in the Caldwell case and the Court's subsequent refusal to review the imprisonment of Farr and Bridge, the First Amendment has become considerably less "pure and clear" for press purposes. Unless Congress acts strongly and clearly, I am afraid our press freedoms may be still more seriously eroded as lower courts follow their customary practice of interpreting Supreme Court rulings more and more narrowly with each new case.

For a society to be truly free it must have a press that is truly free. One of the fundamental services that a free

press renders to a free people is to expose corruption and lawlessness in high places, in and out of government.

When public or private power is abused it is often abused secretly. But informants, who fear for their jobs—and sometimes their lives—will not divulge incriminating information unless their anonymity is assured. Unless a reporter can absolutely guarantee a news source that his identity will be kept confidential no matter what, these sources will not talk and hundreds of stories in the public interest will never come to light.

I am convinced that an absolute press confidentiality privilege would do more for the cause of law and order and justice than would any limitation of that privilege. The Court's ruling that the press does not inherently possess a confidentiality privilege as part of its First Amendment rights vitiates the First Amendment; it deprives the press and the public of a vital pipeline to information about illegal or illegitimate activities which are being covered up.

Congress must keep that pipeline open. Indeed the Supreme Court in-

vided it to do so. Acknowledging the void in the First Amendment that the Caldwell decision created, Justice Byron White writing for the majority pointedly noted that "Congress has freedom to determine whether a statutory newsman's privilege is necessary and desirable . . ."

My bill came in response to that invitation. I introduced it the day after the Caldwell decision and will reintroduce it next month. It consists of a single sentence. It declares that: "A person connected with or employed by the news media or press cannot be required by a court, a legislature, or any administrative body to disclose before the Congress or any federal court or agency any information or the source of any information procured for publication of broadcast." (The wording "news media or press" was chosen so as to include book publishers.)

Passage of this bill would give the press the legal protection it must have to meet its responsibilities in a free and open society.

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