

# Absolute immunity, absolutely

## The fight is not for the reporter who goes to jail but for the public's right to know

By PETER J. BRIDGE

**A**BOUT A MONTH after I had been released from the Essex County Jail in Newark, N.J., I chanced to hold a telephone conversation with a reporter whom I knew only at a distance. He covers the State Legislature for one of New Jersey's many mid-sized dailies, and so our conversation naturally fell to one about impending "shield" legislation which had passed the State Senate and was encountering some unexplainable delays in the State Assembly. These delays had given time to would-be compromisers in the Assembly to draw their own bill which was placed in line for a floor vote at the same time as the original bill.

I should explain that the original bill provides absolute immunity to newsmen from being forced to reveal sources or unpublished information to investigative agencies. The second bill provided the same thing, but also said this immunity could evaporate if four conditions existed at the time of the investigation.

I asked the reporter what he felt the chances were for passage of the absolute immunity bill, as opposed to the one offering conditional immunity.

Without answering directly, he commented to me that he knew of other newsmen who were not in favor of absolute immunity; who felt there were times when a reporter should be obliged to testify. I told him I was aware of that, adding that I felt this kind of opinion among newsmen was merely the product of poor or incomplete information.

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*Peter Bridge is the New Jersey reporter who became the first newsman to be imprisoned following an historic 5-4 ruling by the U.S. Supreme Court last June. The high court ruled that no journalist is guaranteed constitutional protection against having to reveal his or her confidential sources of information to a grand jury. Bridge was in jail for 22 days and was released on Oct. 24. Unable to rely on the First Amendment for protection, newsmen and women and journalism organizations such as Sigma Delta Chi are urging the passage of national and state shield legislation.*

While I would be happy to debate anyone on the subject, I said, I was really at the moment more involved in trying to determine how the legislators planned to vote. But while we were discussing the issue, I continued, how did he feel about it?

"I really haven't given it that much thought," he responded. "But then I don't have to worry too much about being called to testify. I don't do investigative reporting. Most of my writing consists of quotes by public officials."

It was just the kind of response that makes me seered on this issue. It bothers me very much that newsmen: (1) consider that the need for reporters' immunity is a press issue, and (2) think that the shield is only for investigative reporters who are prone to subpoena before grand juries, such as I was.

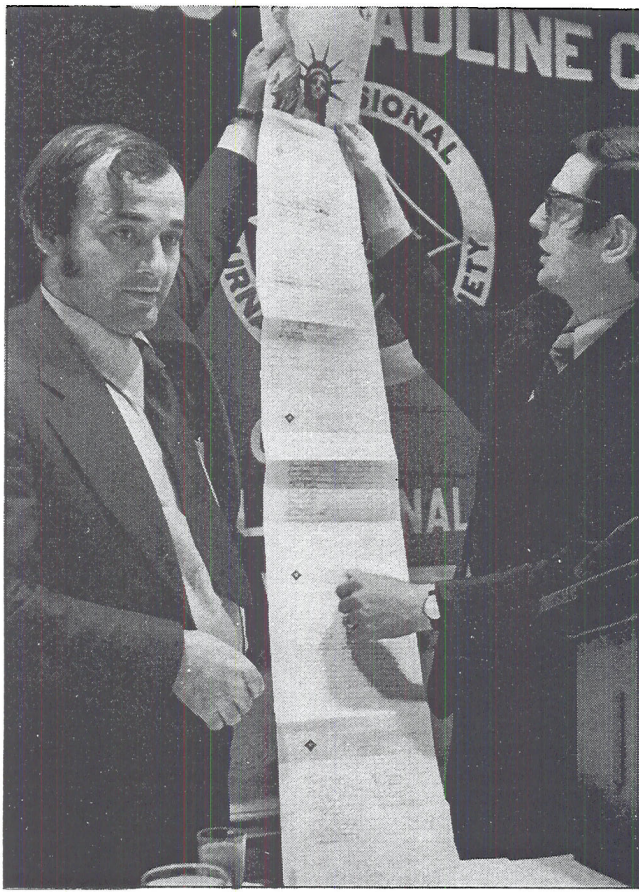
"For your information," I told my colleague, "the story that led to my going to jail was not an investigative story. The reason I was called before that jury was not that I had uncovered some exclusive information of wrongdoing. It was rather because I had quoted a public official as saying she had been offered a bribe. I did not report what she did," I noted. "I reported what she said."

I pointed out that this is exactly the same kind of story he does every day, as he makes his way through the halls of the statehouse, eliciting comment and fact from a variety of public officials. As he goes about doing his job, he picks up bits and pieces of information, much of which is stored for future reference. Sometimes this information leads to bigger and better stories; sometimes not.

Sometimes the miscellaneous information all falls into place at a strategic moment when he is doing another story, and sometimes it simply deepens his background on subject matter.

In any case, this miscellaneous information, taken in its entirety, tends to make him more knowledgeable about the statehouse than the average citizen, and certainly more knowledgeable than the average prosecutor.

"Do legislators ever tell you anything and then ask




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**PETER BRIDGE** (left) has been speaking to Sigma Delta Chi chapters and other interested groups in various parts of the country after being jailed for 21 days for not revealing a news source. Here he holds a collection of SDX petitions signed by members and others who support his stand. With him is Kenneth D. Towers, president of the Headline Club, Chicago SDX professional chapter. Dozens of petitions were presented to Bridge during his appearance at the SDX national convention in Dallas last November. Dozens more have been sent to SDX national headquarters since then. (Photo by Carmen Reporto, courtesy of Chicago Sun-Times)

that they not be quoted?” I asked, already knowing the answer.

“Of course,” he said. “It happens all the time.”

Had he ever promised not to identify these persons, or any other person who had given information on the same basis?

He said he had, and continues to do so. He added that sometimes the information isn’t even useful, but he still promises anonymity to the source because “it helps build a relationship, and who can know when he will come up with something good.”

Keep in mind that we were talking, not of investigative reporting, but of average, day-to-day coverage of a state legislature.

We discussed at some length the real purpose of his being in the statehouse as a reporter, and after getting past answers like “to make a living,” we finally settled upon the truth that his real mission there was to give information to the public, through his published writings. Not self-aggrandizement, certainly not great wealth, and not the temporal feeling of power we in this business sometimes feel. But, TO INFORM THE PUBLIC.

Now suppose you were called before a grand jury next week, and asked questions about operations in the statehouse — about things you had never published, and perhaps never intended to publish in their own right. Suppose you were asked to reveal the information and sources that you had obtained during these “relationships” in the halls of the statehouse. Would your relationship continue on the same basis with these sources? I asked.

“Probably not,” he admitted.

“And new sources,” I urged. “Would you develop new sources of information once word got around that you testified before the grand jury?”

“I doubt it,” he said, somewhat glumly. But then he

added that under the conditional immunity bill, at least four conditions would have to exist simultaneously before he could be forced to testify. Therefore, he reasoned, the chances of his even being called were remote.

“And how are those conditions met?” I pressed him. “Who decides whether they exist simultaneously?”

“I guess a judge,” he replied.

“Right,” I said, and proceeded to describe to him how the judge in my case had determined that there was a “compelling need” for my testimony before the grand jury, not six months before. It was as simple as this, and as illogical as this:

The prosecutor told the court that a witness, the public official whom I had quoted, had told four different stories concerning an alleged bribe offer.

The story I wrote, and which has been published in the *Newark News*, he said, constituted a fifth version. My testimony was necessary, said the prosecutor, to verify or refute the versions related by the person who said she received the bribe offer.

Don’t lose sight of the fact that I never reported that she had, in fact, received a bribe offer, but rather that she had *said* she received a bribe offer. Furthermore, the story she told me was available to the jury in black and white, in the form of a news story.

The judge ruled that there was, indeed, a compelling need for my testimony, and that I should appear before the jury and answer the questions. He said that I would not be required to answer any questions that went beyond the printed word, but that I had to testify.

WITHIN 48 hours, he approved a list of 88 questions prepared by the prosecutor, more than half of which went beyond the scope of the story. Furthermore, included in that list of 88 was one specific question —

### Bridge wouldn't go to jail today

A bill calling for protection of news sources in New Jersey won final legislative approval in that state on Dec. 14. It is a bill which would have prevented a judge from sending Peter Bridge to jail had it been passed 2½ to 3 months earlier.

The measure essentially stipulates that any person engaged in the gathering of news for any news medium does not have to disclose any information about the news story or how it was obtained to any court, grand jury or other investigative body.

The bill was introduced last summer and gained momentum in the New Jersey Senate when Bridge was ordered to jail. Under the new law, a journalist is protected even if he identifies his source.

"What else did she say?" — which this same judge had specifically warned would be an improper question in earlier sessions. What was, and still is, wholly illogical to me, was instantly logical to the judge.

To describe this process further would take more space than exists in this whole magazine. But the point of it all is, that the only thing necessary for conditions to exist — separately or simultaneously — is the pronouncement of a judge. Nothing more.

Therein lies my argument against conditional immunity. My own experience, which includes 20 days in the can for refusing to cooperate with the jury, has educated me.

It has convinced me, for one thing, that any condition in a shield law tends to destroy the shield. That being the case, why bother to waste time, energy, and probably money, in seeking passage of a shield that gives reporters and sources no protection at all?

Throughout this rationale, my friend on the other end of the phone kept insisting that there would be no reason to call him before a grand jury or investigative body. All he does, he said, is report things that happen in the public domain.

Then I reminded him of an incident in the Legislature in 1967, when a state assemblyman stood on the floor of his house and leveled serious accusations at his fellow legislators, a group of the state's leading businessmen, and several other public officials. He charged (with the immunity of a legislator speaking on the floor, by the way) that some legislators had been bought by the business leaders and other public officials in order to maintain a commercial "tax haven" in a small town in the northern part of the state. The town has 22 residents, but contains some of the largest manufacturing and processing plants in the state. Taxes remain low for the businesses because of their combined value, plus the fact there is a two-man police force, no schools — and no children to speak of — very little public works expense that is not paid by the state, and a government in which the officials rotate through the posts.

"Suppose you had been called before the grand jury investigating the allegations (and there was one) and asked to relate anything he or anyone else had ever said to you on the subject?" I queried.

"I don't know," he confessed.

I said that if he had appeared, no matter what he had said or had not said before that jury, if there were indictments, he would be considered at least partially to blame. He would no longer be able to do his job of "covering public occurrences," except in a shallow and bland fashion, because those guys who now grab him in the hallway would make it a point not to be there anymore.

And who loses? Not really the reporter. He will probably remain on the paper's payroll, despite his handicap. His editors probably would not even notice it immediately.

The public loses, because suddenly all the information that ought to be available to it, no longer is. The reporter is actually kept from doing his job.

The business of being a reporter — a good reporter, that is — entails a good deal more than taking official mouthings of public officials, business executives, or even candidates. It involves, in a very real and consistent way, going behind the press release; learning the subject in as much detail and depth as possible, and giving the public the benefit of that enterprise.

Being a newsman is taking the city (or county, or state) budget and getting some knowledgeable person to point out its strengths and pitfalls. In return, more

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often than not, it is necessary to shield that person from discovery, particularly if he provides important clues to hanky-panky.

Most budgets contain sometimes millions of individual line items, precluding, even on a time basis, a thorough study.

The public is served by the expert or knowledgeable person who points out high points and important points to a reporter, particularly if the budget-making agent has not done so. The public is also served by the reporter's taking the information to the budget making agent and seeking comment and/or explanation on an official level. That's called public accountability, and since your average citizen does not spend the bulk of his time in a city hall or statehouse, the reporter is there to call for the public accountability and report back to the public.

But I must add a caveat under existing circumstances. According to the ruling in my case, if the above situation existed, and I had sought out comment by, let's say, the mayor, I would be ordered to reveal all else before the jury that might be investigating the budget in question. The courts would rule that I had waived all privilege under the law because I had revealed my source, never giving heed to the argument that because one person is identified and connected to

a quote, other sources of information in the story are not automatically eliminated.

As I travel through the country, talking to various groups, I am always asked about irresponsible newsmen. Won't a shield law just encourage irresponsibility?

The question makes the grand presumption that the nation's press is just lying around waiting for passage of absolute immunity, so it can commit all kinds of unheard-of atrocities on the American public.

Of course, that is not true any more than it is true that even the majority of newsmen in this country are irresponsible.

Oh, yes, there is irresponsibility in this profession; just as there is irresponsibility among judges, policemen, doctors, and any other profession or field of endeavor. It is at least unethical to be irresponsible, and in some cases, illegal. But neither strong ethical codes nor laws have wiped out irresponsibility. Neither will throwing reporters in jail wipe out irresponsibility in the news industry.

But not throwing them in jail will foster responsibility in a trade where practitioners participate simply because they love what they are doing. Income statistics will show that the average newsman makes less money, even these days, than a person in another trade or profession with similar education, and of similar age and experience. Newsmen usually stay in the business because they don't want to do anything else.

STRENGTHENING responsibility, rather than trying to legislate irresponsibility into oblivion, seems to me a logical course to take, if for no other reason than the fact that irresponsibility cannot be legislated away.

We are witnessing what appears to be an epidemic attempt to cripple a free press in this country. I went to jail for 20 days; Bill Farr was thrown in jail.

Others have been threatened, or are on their way to jail in Maryland, Tennessee, Minnesota, Louisiana and Texas, not to speak of Caldwell, Pappas and Branzburg, who made their way to the U.S. Supreme Court. Why?

I believe it is, at least in part, the fault of the press itself. I believe that the press in this country has not necessarily done the best it is capable of and deserves to be criticized for that. I believe, for example, that if the press of this country began long ago — to Caldwell, Pappas and Branzburg, or even longer ago than that, to Vi Murphy in 1962 — to explain that it is not "Press Freedom" as such that is endangered, but the public's right to know everything it can absorb, that the matter at this point might be moot.

I believe that if the press of this country had somehow been able to project that the reporters going to jail are no more than the bearers of bad news to public officials that do not enjoy constant scrutiny and public pressure through the press and not those truly in jeopardy, then the public uprising would now be history.

It's not too late, however, and I see signs of hope: I see press groups changing their mind about conditional

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immunity, and supporting absolute immunity laws as the only option; I see a Gallup poll which indicates that 57 per cent of the public does not like the idea of throwing reporters in jail to force information from them. That kind of reaction is going to mean something to the politicians when they begin again to consider shield legislation.

The prosecutor and judges in my case found out what public opinion is like after they threw me in the kink, and they did not like it one bit. The press, finally telling it like it is on this subject, had gone to the public with a hot item; the public responded beautifully, and will do so again.

The beauty of the American press is its direct accessibility to the American people, and politicians recognize that. That explains outbursts like those of Vice President Agnew, and it explains a legislator's reticence to enact law to help the press. That same legislator knows full well that by impairing a reporter in the pursuit of his professional goals, you are also impairing the public's accessibility to information, and some politicians prefer to work without public scrutiny. Those of us in this business who do our jobs properly make sure that is not possible.

The public is aware of this, albeit passively in many cases. That is why the arguments must be taken to the public, and not kept as "in-shop" discussion.

Is the American press perfect? Hell, no!

Will it be more perfect with the passage of shield legislation?

Hell, no! At least that won't be the incentive for improvement.

But it will be far worse without such protection, and therein lies the tragedy.

I guess what I've been saying in this piece is the same thing Alexis de Tocqueville said long before me, and far more articulately:

*"In this question, therefore, there is no medium between servitude and license; In order to enjoy the inestimable benefits that liberty of the press ensures, it is necessary to submit to the inevitable evils that it creates."* ■

A legal defense fund to aid newsmen who may be jailed for refusing to reveal confidential news sources has been established by Sigma Delta Chi. More than \$2,500 has been contributed thus far by SDX chapters and members, as well as the general public (see front cover and editor's column).

Contributions may be sent to the Sigma Delta Chi Legal Fund, 35 E. Wacker Dr., Chicago, Ill. 60601.