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Relief for the Press

By Tom Wicker

IN THE NATION

Barely a fifth of the 132 members of the United Nations "enjoy what can genuinely be called freedom of information," the International Press Institute reported the other day. Although it listed the United States as one of the fortunate few, it also concluded that the Nixon Administration is "attempting to chip away at press freedom through the courts and by the threats of court action."

That is no news to the American press, and will not be much news to the new Congress, which is sure to consider the matter in the coming session. On the one hand, there will be the Administration's proposed legislation linking the relicensing of television stations to their supposed "balance" in news presentations; and on the other there will be the question of relief for reporters from the Supreme Court decision holding that the Constitution does not grant immunity against the forced disclosure of confidential sources.

On the second question, Congress will have to decide what kind of relief—if it wants to grant any—might be appropriate. One proposal, embodied in any number of bills, would provide an absolute prohibition against compulsory disclosure. In a draft measure backed by the American Newspaper Publishers' Association, for instance, "no person" could be made to disclose "in any Federal or state proceeding" the source of news gathered for public dissemination, or "any unpublished news or information" obtained while gathering material that had been published.

That's what any reporter would like to have, and no reporter can quibble if publishers really are prepared to go to bat for such a sweeping bill. But there are at least two major problems with it.

The first is that this statute would be "pre-emptive" in that Congress would be dictating to the states what they could and could not do, even in purely state proceedings, thus possibly arousing the opposition of some members of Congress from states where present laws are different, or where there is no law protecting newsmen's sources. The other, and probably more important, objection is that anything so sweeping and absolute is almost bound to run into determined political opposition.

Reporters, after all, are not that popular, either with politicians or with their constituents. As the International Press Institute noted, the "true danger" is that "a growing number of

governments, parliamentary representatives, citizens, and even some members of the press" have begun to accept the idea that "attacks on freedom of expression are legitimate and acceptable."

Nor is the press, on the whole, so free of vice and self-service that it can guarantee that an absolute privilege would not be abused (although the root question is how to insure press freedom, not how to enforce press responsibility). Absolutist laws, moreover, are always subject to the objection that not every case can be foreseen; and such a statute might enable many a legislator to plead that he was for the press—but not *that* much for the press.

These objections have led to a more limited approach, best represented in a bill sponsored by Senator Lowell Weicker of Connecticut. It would apply only to Federal, not state, proceedings, although Mr. Weicker and his staff contend that it also would provide a "model" for state legislative action.

The Weicker bill would bar any Federal grand jury, agency, department or commission, and either house or any committee of Congress from compelling disclosure of sources by bona fide newsmen, as comprehensively defined in the bill.

On the other hand, in a Federal court, if an action was pending in a case of murder, forcible rape, aggravated assault, kidnapping, airline hijacking, or breach of a national security statute, disclosure of sources could be ordered by the judge if it could be proved that the source was of "substantial and direct relevance" to the fair determination of the case, and if it could be demonstrated that the source was not reasonably available in any other manner.

This approach looks more feasible, politically, than an absolutist bill. But would it in fact lead the states to adopt similar action? No one can say. Moreover, the Weicker bill primarily protects the identity of sources; but sometimes unpublished information in a reporter's notebook or tape recorder is equally sensitive. And if the protection is not absolute, judges may find ways to circumvent it, as they have been doing with some state laws that purport to protect reporters in gathering news.

The only thing certain is that Congress had better act soon, before the "chipping away" makes the First Amendment unrecognizable.