NYTimes MAR 6 1975

Privacy vs. the Press: The Issue Remains

News Analysis

By MARTIN ARNOLD

The right to privacy — perhaps the most cherished right of all—is guaranteed, but more and more lately it is coming into conflict in the courts with the press's First Amendment right to report freely news. This week the Supreme Court ruled, in a rape case, that newspapers and radio stations could not be subjected to either criminal prosecution or civil damage suits for reporting accurate information available from law enforcement records. But only time and more cases will tell how broadly the court intended to apply that ruling.

Courts have generally held over the last several decades that public figures, such as politicians, entertainers and athletes, give up their right to privacy in return for being public figures. The question remains: How much privacy does a person who is not a public figure have when his privacy collides with the rights of the press?

The press's right to disseminate information was explicity guaranteed in the Constitution; and an individual's right t privacy has been obtained through a series of judicial rulings, each one put atop the other like so many bricks in a wall, since the beginning of the century.

2 Broad Categories

Briefly, there are two broad categories of cases involving privacy vs. the press's right to print news. One involves what is called depicting a person in a "false light"—this is close to but separate from libel law—and the other involves the public disclosure of private facts about pribate persons.

This week's Supreme Court ruling pertained to the latter category. The high court, in an 8-to-1 decision, struck down a Georgia law that made it a misdemeanor to print or broadcast the name of a rape victim. Several other states have similar laws. It was the first time that the Court had been asked to rule that an individual's right to privacy could outweigh the First Amendment when the news report was true.

The case was brought by the father of a young woman who had been raped and killed in 1971 by six teen-age boys. The father sought damages from an Atlanta television station for invasion of privacy for broadcasting his daughter's name. The Georgia courts upheld the father as a matter of law, and the television station appealed to the Supreme Court.

The Court ruled that "once true information is disclosed in public court documents open to public inspection, the press cannot be sanctioned for publishing it."

Ruling Restricted

The Court then dampened the ruling somewhat by saying that it was confining the ruling to "the narrower interface between press and privacy" involved in printing the name of a rape victim rather than "the broader question whether truthful publications may ever be subjected to civil or criminal liability."

Still, the reality of the law is such that lawyers who defend newspapers in privacy cases will now bring appeals based on the broader words of the ruling, hoping finally to inch the Court toward absolutely guaranteeing the press ths right to print whatever information it wants. It probably will take many more cases, involving crimes other than rape, to determine how far the Court is willing to go.

The aim of the press and its lawyers is to get the courts eventually to apply what is called "the Sullivan Standard" to privacy cases involving people who are not public figures.

In the landmark case of The New York Times Company v. Sullivan, the high court held that a public figure could not recover damages from a newspaper in a libel case unless the plaintiff established "clear and convincing" proof that the statement published was false, and that the publication either knew it was false or that it acted in "reckless disregard" to what should have been its "high degree of awareness of probable falsity." This is an extremely tough standard for a plaintiff to meet in court.

Between The Times-Sullivan ruling and this week's ruling, there have been a number of cases involving privacy vs. the press, but most lawyers who specialize in such cases do not believe that the rulings have been broad enough to substantially clear the murky waters.

Last December, for instance, the Court ruled, in a "false light" case, against the press; therefore, the laws of right of privacy were not modified by that decision'

Children Interviewed

The case involved a construction worker in West Virginia who was one of 44 persons killed in the collapSe of a bridge in 1967. Five months after the accident, a reporter and a photographer from The Cleveland Plain Dealer visited the home of the worker's widow while she was at work and interviewed and photographed her children.

The resulting article referred to the family as "hillbillies," depicted them as victims of the public's neglect of Appalachia, and said the widow refused to discuss the family's problems. The newspaper later admitted that the woman had not been interviewed. She sued, and was awarded $60,000 in damages.

The paper appealed to the Supreme Court, arguing that it had a right to report freely about people involved in such a dramatic event as the collapse of a bridge, and that in this case it had done so without culpable malice or recklessness. That was the issue, as far as the press was converned: Do private people who are connected to events of public interest have a buffer of privacy against reporting and, if so, how wide a buffer?

The Court ruled that the family was subjected to "calculated falsehoods" and that the "jury was plainly justified" in finding that the family had been depicted "in a false light through knowing or reckless untruth."

There are other privacy cases pending in which the press has an interest. In Houston, for instance, The Houston Chronicle has sought a state court injunction against the police department's selectively denying the news media access to both formal and informal arrest records and offense reports. The police contend that they may deny access because, they say, it involves an unjustified invasion of privacy.

The Chronicle is appealing. So with all these cases, including this week's, the Supreme Court has still not answered in general terms that very subtle question of which is more important, the privacy of the individual or the privlege of the press. Most legal experts think it will be a slow process to define the distinction between private facts and public news, and to determine precisely when the printing of a private fact is offensive.