

Fresno Four in Throes of Judicial Balancing Act

California's 5th District Court of Appeal has upheld 55 contempt citations against four Fresno *Bee* newsmen for refusing to tell how they obtained information from a sealed grand jury transcript. ("The Fresno Four," July-August QUILL.)

The *Bee* plans to appeal the decision to the California Supreme Court.

In a 2-1 decision, the court drew a jurisdictional line beyond which California's shield law will not apply. It said the reporter's privilege does not hold when it conflicts with the constitutional duties and powers of the court or interferes with a criminal defendant's right to a fair trial.

The ruling whittles away some of the protection the *Bee* newsmen claimed was provided by the absolute language of the state shield law. The law states that an editor or reporter cannot be adjudged in contempt by anybody with the power to issue subpoenas for refusing to disclose sources of information.

The appellate court qualified that, saying: "The shield law still remains as a protection against the revelation of all sources other than court officers . . ."

Three articles by reporters William Patterson and Joe Rosato touched off the conflict. The articles, published by the *Bee* last January, dealt with secret grand jury testimony which led to bribery-conspiracy indictments of a Fresno city councilman and two other men.

When the two *Bee* reporters,

Managing Editor George Gruner and City Editor James Bort refused to reveal the source of the information, Superior Court Judge Denver Peckinpah cited them on a total of 73 contempt counts and sentenced them to indeterminate jail sentences. The appeals court threw out 18 of the citations on grounds the questions exceeded the scope of the Superior Court inquiry.

Other key points in the appellate decision:

- *Bee* reliance on the First Amendment was rejected. The court said there is no constitutional protection under the First Amendment because it is outweighed by the constitutional right to a fair trial.

- The trial court can require newsmen to answer questions intended to reveal whether officers of the court were the source "even in the face of denials that court officers were involved . . ." The *Bee* witnesses had testified that the information did not come from an officer of the court.

- Patterson's possession of a courthouse master key and Judge Peckinpah's suggestion of possible criminal use of it did not invalidate the proceedings. The appellate court said the inquiry did not substantially deviate from the primary objective of learning whether the source of the information was an officer of the court. The *Bee* witnesses had testified the key was not used illegally.

- The indeterminate sentences are not unduly harsh. Judge Peckinpah

had told the four they would stay in jail until they were ready to answer the questions put to them. The appellate court said such sentences are "an appropriate remedy to obtain necessary compliance from a recalcitrant and contemptuous witness."

In dissenting, Justice Donald Franson said all the contempt citations should be thrown out because the questions were outside the scope of the court's inquiry. He argued that Judge Peckinpah might better have issued a qualified gag order, allowing release of those portions of the transcript that dealt with a public official's activities.

"There is something inherently wrong in allowing a court to prohibit the dissemination to the public of sworn testimony concerning misconduct by a public official who remains in office and votes on issues pertinent to the substance of the testimony without giving the public, through the press, the right to be heard on the matter," Franson said.

The appeals court sent the case back to Superior Court to allow the newsmen to purge themselves of contempt by answering the questions. The four have stated they will go to jail rather than violate the confidentiality of their source.

Whatever their stand, Judge Peckinpah will no longer be involved. He suffered a severe heart attack July 17 and was granted a disability retirement in August.

— Dayle H. Molen