NYTimes NOV 21 1973 THE NEW YORK TIMES, W.

Amid Attacks on Press, Richardson Order Is Seen as Only Bright Spot

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Special to The New York Times

WASHINGTON, Nov. 20—Judicial, legislative and executive attacks on the press have been increasing, in some cases quietly and subtly, at the very time that the press has been receiving praise for its Watergate disclosures.

Many newsmen and lawyers feel that the only bright spot in a rather gloomy picture has come from the Department of Justice. Last month former Attorney General Elliot L. Richardson issued an order establishing a policy that no reporter could be issued a Federal subpoena, or could be arrested, interrogated or indicted without the personal approval of the Attorney General.

And Robert H. Bork, the Acting Attorney General, said that as long as he held the job the Richardson order would remain in effect.

Mitchell Guidelines

"John Mitchell [the former Attorney General] set up guidelines which are still in effect, but Richardson took the large step that all such cases against reporters had to be personally approved by the Attorney General, and he made it a departmental order, which is stronger than merely guidelines," a spokesman for the Justice Department said yesterday.

The Mitchell guidelines require that Federal police agencies negotiate with the news media before serving any subpoena on the news media; that the agencies first try to obtain the information sought from other sources and that authorization be gotten from the Attorney General for any subpoena to the press.

Most reporters feel that the Richardson order was but a spot in an otherwise dark sky. They point, for instance, to several fairly recent judicial rulings that the Reporters Committee for Freedom of the Press has called "the most serious" attempts "by judges to ban reporting of actual courtroom events, to ban any contact between the media and the defense, especially in cases where the defense claims that the criminal justice system is being politicized."

The committee also pointed out that some judges were trying "to stop any inquiries by the press into the highly controversial grand jury system."

Baton Rouge Case

Last month, the Supreme Court, with only Justice William O. Douglas dissenting, denied review of a case that many news reporters and editors and lawyers specializing in the field believe to be among the most important fair trial-free press cases of this century.

The case involved two reporters, one for The Baton Rouge Morning Advocate and one for The Baton Rouge State Times. The two were cited for contempt in United States District Court in New Orleans on Nov. 8, 1971, for printing testimony in their newspapers in violation of a judge's order not to.

The case was unusual in several respects. First, the testimony that was printed was given in open court in a hearing involving an alleged murder conspiracy. The publishing of testimony given in open court is a constitutional right.

But the most unusual part of the case came upon the reporters' appeal of the contempt citation to the United States Court of Appeals for the Fifth Circuit.

That higher court held that although the judge's original ban on the reporting of testimony in open court was unconstitutional, the two newspapers should have obeyed the order until they had completed all legal appeals.

Thus, the appeals court said that the press must obey unconstitutional rulings. When the Supreme Court allowed that ruling to stand, it became in effect part of the legal precedent of the land. It gives any judge the right to order a newspaper not to publish any news item, and the newspaper must obey that order for as long as it takes to appeal the case.

Newsmen argued, among other things, that a court hearing was "news" immediately, not months or years after a set of appeals.

Prior Restraint Seen

It was the further contention of the press that the result of the ruling was to impose prior restraint, the practice of prohibiting in advance the publication of certain material. Only once in American history has the Government imposed prior restraint on a newspaper of general circulation, and that was in the summer of 1971 when The New York Times disclosed, for the first time, the Pentagon papers, a secret Pentagon study of the Vietnam war. The Supreme Court lifted that prior restraint.

The American Newspaper Publishers' Association, the American Society of Newspaper Editors, the National Association of Broadcasters and the Reporters Committee all joined in the fight to reverse the New Orleans court ruling.

When the effort failed, the Reporters Committee then urged that in such a case the newsmen involved immediately start an appeal, and, as part of the appeal, insist that the trial or proceedings be immediately halted until the courts decide on the constitutionality of the order.

The effect of the New Orleans ruling was immediately seen in another controversial case, which is still being battled in the courts. It involved the so-called "Gainesville Eight" trial earlier this year.

Three weeks before the trial, United States District Judge Winston Arnow issued the first of at least six pretrial publicity orders.

Traditionally, photographers are not allowed to take pictures of the proceedings in a courtroom, the tradition having grown up because of the cumbersome quality that cameras used to have. To get around this, another tradition sprouted—that of the courtroom artist, who would be hired by the press to make sketches of the courtroom proceedings.

The Columbia Broadcasting System hired an artist, Aggie Whelan, to attend the pretrial hearings in the "Gainesville Eight" case. She attended one such hearing, but made no drawings while in court. She later drew a sketch from memory, which was shown on C.B.S.-TV. Judge Arnow held the network in contempt, and fined C.B.S. $500.

The judge cited the New Orleans case, and the United States Court of Appeals heard the appeal. It voided the judge's "sketch order" as unconstitutional, but let the contempt citation stand nonetheless.

In its latest newsletter, the Reporters Committee documents 11 other recent cases in which it believes Federal and state courts have attempted to nibble away at the First Amendment rights of the press.

These 11 include an unprecedented Federal court ruling that gave former Vice President Spiro T. Agnew's attorneys the right to subpoena reporters in an attempt to find out where they were obtaining their information—before Mr. Agnew was even accused of a crime. The case became moot when Mr. Agnew resigned the Vice-Presidency.

On the legislative level, Alabama passed a law that set up a special Ethics Commission. It in essence has the right to license reporters to cover either the state Legislature or any state governmental agency.

The law was originally introduced to prevent conflicts of interest by state officials, but as an effort to get the proposed law killed, it was amended to include newsmen in the belief that Gov. George C. Wallace would then veto it. He did not. The law now requires newsmen to list all their sources of income and debts before they can be accredited by the commission to cover the Alabama government.

Two Alabama newspapers are battling the law, as it affects journalists, in the courts on constitutional grounds.