

July 15, 1942

TRIBUNE CASE

Summary

The serious doubts as to the prospects of conviction arise because of defects in the statute.

The only statute applicable punishes disclosure of written instruments, viz., "documents", "notes", "writings."

The case against Johnston is clear up to the point of disclosure. He obtained on the Barnett a copy of a document, viz., a secret dispatch, and communicated its contents to his editor. The proof shows, however, that he had already informed his editor about the requirement of Navy censorship. He says he therefore relied on the Managing Editor to clear the article through the Navy and was surprised it was published without such clearance.

The Navy censorship requirements did not specifically forbid his giving his stories to his editor with a view to having the editor invite censorship.

If we could establish that Johnston purloined information that he knew he had no right to he might be convicted for merely giving the story to his editor; but there was nothing about the paper he found on the ship to show it was taken from any secret dispatch or was anything more than an estimate which had been the subject of general discussion. The fact that it had been left lying around suggested there was nothing secret about it.

Johnston's conviction is therefore doubtful. Reliance on his Managing Editor to have the article censored was natural.

As to Maloney, the proof shows he knew or had reason to believe Johnston's article of June 7 contained information obtained on the Barnett and was therefore subject to Navy censorship.

The proof also seems clear that Maloney in his eagerness for a "scoop", deliberately violated the Navy requirement for censorship. The difficulty is that we must go further and prove a violation of the statute. The statute only penalizes wilful disclosure of the contents of a "document", "writing" or "note."

Maloney says he did not know Johnston's information was obtained from any writing or document. Johnston says he did not reveal to Maloney that he had seen or copied any document or writing while on the Barnett.

Maloney can claim that he did not "wilfully" offend because he knew nothing about any document or writing and that defense seems likely to be sustained. I doubt if the notes which Johnston had made would be a document, writing or note as defined in the statute.

The Tribune Corporation cannot be convicted unless either Johnston or Maloney is guilty.

The statute (subsection (d) section 31) should be amended to include the disclosure of "information" relating to national defense whether or not in documentary form.

In view of these doubts as to conviction and the interferences with Navy operations by using many officers as witnesses, it is my judgment that the case should not be prosecuted.

I have reached this conclusion with regret because of the clear demonstration from the record in this case that Maloney's eagerness for "scoops" and "hot" stories is such that if he thinks he can "get away with" it, he will publish any material relating to national defense, in a reckless disregard of any other consideration. In this case, to avoid Navy censorship, he concealed the fact that the story came from Johnston and had it written as emanating from Washington and attributed the disclosures as emanating from unnamed officers of Naval Intelligence in Washington, in reckless disregard of the suspicion of "leakage" he was casting on them.



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