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On the Job

THE OVERTIME WARS

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A few years back, Glynn Wilson covered city hall for the Decatur Daily in north Alabama, a beat he considered the best on the paper and one he hoped would bring him closer to his ambition of working for one of Alabama's larger dailies.

But there was a hitch. According to Wilson and other former Decatur Daily reporters, the paper pushed reporters to work overtime but generally did not pay for it. When reporters questioned the system, Wilson says, editors intimidated them -- reassigning stories, directing them to falsify time cards, and offering days off that never materialized. After Wilson objected he was fired, he says, and he soon took the paper to court. Decatur Daily publisher Barrett Shelton, Jr., contended that Wilson's allegations were untrue. But in 1986 a federal court upheld Wilson's overtime claim, awarding him $ 11,000 in back pay, damages, and court costs.

Cases like Wilson's are only the most visible symbols of the tension about overtime in many print and electronic newsrooms. A lot of media organizations, of course, adhere to the law, a policy that staff members at places like KHOU-TV in Houston say boosts morale. In many other newsrooms, reporters and managers have developed their own system of overtime compensation outside legal parameters -- agreeing to grant future comp days, for example. (Legally, overtime must be paid in cash -- time and a half for each hour over forty -- or in compensatory time that must be taken in the same week as the overtime.)

And it is not hard to find reporters in a third category: those who work overtime without any compensation, in effect volunteering free labor for the company but, in many cases, afraid to complain.

Wilson won his case under federal law and government regulations that currently entitle most journalists to collect overtime -- provisions that are under

assault in the courts. The legal controversy centers on the Fair Labor Standards Act of 1938, the Depression-era law that mandates overtime. Regulations under the law define in general terms who is exempt from its provisions -- "learned professionals," "artistic professionals" who do "work that is original and creative in nature," and people whose work requires "knowledge of an advanced type . . . acquired by a prolonged course of specialized instruction."

The labor department, under a provision of the FLSA, issues guidelines that interpret those regulations. Under these guidelines, most newspaper reporters -- with the exception of editorial writers and columnists, who are classified as artistic professionals -- are entitled to overtime because they perform tasks that are "not predominantly original and creative."

Because of the nature of the law, these overtime disputes often put journalists (and their lawyers) in the odd posture of arguing that their work requires little creativity and independent judgment, with management contending the opposite.

A handful of cases slowly wending their way through America's legal system, as well as one that has already been decided, could forever change reporters' workplace rights. Here is a review of the key cases:

* Dalheim v. KDFW-TV (decided on appeal December 1990). By most accounts, Dalheim is the first major overtime decision connected to television. Dallas-based KDFW argued unsuccessfully that general assignment reporters are creative professionals and that producers are professional administrative employees. But the court found that determining overtime status is dependent on job description, not job title. Nineteen present and former general assignment reporters, producers, directors, and assignment editors were awarded $ 350,000.

While it is a landmark case, Dalheim made clear that such suits are fact-specific and that reporters at other stations who do exercise a certain level of creativity and autonomy could be classified as exempt from the overtime law. Overtime elgibility depends on "what specific authority and what responsibility" you have, says Yona Rozen, an attorney who represented the plaintiffs. "I think our case is a precedent-setting case, but I don't think it means that every person working as a TV reporter is nonexempt."

Still, Dalheim has fostered a growing consensus that television reporters are entitled to overtime. David Goldberg, executive news director at KHOU-TV in Houston, cites the KDFW suit a factor in including overtime provisions in contracts at his station.

* Sherwood v. Washington Post (awaiting trial). The case, like others, will probably turn on what might be called the "creativity question." Should former Post reporter Tom Sherwood have been exempt from overtime requirements as an "artistic professional" whose "principal duty is to write original and creative material," as the Post has argued? Or is he an average wage earner constrained

for the most part by supervisors and journalistic formulas? Says Post attorney Bo Jones: "My main point is that reporters in the [Post] newsroom are treated as professionals and they are expected to act as professionals, and they exercise a great deal of judgment in their work." "The only advantage to calling yourself a professional," counters Sherwood, "is allowing your employer not to pay you overtime."

Since Sherwood is at the top of his field, a ruling in his favor would be an important precedent for all reporters, including those of lesser stature. If the Post prevails, on the other hand, the case could lead to exemptions only for journalists of Sherwood's caliber at papers like The New York Times, which generally pays overtime.

* U.S. Department of Labor v. The Concord Monitor (filed 1981, tried 1986, awaiting decision). This incredibly long-running case is similar to Sherwood, with the government arguing that reporters are nonprofessionals, and thus entitled to overtime, and the paper saying they are professionals. The suit charges that the New Hampshire daily capitalized on the "product resulting from long, long hours of work of ambitious young reporters, editors, and photographers without paying them overtime benefits." The Monitor asserts that the government is inconsistent and arbitrary in its professional classifications -- that journalists are considered professionals, for example, for immigration purposes and labor statistics. The paper has argued as well that these days journalists should have the status of artistic or learned professionals much like actors or lawyers, despite arguments that academic training is not crucial to a reporter's job performance. The decision in the case could have wide impact, since, unlike erwood, it is focused on small-market reporters who status is more easily generalized.

* Freeman v. NBC News (filed 1985, awaiting decision). NBC News writer Jacob Freeman, like others in overtime litigation, contends that his work is formulaic and mundane and that he should be classified as an ordinary wage earner. NBC argues that Freeman is a creative professional.

* U.S. Department of Labor v. Philadelphia Inquirer (filed June 1991, settled October 1991). The suit challenged the Inquirer's stringer system, with the government arguing that stringers are full-fledged employees entitled to overtime and not contract employees, as the paper contended. Could the $ 77,850 settlement involving 210 stringers affect the status of stringers at other papers? The Inquirer did not admit guilt in the settlement or concede that stringers are full-fledged employees "for the purposes of any statute or regulation." But the settlement did make clear that the paper will be required to treat stringers as employees under the Fair Labor Standards Act, thus entitling them to collect overtime -- a significant recognition for a growing class of journalists.

Each of these cases is likely to affect not only the journalists involved, but also the management of print and electonic newsrooms all over the country. Millions of dollars in overtime are involved. And, partly because of that, the

arguments over the degree of professionalism and creativity of journalists in these cases tend to mask a deeper disagreement: management argues that the overtime law is an anachronism in today's newsroom, because flexibility and give-and-take ought to prevail over the time-clock mentality. Many reporters, for their part, argue that in today's economic climate, with publishers struggling to maintain profit margins and editors trying to do more with less, the overtime law is as relevant as it ever was.