

Promise on Subpoenas

Ever since Vice President Agnew criticized liberal TV commentators and newspapers, U.S. journalists have been on the defensive. A political writer for a major West Coast paper said last month: "Buried in our subconscious is the thought 'Be goddam careful. Don't start a beef.'"

Potentially, a more serious problem between the Administration and the press arose from the Justice Department's growing tendency to search among newsmen's private material for possible trial evidence (TIME, Feb. 9). Last week, after mounting indignation from the news media, the Administration decided that some of its more eager officials had gone too far. Sounding slightly embarrassed, Attorney General John Mitchell announced that henceforth "no subpoenas will be issued to the press without a good-faith attempt by the department to reach a compromise acceptable to both parties."

Said Mitchell: "I regret that recent actions by the Department of Justice involving subpoenas for members of the press and property of the press may have been the subject of any misunderstanding and of any implication that the Department of Justice is interfering in the traditional freedom and independence of the press . . . We realize the peculiar problems that subpoenas raise for the press." So saying, Mitchell prepared to invite news executives to Washington to hear his reassurances in person.

Fear Betrayal. Subpoenas are commonly used to compel personal testimony or the production of documents before official proceedings, usually a judicial hearing such as a grand jury. They are available to both the prosecution and defense. Unlike warrants, their justification need not be demonstrated in advance before a judge, but their validity may be challenged after they are issued, on the grounds that they are oppressive, burdensome or irrelevant. Anyone failing to comply with a valid subpoena order is subject to a contempt citation and, often, jailing.

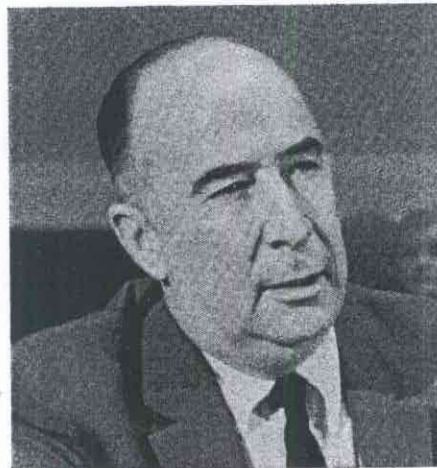
Newsmen are particularly sensitive to the use of subpoenas calling for their unedited files. They fear that they will be hampered in their work if confidential sources are betrayed. Hence the Justice Department has customarily negotiated the scope of subpoenas for the news media. Mitchell insisted that there had been no change of policy under his direction but conceded that "unfortunately" some subpoenas had been issued without prior negotiation. Among the most recent: one ordering New York Timesman Earl Caldwell to produce notes and tape-recorded interviews on the Black Panther Party acquired since January last year.

Many of the open-end-type subpoenas

issued on the press have sought information about the Panthers or the white radical Weathermen. The U.S. attorneys who obtained them are well aware of Mitchell's hard line on both dissident groups; they also know he favors "no-knock" authority for police investigating some cases. Thus, these attorneys may have thought they were carrying out Mitchell's desires, if not his orders. But an aide stressed that Mitchell had not promoted the trend. "Some eager beavers were off on a hunting trip," he offered, "and we're going to stop it."

No Fishing. Mitchell's move came in the face of united uproar from the press. Individual newsmen and major news organizations, including CBS, the New York Times, the Wall Street Journal and Newsweek, made it clear that they were prepared to help serve justice but were equally determined to protect confidential relationships. Hedley Donovan, editor in chief of Time Inc.,

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MITCHELL OF JUSTICE
Now they will be stopped.

declared: "Should we believe that there is no immediate relevance and that a law-enforcement body is on a 'fishing expedition' for information, we will take appropriate legal action to contest the subpoena."

Others joined the press in protest. Ramsey Clark, Mitchell's predecessor at the Justice Department, said: "I think there has been a change in policy if general warrants are being issued, and I have a feeling of great uneasiness about it." Clark warned against destroying "the effectiveness of the press."

Mitchell's pledge to negotiate will not end the problem of subpoenas on the press. For one thing, negotiation does not ensure agreement. For another, the Justice Department has not been alone in efforts to probe newsmen's files. State attorneys and defense lawyers have also been caught up in the trend and there is no assurance that they will follow Mitchell out of it. Perhaps it will take a court challenge to establish where freedom of the press ends and aid to attorneys begins. But Mitchell, at least, seems conciliatory at present.