

# PRESS

Fourth Estate or legmen for lawyers.

Says Don H. Reuben, a Chicago lawyer who represents NBC, the Tribune Co., the City News Bureau, *Look* magazine and Time Inc.: "We've become an information service for everybody who's in court." A Chicago TV news director adds: "The judges are being unfair, just stamping out subpoenas as if they were using a Xerox machine."

Fishing. Newsmen recognize that they have an obligation, like any citizen's, to serve justice. Few of them would hesitate to volunteer pertinent evidence in a trial; many of them have, in all sorts of cases. Often, the government is clearly entitled to a reporter's private information. The question is one of reason and balance, and journalists are starting to feel that the balance is being abused by subpoenas. As Richard Wald, vice president of NBC News, says: "Subpoenas have become easy ways for prosecutors to fish around." Such fishing can tie up newsmen in the search for old film clips and notes, as well as endanger the relationship of trust that must exist between a reporter and the people he interviews.

"This can't become a dragnet operation in which law-enforcement people are relying on us to do their police work," notes CBS News President Richard S. Salant. "People are going to duck when we come around because they'll think we are arms of government. Our sources will dry up. We have trouble now covering the activities of militants because they regard us as part of the government."

In Chicago, the subpoena splurge began after the riotous 1968 Democratic Convention. In its wake, newspapers, magazines (including TIME and LIFE)

and broadcasters received subpoenas from federal and state grand juries, U.S. and state's attorneys, the city corporation counsel and assorted individual plaintiffs and defendants in convention-related cases. The U.S. Attorney's office still has all the CBS video tape from the convention. "We can't get it back," says Salant.

The pattern was repeated after the Weathermen staged their window-breaking "wargasm" in Chicago last October. Within a week, government attorneys had subpoenas on the desks of local editors and station managers, and a special county grand jury followed suit. Last December's gun battle between police and Black Panthers set off another round. Lawyers preparing a defense for seven Panthers subsequently charged with attempted murder say they have served some 50 subpoenas to "virtually all media sources in Chicago." The subpoenas order, among other things, access to reporters' notebooks.

News organizations have noticed a similar trend in New York, San Francisco and Los Angeles. Last month, over a period of two weeks, CBS News in Manhattan received three subpoenas. One of them—perhaps the most far-reaching subpoena issued yet—involved the case of David Hilliard, a Black Panther charged with threatening the life of President Nixon in a San Francisco speech last November. It ordered CBS to produce for the prosecution all its correspondence and intra-office memoranda relating to the Black Panther Party between mid-1968 and this year. CBS says that it will try to negotiate its way out of the subpoena, but it is frankly nervous about challenging it in court. The result could be an unprecedented ruling setting some outer limit on freedom of the press.

**Access Doctrine.** Says Richard W. Jencks, president of the CBS Broadcast Group and himself a lawyer: "In dealing with the Government in a situation of ambiguity, you're better off to live with the situation than to be ruled against." Jencks admits he is influenced by a 1969 Supreme Court decision that upheld the FCC's "personal attack" rule, thereby establishing the "access doctrine" which bothers broadcasters to this day. "I wish we'd never taken up that challenge," says Jencks.

If he and CBS do not take up the subpoena challenge, somebody else might. Chicago Attorney Reuben vows: "We're going to move, and move strongly on it. We're going to get formal rules before we're through from the Supreme Court of Illinois and the Federal District Court." Reuben indicates he will petition both these courts in the spring after accumulating "enough evidence to show what a really monstrous problem it has become."

If that does not work, what then? Says Salant of CBS, who apparently is angrier than Jencks of CBS, his immediate boss: "Some of us may have to go to jail."

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## Reporting for Court Duty

"The way things are going," remarked a newsman in Manhattan, "reporters will soon have to preface an interview with the caution, 'You have the right to remain silent and to have a lawyer present. Anything you say may be taken down and used in evidence against you.'"

The newsman was only half joking, for there is a growing and disturbing inclination among U.S. prosecutors and defense counsel to use reporters' films, tape recordings and even notes as evidence in court cases. In Chicago, particularly, it has reached the stage where some newsmen might well wonder whether they are members of the



CBS NEWS PRESIDENT SALANT



PANTHER HILLIARD INTERVIEW

*Dragnets for cops, limits to be defined.*