

Mitchell Limits Media Subpoenas To Those He Personally Approves

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Attorney General John N. Mitchell said yesterday that no more contested subpoenas for news media personnel or property will be issued without his personal approval.

Mitchell made the commitment in announcing generally conciliatory guidelines for federal prosecutors seeking to subpoena news media. He spoke to the House of Delegates of the American Bar Association in St. Louis.

Calling the guidelines "reasonable and workable," the Attorney General said they "represent a genuine effort by the Department of Justice to accommodate the respective responsibilities of the news media and the federal prosecutor."

He urged the ABA or a similar group to conduct a comprehensive study of the controversy over subpoenas as it affects the free press and fair trial issue.

Mitchell described the controversy as "one of the most difficult problems I have faced as Attorney General." The Justice Department has been under increasing pressure from major news-gathering organizations and the American Society of Newspaper Editors over efforts to obtain published and unpublished information and even the identity of confidential news sources for use in criminal investigations.

Newsmen fear that confidential sources will hesitate to disclose information that may be subjected to subpoena.

Mitchell said yesterday that the press "views subpoenas as an effort by government to utilize the media as a quasi-government investigatory agency."

Mitchell said his personal approval will be necessary in the future when a federal prosecutor and the newsman or organization from which evidence is being sought cannot agree on the scope or content of a subpoena. When negotiations fail, the official will apply for Mitchell's approval.

The tone of the Attorney General's guidelines was responsive to news media demands, stressing negotiations on the scope of subpoenas and efforts by law enforcement to gain evidence from nonpress sources.

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But Mitchell emphasized that the Justice Department will retain its full power to subpoena the press or anyone else where the "fair administration of justice requires it."

"We will not permit an innocent man to be convicted or a guilty man to be freed because we declined to subpoena a newsmen who had information vital to the case," he said.

Mitchell said it was clear to him that there is no constitutional or common law privilege for the press to refuse to produce evidence requested in a properly drawn subpoena.

The Supreme Court has never clearly ruled on press privilege, but such a ruling seems imminent because of about a dozen challenges now in the courts. Sixteen states have enacted such laws, and the Newsmen's Privilege Act of 1970 has been introduced in the House and Senate.

The Attorney General said yesterday that he would not oppose legislation granting some type of reporter-informant privilege similar to a lawyer-client relationship.

He attributed the intensification of the subpoena controversy on the economic and editorial strength of the nation's news media.

Newsmen, he said, are often detached for weeks or months to study a single issue and produce an in-depth report that involves facts and usually photographs that the government finds difficult, if not impossible, to duplicate.

Increasing attention is also being paid by news media to street demonstrations, campus violence, revolutionary movements and other activities coming under closer government scrutiny.

Mitchell said in effect that whether subpoenas really violate newsmen's rights under the First Amendment, the reporters and their news organization believe they do. He said he was "struck by the intensity of the belief by newsmen that our subpoena policies are endangering their First Amendment guarantees."

"Serious journalists from all the media have told me privately that they will go to prison rather than comply with subpoenas; that they will destroy their notebooks and burn their film rather than permit them to be used in a judicial proceeding."

By centralizing the ultimate subpoena authority in his own hands, Mitchell may have answered a major media objection — that subpoenas were proliferating from federal prosecutors who didn't appreciate, or who chose to ignore, the First Amendment implica-

tions of digging for evidence in this manner.

Even here, however, the Attorney General gives his department an alternative when a subpoena is issued without his approval. He said Justice would move to quash an unauthorized subpoena, but in a way that wouldn't deter re-issuing the subpoena for the same purpose later.

The guidelines stipulate:

- In determining whether to request issuance of a subpoena to the press, the approach in every case must be to weigh that limiting effect against the public interest to be served in the fair administration of justice.

- All reasonable attempts should be made to obtain the information from non-press sources.

- Negotiations with the press should be attempted in all cases in which a subpoena is contemplated.

- If negotiations fail, no Justice Department official should make any arrangements for a subpoena to the press without the express authorization of the Attorney General.

- In requesting the Attorney General's authorization, the following principles will apply: The information sought is essential and cannot be obtained from non-press sources; Normally, subpoenas should be limited to the verification of published information. Great caution should be observed in requesting subpoena authorization for unpublished information or where a serious claim of confidentiality is alleged. Subpoenas should be directed at material information regarding a limited subject matter.