

Mitchell Has Followed News Sub

By Isabelle Hall

United Press International

Attorney General John N. Mitchell has authorized only two news subpoenas since he issued strict guidelines last summer to calm complaints that the government was trying to use the press as a kind of governmental investigatory agency.

His guidelines of Aug. 10, 1970, have restricted U.S. attorneys and Justice Department lawyers from going to the news media with subpoenas for grand jury investigations that smacked of "fishing expeditions" without his approval.

The only subpoenas issued since then were to an "underground" newspaper editor in Wisconsin and to a New York freelance writer who did an article for a magazine.

When the issue first flared in February, 1970, Mitchell contended that it had been the policy of the Justice Department to issue subpoenas to obtain information held by the press "which might be of some aid in both criminal and civil investigations."

Some insiders believe Mitchell was misled by department attorneys into believing the broad subpoenas they issued were normal practice.

The flurry of controversy they created and a check of past Attorneys General and veteran department personnel indicated they were not normal.

The subpoenas were issued

—reportedly without Mitchell's knowledge or approval—to news organizations that were then being accused by Vice President Agnew of news distortion. They included The New York Times, the Columbia Broadcasting System, Newsweek magazine and Time, Inc.

The subpoenas were issued by grand juries investigating the Black Panther Party and Weatherman faction of Students for a Democratic Society (SDS).

The subpoenas made blanket requests for raw notes, film, tape recordings and unedited files.

Was this a departure from the past?

Nicholas deB. Katzenbach, Attorney General in the Johnson administration between Feb. 13, 1965 and Oct. 3, 1966, who previously had been an Assistant Attorney General and later Deputy Attorney General in the Kennedy administration, could speak for a span of almost six full years at the Justice Department.

"I can't recall any newspaperman that we subpoenaed," Katzenbach told UPI. "But there were thousands of cases. I could be wrong. I don't remember."

He said the Justice Department "did use newsmen as witnesses in civil rights cases but that was voluntary. We may have used subpoenas at their request to protect them."

Ramsey Clark, who succeeded Katzenbach as Attorney General and served the

three years until the Nixon administration took office Jan. 20, 1969, suggested that broad subpoena policy was a major change.

At the time of the subpoenas, early last year, Clark said he had no recollection of any previous action of similar scope. He suggested that limited subpoenas—perhaps to call a reporter to testify in a specific murder case—might be warranted, but added:

"To concede the power in the judiciary to force members of the press and other communications media to divulge general information they have developed in performing their function would be the destruction of the effectiveness of the press."

Katzenbach expressed similar reservations: "I think there's a great deal of value in not subpoenaing newsmen. It would have to be pretty important to take away the First Amendment rights."

President Eisenhower's first Attorney General, Herbert Brownell, declined comment on the issue. So did the only living Attorney General from the Truman administration, Tom C. Clark, who resigned from the Supreme Court when his son, Ramsey, was chosen Attorney General.

The issue is a thorny one which now is in the hands of the Supreme Court. No decision is expected until the court's next term, starting in October. The current term ends in two or three weeks.

The subpoena that probably

caused most of the press furor was issued in February of last year to Earl Caldwell, a Negro reporter for The New York Times. He was subpoenaed to testify before a federal grand jury in San Francisco investigating Black Panther activities.

Caldwell refused to testify, and on June 5, 1970, he was convicted of civil contempt by a federal district court. The 9th U. S. Circuit Court of Appeals subsequently overturned his conviction, but the government appealed the reversal to the Supreme Court last December.

That was after Mitchell issued his new guidelines—making him the sole arbiter of issuance of such subpoenas—but he may have felt he had no choice but to have the Caldwell case appealed because it had gone so far already.

A Justice Department official said "we don't keep score on this," but another official said that since Mitchell's new rules, only two news subpoenas had been issued.

Mark Knops, 27, of Madison, Wis., editor of an underground paper, was subpoenaed Sept. 1, 1970, one day after he was sentenced to six months in jail for contempt for refusing to testify before a grand jury. An earlier jury wanted him to testify in connection with the Aug. 24, 1970, bombing of a building and death of a researcher on the University of Wisconsin campus.

The second subpoena was is-

poena Guideline

sued to Michael Myerson, a New Yorker who wrote an article about David R. Poindexter in the January, 1971, issue of Ramparts magazine. Myerson testified but said he did not know if what he wrote about Poindexter was true or not.

Poindexter subsequently was acquitted of federal charges of harboring black militant Angela Davis as a fugitive.

On Feb. 5, 1970, Mitchell issued a lengthy statement expressing regret at the "misunderstanding" created by issuance of hood subpoenas.