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News Groups Appeal to High Court Against Subpoenaing of Reporters

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WASHINGTON, Sept. 20 — Widely differing elements of the news industry have filed friend-of-court briefs with the Supreme Court in the past few days, warning that the increasing issuance of subpoenae to the news media is threatening press freedom but disagreeing as to what the courts should do about it.

Today was the deadline for amicus briefs in three press subpoena cases that will be heard early in the high court term that begins on Oct. 4. Briefs flowed into the clerk's office over the weekend, filed by such diverse journal elements as the reporters' and photographers' organizations, the American Society of Newspaper Editors, The New York Times and all three major television networks.

They presented data showing that the practice of subpoenaing journalists increased markedly as prosecutors' investigations of political radicals grew in the last two or three years. Unless journalists are shielded from having to testify, they argued, sources will stop talking to them and the flow of information to the public will dry up.

But a long-standing division between journalists was reflected in the solutions that were urged on the Court. Some of the news media organizations said that it would be sufficient to shield newsmen from testifying except in certain unusual circumstances, while others insisted that newsmen must have an absolute privilege not to testify.

The former position was taken in a brief filed by Prof. Alexander M. Bickel of the Yale Law School, who took a similar non-absolutist position last June in representing The New York Times in its successful litigation against the Government's efforts to suppress the Pentagon papers.

Professor Bickel said that the volume of press subpoenas had risen tremendously recently as prosecutors sought to use newsmen as "a springboard for investigation" or as "an investigative arm of the Government."

The brief contained an appendix listing 124 subpoenas that were served in the last two and a half years on the National Broadcasting Company, the Columbia Broadcasting System and their wholly owned subsidiary companies. Some of the subpoenas were sought by defense lawyers.

The Bickel brief asserted that newsmen should not be required to respond to grand jury subpoenas unless there was first a showing that they probably had knowledge of a specific crime, that the information could not be obtained from other sources and that the Government had a compelling need for the information.

Such a compelling need, according to Professor Bickel, could only be justified in an investigation of a major crime — not an inquiry of such victimless activity as prostitution, narcotics and gambling offenses.

The cases before the Supreme Court concern Earl Caldwell, a New York Times reporter, who refused to enter a grand jury room to testify about Black Panther activities; Paul Pappas of WTEV-TV in New Bedford, Mass., and Paul M. Branzburg, a reporter in Louisville. The latter refused to testify about black militant and narcotics activity, respectively.

Professor Bickel argued that none of the subpoenas against the three were justified. The brief was filed for the New York Times. N.H.C., C.B.S., The American Broadcasting Company. The Chicago Sun-Times, the Chicago Daily News, the Associated Press Managing Editors Association, the Associated Press Broadcasters' Association and the Association of American Publishers.

Briefs filed by The Newspaper Guild and the Authors League of America took a similar nonabsolutist position.

However, three amicus briefs filed by other news media groups insisted that the First Amendment creates an absolute and unqualified "newsmen's privilege." These groups were the American Society of Newspaper Editors, Sigma Delta Chi journalism fraternity, the Dow Jones Publishing Company, The Washington Post, Newsweek magazine and the National Press Photographers Association.