

'Steady Campaign ... to Deprive Vice President'

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Following are excerpts of an affidavit signed by Jay H. Topkis, a lawyer for Vice President Spiro T. Agnew, filed yesterday as part of a motion to stop a federal grand jury from hearing evidence against Agnew:

"We have arrived at a firm conviction that personnel of the Department of Justice have engaged in a steady campaign designed to deprive the Vice President of that basic right of a free man: the right to be judged fairly, on the merits, without prejudice.

Needless to say, we reach this conclusion with the greatest reluctance. But as the weeks have gone by, the accumulation of evidence has left us with no choice." (Topkis specifically at-

tacked a report by The New York Times and CBS that Agnew was engaged in plea bargaining with Justice Department officials.)

"The source of this report can only have been in the Department of Justice.

"This is, as I have said, but the latest in a flood of similarly prejudicial reports. One or two might be deplorable but perhaps inevitable inadvertence. But this case has seen leaks in such number and with such constancy as to rule out any explanation by accident. It is clear, I submit, that the Vice President is the victim of a deliberate campaign, calculated and intended to deprive him of his basic rights to due process and fair hearing."

(Topkis gave several examples of what he called unfair news leaks.)

"We could expand almost endlessly upon the examples here cited. But there is no need: there can be no disputing that they are fairly representative of hundreds of similar stories. Taken together, they permit only one possible explanation: a number of officials in the prosecutorial arm of our government have misused their offices in an immoral and illegal attempt to drive the Vice President from the office to which he was elected and to assure his conviction."

"I regret to say that the prosecutors have clearly accomplished their objective. There can be few sentient

human beings within the borders of the United States who have not heard or read the outrageous statements which the prosecution has leveled at the Vice President. The result can only be to make impossible any fair consideration of the matter on its merits. Jurors are like the rest of us, no better, no worse. No more than anyone else can they put out of their minds the fact that—morning, noon and night, by newspaper, magazine, television and radio—the Vice President has been ripped and flayed by that prosecution—and all of this before any determination has even been made as to whether any evidence may constitutionally be presented to a grand jury.

"Such prosecutorial be-

havior offends not only the code of professional responsibility of the American Bar Association. But also the statements of policy promulgated by the Department of Justice.

(Topkis noted that the code explicitly forbids any statement relating to the possibility of a plea of guilty to the offense charged or to a lesser offense, the performance or results of any examination or tests, the identity, testimony of credibility of a prospective witness, any opinion as to the guilt or innocence of the accused, the evidence or the merits of the case.)

"The prosecutors seem here to have used the code not as a list of prohibited acts but as a catalogue of opportunities...."

"The result, as I have suggested, is to make impossible a fair hearing on the merits, by either grand or petit jury. And the only meaningful remedy is now to enjoin further investigation of the Vice President's conduct.

"Conceivably, of course, the prosecutors will deny responsibility for what the record reveals. If any such denial has an element of credibility, I respectfully submit that the necessary course is a full hearing to determine the truth. The rights of this court and the rights of the Vice President have been grievously abused. The malefactors should be dealt with appropriately.

(Topkis included 11 news articles with the affidavit.)