

Only a President Immune, U.S. Says

Lawyers Subpoena Reporters

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By Edward Walsh
and Douglas Watson

Washington Post Staff Writers

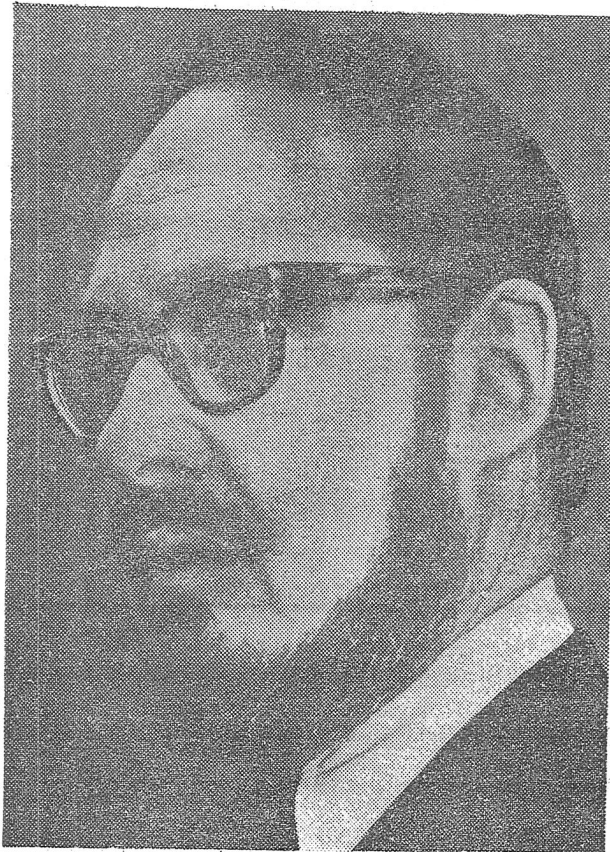
Lawyers for Vice President Spiro T. Agnew served subpoenas on eight reporters and two national news magazines yesterday in a sweeping attempt to force disclosure of the sources of news accounts about the criminal investigation of Agnew.

Agnew's lawyers also reportedly served subpoenas on top Justice Department officials, including Attorney General Elliot L. Richardson, but this could not be confirmed. Every Justice Department official asked about subpoenas to government officials replied, "No comment."

Agnew's lawyers also refused comment. "What does the Justice Department say?" asked Martin London, one of the Vice President's attorneys. Told Justice officials were refusing to comment, London replied, "Well, I'm certainly not going to comment."

Other government officials said to have been subpoenaed were Assistant Attorney General Henry E. Petersen, head of the criminal division, and George Beall, the U.S. attorney for Maryland who is conducting the criminal investigation of the Vice President.

Executives of news organizations whose reporters were subpoenaed yesterday unanimously condemned the action,



The Washington Post

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charging the subpoenas violated the Constitution's First Amendment guarantee of freedom of the press and that the disclosure of confidential sources would cripple reporters' ability to gather news.

The refusal even to acknowledge the existence of subpoenas stemmed from a court order issued Wednesday by U.S. District Court Judge Walter E. Hoffman. The order authorized Agnew's lawyers to subpoena sworn testimony from anyone they think has knowledge of news leaks concerning the Agnew case and clamped a tight lid of secrecy on the case.

Agnew's lawyers sought the subpoena power as part of their attempt to halt a federal grand jury investigation in Baltimore of the Vice President on allegations of violation of bribery, extortion, conspiracy and tax laws.

In Baltimore yesterday, Jerome B. Wolff, a former aide to the Vice President and president of an engineering firm, spent more than two hours inside Beall's office. Neither Wolff, considered a key figure in the case, nor his attorney, would comment on the meeting with federal prosecutors.

The investigation, according to sources, involves allegations that Agnew accepted kickbacks from architects and engineers while governor of Maryland and, in at least one instance, since becoming Vice President.

In a motion filed with Hoffman Sept. 28, Agnew's lawyers argued that the Constitution prohibits the indictment of a president or vice president until he is first impeached and

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removed from office by Congress. In a second argument seeking a halt to the probe, the lawyers charged that leaks to the press about the case have made it impossible for Agnew to receive a fair hearing from the grand jury, or at any subsequent criminal trial.

The Justice Department, in a reply to the Agnew motion filed yesterday, argued that the President—but not the Vice President—is immune from criminal prosecution. The department's reply to Agnew's contention about prejudicial publicity will be given to Judge Hoffman Monday and made public Tuesday.

Hoffman will hear oral arguments on the Vice President's motion to halt the investigation Oct. 12 and is expected to rule on the motion early the following week.

The reporters who were served subpoenas yesterday were ordered to appear at 9 a.m. Thursday at room 630 in the federal courthouse in Baltimore, and to bring with them "all writings and other forms of record (including drafts)" that reflect who their sources are for stories about the Agnew investigation.

Legal sources said yesterday that the Justice Department officials believed to have been subpoenaed were directed to give their testimony Wednesday.

Sources also said that Hoffman, in what one source called an "extraordinary" move, planned to be present when the reporters and government officials were questioned, and to rule immediately on legal issues and disputes that arise during the questioning.

Lawyers for the subpoenaed reporters are also expected to

request a delay in the scheduled taking of testimony Thursday. But barring a delay or a successful quashing of the subpoenas, one legal source said yesterday, Hoffman's planned attendance at the questioning raised the possibility that reporters who refused to name their sources could be held in contempt of court and imprisoned almost immediately.

News organizations in the past have fought attempts to force disclosure of confidential sources, and some reporters have gone to jail rather than identify their sources. Last March, U. S. District Court Judge Charles R. Richey denied motions seeking to require executives and reporters of The Washington Post and three other publications to testify and submit documents in three civil suits that grew out of the Watergate bugging conspiracy.

Judge Hoffman normally presides over a federal court in Norfolk. He was assigned to preside at the Agnew case by Clement F. Haynsworth, chief judge of the Fourth U. S. Circuit Court of Appeals, after every federal judge in Maryland disqualified himself because of past associations with the Vice President.

Agnew was governor of Maryland from 1967 to 1969 and executive of Baltimore County from 1962 to 1966.

Hoffman has already made it clear that he is displeased with news accounts of the Agnew investigation. In a public statement Tuesday that was laced with criticism of the press, Hoffman declared that "the perpetual conflict" between the press and the courts over news accounts of criminal investigations soon "must be resolved."

The subpoenas issued to re-

porters were delivered beginning early yesterday morning in Washington, Baltimore and New York by law clerks of the New York firm of Paul, Weiss, Rifkind, Wharton and Garrison. The reporters who were subpoenaed were:

Richard M. Cohen of The Washington Post; Ronald Sarro and Robert Walters of the Washington Star-News; Nicholas Gage of the New York Times; William Sherman of the New York Daily News; Fred Graham, Washington correspondent for CBS television; Ronald Nessen, a Washington correspondent for NBC television; and Stephan Leshner, the Justice Department reporter for Newsweek magazine.

In addition, Newsweek and Time magazines received subpoenas for the testimony of all persons who wrote or contributed to stories about the Agnew case that were published Aug. 20 in Newsweek and Aug. 27 and Sept. 3 in Time.

Some of the reporters could not accept the subpoenas personally. Walters, for example, had not returned yesterday from Chicago, where he had covered a speech by the Vice President, so his subpoena was accepted by Newbold Noyes, editor of the Star-News. Leshner is recovering from a heart attack he suffered shortly after working on a story about the Agnew investigation. His subpoena was accepted by Mel Elfin, Washington bureau chief for Newsweek.

Nessen of NBC was the last reporter to be served a subpoena. He accepted it at 6:10 p.m. yesterday after returning to Washington from Baltimore, where he has been covering the Agnew case.

Most of the subpoenas to re-

porters were served in Washington. One legal source suggested yesterday that motions to quash the subpoenas may be filed in Washington and New York Federal courts, rather than Baltimore, thus possibly preventing Hoffman from ruling on the issue.

It was not clear yesterday what Agnew's lawyers intended to do with any testimony they elicit from Justice Department officials or reporters. Hoffman has ordered that all testimony taken on the source of news leaks be sealed and not made public.

Nor was it clear whether the Vice President's lawyers expected any of the subpoenaed reporters to divulge their sources. London refused to comment yesterday when asked this, but in a telephone interview earlier this week Jay H. Topkins, another of Agnew's lawyers, remarked they he would not expect reporters to disclose their sources.

News executives yesterday were unanimous in announcing they planned to fight the subpoenas. "We're going to fight the subpoena as an invasion of the First Amendment," said Benjamin C. Bradlee, executive editor of The Washington Post.

Joseph A. Califano, attorney for both The Washington Post and Newsweek, said in a statement:

"The Washington Post and Newsweek consider these subpoenas an invasion of their rights and the rights of the public under the First Amendment to the Constitution, particularly since any response to them would require the revelation of confidential news sources."

Similar statements were released by executives of every news organization whose reporters were subpoenaed.