

Media to Fight Subpoenas

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Lawyers for reporters and news organizations subpoenaed by attorneys for Vice President Spiro T. Agnew said yesterday that they intend to go to court on Tuesday or Wednesday seeking to quash the subpoenas.

The lawyers for the nine reporters and two national news magazines that have been subpoenaed also are scheduled to meet here today to discuss a united strategy for fighting the attempt to force disclosure of sources of news about the criminal investigation of Agnew.

The subpoenas were served Friday on the newsmen and, reportedly, on top Justice Department officials under an extraordinary order by U.S. District Court Judge Walter E. Hoffman. The judge authorized Agnew's lawyers to subpoena testimony and notes of anyone who they think has knowledge of news leaks in the Agnew case.

Lawyers for the reporters at the four newspapers, two television networks and two news magazines are considering filing motions to quash the subpoenas here or in New York to avoid filing them in Baltimore before Judge Hoffman.

The subpoenaed reporters were ordered to appear at 9 a.m. Thursday in the Baltimore federal courthouse. Sources said that Hoffman intends to be present when the reporters and Justice Department officials are to give depositions about leaks. This highly unusual move would enable the judge to determine immediately which individuals decline to reveal their sources. He could then hold them in contempt and order them jailed.

Lawyers for the news organizations said that should Hoffman or another judge deny their motions to quash the subpoenas, they will at once appeal and seek to postpone Thursday's hearing until the Fourth U.S. Circuit Court of Appeals can rule.

However, one of the newspapers' lawyers said that appellate courts generally have declined to consider such motions until persons have been found in contempt by lower

courts. Thus, an appeal may not be possible until after the reporters refuse to divulge their sources and, possibly, are jailed.

Spokesmen for the subpoenaed reporters' news organizations yesterday reaffirmed their unanimous intention to fight the subpoenas as in infringement of basic freedom of the press rights guaranteed by the First Amendment.

Richard S. Salant, president of CBS News, said, "CBS is convinced that to force reporters in instances like these to disclose their sources would be a grave violation of the First Amendment and we believe that the issues this action raises go to the heart of the concept of a free press in a free country."

Referring to one of Agnew's lawyers who signed the subpoenas, Salant said, "We are confident that the legal material Jay Topkis prepared for CBS in 1970 on behalf of CBS news correspondent Mike Wallace and CBS news producer Paul Loewenwarter in preparation for resisting an expected Department of Justice subpoena seeking confidential sources... will prove useful in similarly resisting (Friday's) subpoena signed by Mr. Topkis."

Lawyers for most, but not all, of the affected reporters and news organizations met to discuss the case Friday at the Washington office of Joseph A. Califano Jr., lawyer for Washington Post reporter Richard M. Cohen and Newsweek magazine.

A spokesman for Time magazine said yesterday that Sandy Smith, a Washington-based reporter for Time, was subpoenaed late Friday afternoon, raising the number of subpoenaed reporters to nine.

Others subpoenaed besides Cohen and Smith are 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, a Washington correspondent for CBS, Ronald Nessen, a Washington correspondent for NBC, and Stephan Leshner of Newsweek.

Lawyers for the reporters

are looking at Maryland's shield law for newsmen in arguing their clients' right not to disclose news sources.

The state shield law enacted in 1896, is the oldest in the nation and has been held by Maryland courts to provide reporters with the right to keep news sources confidential, though not excusing reporters from testifying on crimes or other acts they witness firsthand.

If the Maryland shield law is cited, Agnew's lawyers might contend that the Maryland law is not binding on federal court procedures.

Attorneys for the newsmen might maintain that the state law provides a guarantee that newsmen need not reveal their sources in any court in the state, regardless of where the reporter works or where he interviewed the source.

There will be no legal action Monday because it is Columbus Day and a legal holiday. Several lawyers for reporters who have been subpoenaed said the motions to quash—which will be filed individually—will very likely be submitted Tuesday, or Wednesday at the latest.

In authorizing Agnew's attorneys to subpoena reporters and Justice Department officials, Judge Hoffman said last week, "We are rapidly approaching the day when the perpetual conflict between the news media, operating as they do under freedom of speech and freedom of the press, and the judicial system, charged with protecting the rights of persons under investigation for criminal acts, must be resolved."

One of the news organizations' lawyers—who, like other lawyers interviewed, asked that his name not be used—said that moving to quash the subpoenas in a court other than Hoffman's may be done because "Judge Hoffman doesn't seem to be terribly sympathetic" to the reporters' point of view.

In addition to the subpoena of the nine reporters, Newsweek and Time received subpoenas for all persons who wrote or contributed to partic-

ular stories about the Agnew case.

A Time spokesman said that a literal interpretation of Time's subpoena would require "at least 10 or 12" and perhaps "up to 30 or 40" Time magazine reporters, editors and other employees to appear in court.

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 filed by the Committee to Re-Elect the President that sought to require executives and reporters of *The Washington Post* and three other publications to testify and submit documents in civil suits that grew out of the Watergate bugging conspiracy.

Spokesmen for the news organizations whose reporters have been subpoenaed by Agnew's attorneys expressed a unanimous determination Friday and yesterday to uphold the right of confidentiality of reporter's sources.

Donald Wilson, a vice president of Time magazine, said, "We believe that a reporter should not be required to disclose confidential sources except in the most compelling circumstances, such as immi-

nent danger of loss of life, or if the reporter had essential information on a violent crime or on a matter of overriding danger to the national security. None of these factors applies to the present situation and thus we do not intend to disclose the confidential sources."

Several of the lawyers representing reporters stressed the short time allowed to fight the subpoenas before the reporters are scheduled to give their depositions Thursday.

In most cases when subpoenas are challenged, there are oral arguments on motions to quash before persons are required to abide by subpoenas.

The lawyers said yesterday they don't know whether Hoffman or another judge considering such motions would act on them immediately or possibly delay a decision until after Thursday when reporters have been ordered to give depositions.

"The time limit is such that the deposition could be taken or the reporters could be in jail" before decision could be obtained from the appellate court, one lawyer said.

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

Hoffman has scheduled arguments Friday between lawyers for the Justice Department and Agnew on the Vice President's contention that he cannot be indicted, a contention disputed by the Justice Department in the brief it released yesterday.