Government Eases Demand for Newsmen's Files

Will Not Insist on Obtaining All the Data It Had Asked— Concedes Policy Breach

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WASHINGTON, Feb. 4—The Justice Department disclosed today that it would not insist on obtaining all of the material that it had demanded from newsmen in a recent series of subpoenas.

A spokesman for the department said that investigating officials had breached a long-standing policy of agreeing with newsmen on the information to be demanded before subpoenaing their files.

"There was a breakdown in the established pattern of pre-subpoena negotiations," the official said, which resulted in the issuance without prior notice of wide-ranging subpoenas on news organizations that had investigated the activities of radical political groups.

Privately, some Justice Department officials indicated they were chagrined over what they said appeared to be blunders by officials who had served newsmen with subpoenas that gave the impression the Nixon Administration had instituted a rigid new policy toward the news media.

The subpoenas had been met with statements of criticism and concern by officials of The New York Times, the Columbia Broadcasting System, Time Inc., and Newsweek.

Each company had been the subject of grand jury subpoenas demanding such raw data as reporters' notes, tape recordings, news film and unedited files. The subpoenas have issued by grand juries that were investigating the activities of the Weatherman faction of the Students for Democratic Society and the Black Panther party.

The companies' statements expressed concern that the Government's attempt to obtain newsmen's raw files could dry up reporters' news sources by revealing the names of confidential informants. There was also talk in some circles here that the subpoenas might be an expression of displeasure by officials at some news stories that they felt placed radical groups in a favorable light.

The statement today from the Justice Department reflected a conciliatory posture by the Government.

The spokesman said that after informal negotiations with one news magazine, the Jus-

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tice Department has dropped, for the time being at least, its demand for names of confidential informants concerning the Weathermen.

The official also said that the department would not insist on obtaining all the material that it subpoenaed Monday from Earl Caldwell, a New York Times reporter in San Francisco who has written articles about the Black Panthers.

The subpoena demanded a broad range of notes and tape recordings bearing on the Panthers' activities. Today the Government official said that the department was willing to negoiate the question of what material must be presented, as it had with others who were served with subpoenas without a prior understanding of what would be demanded.

Prior to the recent series of subpoenas, subpoenas for newsmen's materials had almost always been the product of a prior bargaining process. Typically, the reporters would insist that they could not disclose certain sensitive information such as informants' identities. However, they would not object to the subpoenas themselves, because they felt that by not appearing voluntarily they counteracted any suggestion that they were acting as an investigative arm of the police.

Under such working arrangements, the Justice Department has obtained information from newsmen, particularly in connection with civil rights disturbances in the South.

Nixon Administration officials insist that this procedure has been followed at least twice in this Administration, and that the recent exceptions are examples of miscues and not a new policy.

Previously, both the Government and the news media avoided rigid positions, because both apparently feel that they would lose from a test in the Supreme Court.

An illustration of the problem was provided in 1968 when Annette Buchanan, the editor of the student newspaper at the University of Oregon, was convicted of contempt for refusing to give a grand jury the names of students who had told her of their use of marijuana.

It is well established that journalists have no common law privilege to refuse to give the name of their sources. Oregon was not one of the dozen states that have passed statutes giving reporters the right to refuse to give such information. A similar law has been urged in Congress, but never adopted.

Miss Buchanan appealed, contending that the First Amendment's free press guarantee gave her the right to stand mute in order to preserve her sources of information. The State Supreme Court turned her down, declaring that "freedom of the press is a right which belongs to the public: it is not the private preserve of those who possess the implements of publishing." The United States Supreme Court declined to hear her appeal.

Such a denial does not mean that the Supreme Court agrees with the lower court's view of the First Amendment, and there have been hints that in a test of subpoenas such as those currently in controversy, the Court would declare that newsmen do have certain rights to refuse to comply.

Lawyers who argue this view usually cite a 1958 decision of the United States Court of Appeals for the Second Circuit in New York, involving a suit by the actress Judy Garland against Marie Torre, a columnist for The New York Herald Tribune.

After Miss Torre quoted anonymous "network executives" concerning Miss Garland, the actress sued for damages and demanded that Miss Torre give her informants' names. The columnist refused on first amendment grounds, and the case was decided in an opinion by Potter Stewart, who was then a Court of Appeals judge.

He declared that "the compulsory disclosure of a journalist's confidential sources of information may entail an abridgement of press freedom by imposing some limitation upon the availability of the news."

But he noted that "we are not dealing here with the use of the judicial process to force a wholesale disclosure of a newspaper's confidential source of news, nor with a case wheer the identify of the news source is of doubtful relevance or materiality."

He applied a test of First Amendment rights that is favored by a majority of the Supreme Court currently — a balancing of the need for the information with the deleterious affect on the newsman's rights.

In that case, Miss Torre lost out in the balancing process.

While the Supreme Court has not specifically ruled on the same issue, it has handed down a series of ruling in recent years designed to foster a robust, aggressive press. In civic rights cases in the South it has also protected the right of controversial groups to keep their membership lists secret.

If the subpoena issue were to reach the Supreme Court, the Court would be compelled to balance a complex mix of competing values.

The news media would assert that the free flow of news would be subverted if reporters' notes could be subpoenaed. They could also point to a 1949 study by the New York Law Reform Commission, which found that enforcement is not hurt in states where reporters may refuse to disclose their sources.

The Government would argue that secrecy can cloak irresponsible journalism and that the public's right to effective law enforcement should come first.