

Professor Asks Limit on Subpoenas

It is more important to stop the indiscriminate subpoenaing of newsmen than to spell out "the precise shape of (their) testimonial privilege," a Stanford University law professor said yesterday.

In a statement submitted to the Constitutional Rights Subcommittee of the U.S. Senate Judiciary Committee, professor Anthony Amsterdam said:

"The pressures are very heavy today to issue subpoenas where they are merely convenient, not necessary, and without the slightest concern for their damaging effects upon the freedom of the press."

This comes about, he said, because of the U.S. Supreme Court's 1972 "Branzburg" decision, which held, in effect, that newsmen must disclose their sources to courts and/or grand juries.

Amsterdam served without pay as volunteer counsel for New York Times reporter Earl Caldwell, whose sources for a story on the Black Panthers were at issue in the Branzberg decision. Stanford spokesmen said it was believed he volunteered yesterday's statement to the Senate subcommittee.

"The subpoena-seekers now have a clear field and nothing to lose.

"... No longer do prosecutors and investigators hesitate to use press subpoenas lest they find themselves with 'a federal case' on their hands. The federal case is over."

He said newsmen need protection from indiscriminate issuing of subpoenas and suggested that such subpoenas in court cases should be issued only by a judge, and in legislative and administrative actions "by the ... committee ... or subcommittee ... or agency, not by subordinate investigative staff."

Amsterdam set forth three criteria he said should be met before a press subpoena is issued:

"1. Whether there is reasonable ground to believe that the newsman has any material, unprivileged evidence to give.

"2. Whether there exists some factual basis for the investigation of the claim of the subpoenaing party in a court case — a requirement which might stop the tempting practice of commencing investigatory fishing expeditions by subpoenaing reports.

"3. Whether the evidence sought from the newsman cannot be equally well obtained from non-news sources."