

Judge Authorizes 'Leak' Subpoenas

By Edward Walsh
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BALTIMORE, Oct. 3— Federal Judge Walter E. Hoffman authorized lawyers for Vice President Spiro T. Agnew today to subpoena sworn testimony from anyone they think has knowledge about leaks to the press about the criminal investigation of the Vice President.

Hoffman's court order authorizing the subpoenas was filed here shortly after the judge, in an extraordinary public session, warned the grand jury investigating Agnew to disregard news accounts of the probe. At the hearing attended by the grand jurors, federal prosecutors, Agnew's lawyers and dozens of reporters, Hoffman declared:

"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 to protecting the rights of persons under investigation for criminal acts, must be resolved."

The filing of the court order and Hoffman's admonition to the grand jury came after a 90-minute meeting attended by Hoffman, Agnew's three lawyers and four federal prosecutors.

After listening to Hoffman, the grand jurors returned to a room that was sealed off and guarded by U.S. marshals to hear more testimony against Agnew. Five witnesses testified before the grand jury today, in the second session involving allegations that Agnew has accepted kickbacks from Maryland architects and engineers.

Late today, there were no reports of subpoenas being served on Justice Department officials, whom Agnew has accused of being the source of leaks to the press, or reporters who have written about the Agnew investigation. Agnew's lawyers said earlier this week that they are considering questioning reporters about the sources of news stories concerning the investigation.

Hoffman's court order set

the stage for a possible clash over a second constitutional issue in the Vice President's attempt to halt the federal investigation of his activities. Attempts to force reporters to reveal their sources have been resisted by news organizations in the past, generally.

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ground that the identity of confidential sources is protected by the First Amendment to the Constitution.

Last Friday, Agnew's lawyers, in a motion filed with Hoffman, asked for an end to the investigation. They argued that the Constitution prohibits the indictment of a President or Vice President until he is first impeached and removed from office by Congress.

Agnew's lawyers also contended that leaks to the press about the investigation have made it impossible for the Vice President to receive a fair hearing from the grand jury, or at any subsequent criminal trial.

Hoffman's court order did not mention leaks to the press or specify why Agnew's lawyers sought subpoena power to take depositions—statements made under oath outside a courtroom. It was, however, clear the lawyers planned to use that power in an attempt to prove Agnew's charge that Justice Department officials have been the source of leaks to the press.

In a speech in Los Angeles Saturday, the Vice President declared that this was his intention, saying that he planned to seek court permission "to examine under oath these people who are trying to destroy me politically through the abuse of the criminal justice system of the United States."

Hoffman ordered that the transcripts of depositions taken by Agnew's lawyers be sealed and not made public, and he ordered all lawyers involved in the case not to discuss any depositions. The only other limitations

Hoffman placed on the subpoena power he granted was to require Agnew's lawyers to notify the Justice Department at least 48 hours before they planned to take sworn testimony from any witness.

The events here today unfolded in a federal courthouse crowded with reporters who followed the lawyers and prosecutors involved in the case through the corridors of the building. Neither Agnew's lawyers, the prosecutors nor Judge Hoffman would comment about their meeting or about Hoffman's court order.

Agnew was represented at the meeting by Jay H. Topkis and Martin London of the New York law firm of Paul, Weiss, Rifkind, Wharton & Garrison, and Judah Best of the Washington firm of Colson and Shapiro.

The meeting was also attended by Judge Edward S. Northrop, chief federal judge in Maryland, George Beall, the U.S. attorney for Maryland, and three assistant U.S. attorneys who are working with Beall on the Agnew case—Barnet D. Skolnik, Ronald Liebman and Russell T. Baker.

Beall notified Agnew Aug. 2 that Agnew is under investigation for possible violations of bribery, extortion, conspiracy and tax laws. 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.

Hoffman normally presides at 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 association with the Vice President.

Agnew was governor of Maryland from 1967 to 1969.

No Justice Department officials from Washington attended the meeting, held in a spacious suite of offices on the sixth floor of the federal courthouse here. A Justice Department spokesman in

Washington said late today that no employees of the department had yet been subpoenaed by Agnew's lawyers and that he could not comment on how the department might respond to such subpoenas.

Following the meeting, Hoffman, Agnew's lawyers and the prosecutors walked to the main federal courtroom here on the fifth floor of the building. With reporters crowded into the courtroom's jury seats, Beall and his assistants seated at a table in front of Hoffman and Agnew's lawyers in the front row of seats normally used by spectators, the

grand jury was ushered into the courtroom.

Eighteen of the 22 grand jurors were present. The 10 men and eight women listened impassively as Hoffman, seated and turned slightly toward them, read from a 10-page written statement that was later distributed to reporters.

Hoffman reminded the grand jurors of their powers and responsibilities under federal law, a routine explanation given to all grand jurors when they first begin to meet and first given to this grand jury when it was empaneled last December. But Hoffman's statement was

also laced with critical comments about the press, especially in connection with the Agnew investigation.

"It would be a tragedy to the cause of the administration of justice," Hoffman said, "if grand jurors returned an indictment . . . merely because the jurors may have heard or seen comments by the news media.

"You are not concerned with the sources of the information disseminated by the news media," Hoffman said. "It is because I have learned, over a period of 20 years as a judge and an additional 23 years as an attorney, that the news media

frequently are wholly or partially inaccurate, that I must warn you to disregard any comments you have seen or heard from any source, save and except what you have heard or seen in your grand jury room while in session."

"The news media are integral and necessary parts of our lives," the judge continued. "My relationship with them has been generally good. I know that there are reporters and editorial writers who insist upon checking the facts before making any comment but, unfortunately, in the present-day

grab for priority in getting news items, the news media frequently overlook the rights of others, especially where criminal matters are involved."

In a clear reference to Agnew's assertion that the Constitution shields him from criminal prosecution while he is Vice President, Hoffman told the grand jury:

"For your purposes, you are not concerned with whether a person is immunized from indictment or trial. You are not concerned with the policy of any law. Congress makes that policy."

At the end of the 15-minute public session, Hoffman turned to reporters and, with a small smile, said, "I suppose the press wants some comment." He then announced that copies of his statement would be available.

After the 15-minute public session, Agnew's lawyers spent about 45 minutes in Beall's office. They then filed the court order, which Hoffman apparently had agreed to issue at the earlier meeting with all the lawyers.

Agnew's lawyers may have set the stage for issuing subpoenas to reporters in a series of telephone calls

made from New York by Topkis Tuesday. Topkis asked two reporters — Fred Graham of CBS and Richard M. Cohen of The Washington Post — voluntarily to identify their sources for stories about the Agnew investigation.

Both refused, apparently clearing the way for Topkis to subpoena them.

Topkis is also believed to have asked Ben A. Franklin of The New York Times to identify his sources, although executives of The Times refused to confirm this. Franklin also is believed to have refused the request.