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Congress to Open Talks on News Source

By DAVID K. SHIPLER

Congressional hearings will begin today on legislation that would prevent courts, grand juries and other governmental authorities from forcing newsmen to testify about their confidential sources of information.

In the wake of several jailings and contempt of court citations against newsmen who refused to honor subpoenas, members of Congress have introduced more than 25 measures intended to protect newsmen.

Today's hearings will be held by Subcommittee No. 3 of the House Judiciary Committee. The Senate Judiciary Subcommittee on Constitutional Rights will begin its hearings Feb. 20.

The Supreme Court left the door open for Congressional action on the matter when it ruled 5-to-4 last June that nothing in the Constitution prevented newsmen from being compelled to testify before grand juries.

"At the Federal level, Congress has freedom to determine whether a statutory newsman's privilege is necessary and desirable," wrote Associate Justice Byron R. White for the majority, "and to fashion standards and rules as narrow or broad as deemed necessary to address the evil discerned and, equally important, to refashion those rules as experience from time to time may dictate.

A number of legislators, in supporting such bills, have expressed the fear that the public will learn considerably less about wrongdoing in government and about dissident political movements if sources who are afraid of being identified refuse to talk to reporters.

Opposition to such legislation has not yet become evident. Staff members of both House and Senate Judiciary subcommittee that wil llook into the issue have been hard-pressed to find witnesses against the bills.

"The Administration is taking pretty much of a hands-off approach to it," said Lawrence Baskir, counsel to the Senate subcommittee. "We're having a little bit of difficulty, as a matter of fact, finding people opposed to it."

Much of the debate in Congress is expected to focus on four main variables in the bills:

The question of whether the Federal legislation should preempt state laws, or apply only to Federal courts and grand juries.

¶Whether the bill should give newsmen "absolute" immunity from forced testimony under any conditions, or "qualified" immunity, in which a judge could find a compelling need for a reporter's testimony.

¶Whether the immunity would apply only to professional journalists working for established media, or to anyone gathering information for eventual publication or broadcast, a category that might include scholars, authors, underground press reporters, students working for school newspapers and pamphleteers.

¶Whether the protection against disclosure should apply only to confidential sources, or also to confidential information, perhaps including public events that the reporter witnessed.

The bills already introduced cover the spectrum on each of these issues, and there is some disagreement even within segments of the press about which is preferable.

The American Newspaper Publishers Association is supporting an absolute and preemptive bill, which has been introduced in the Senate by Alan Cranston, Democrat of California.

The Joint Media Committee —a group of several news organizations — has favored a qualified bill similar to one introduced by Representative Charles W. Whalen, Jr., Republican of Ohio.

20 Bills in House

Aside from Senator Cranston's bill, absolute measures have been introduced in the Senate by Vance Hartke, Democrat of Indiana, and Mark O. Hatfield, Republican of Oregon. Among the qualified bills are those by Lowell P. Weicker Jr., Republican of Connecticut, and Richard S. Schweiker, Republican of Pennsylvania.

On the House side, more than 20 pieces of legislation have been dropped in the hopper. They range from a one-paragraph, absolute bill by Bella S. Abzug, Democrat of Manhattan, to slightly more complicated, qualified measures by Wilbur D. Mills, Democrat of Arkansas, and Claude Pepper, Democrat of Florida.

The qualified bills would generally require a reporter's testimony if three conditions were met: that the reporter's information is relevant to a specific crime, that it is unavailable elsewhere and that is would serve a compelling national interest. Some newsmen have argued that a qualified bill might be worse than none at all, since it would have the effect of sanctioning most subpoenas.

Representative Ogden R. Reid, Democrat of Westchester, made that argument when he introduced his own absolute bill last week. "I think that thoughtful observers recognize at this point that anything that is qualified will not now work," he said, observing that some reporters had been jailed in states with qualified laws on the books.

Pre-emption Controversial

In testimony before Congress last fall, Roger C. Cramton, an Assistant Attorney General, argued against an absolute bill but said that qualified law would do no good because "neither the newsman nor his source can receive or give information with any assurance that it will not subsequently be divulged" as the result of a judge's ruling.

The issue of pre-emption is equally controversial. Since most recent subpoenas of newsmen have come on the local level, not the Federal, some news organizations are pushing hard for Congress to legislate for the states as well as for the Federal Government.

Questions have been raised about the constitutionality of such an approach. But Jack Landau, a reporter for the Newhouse newspapers, who is also a lawyer, argues that the 14th Amendment's guarantee of equal protection under the law gives Congress the power to legislate for the states on some matters, as it did in the Voting Rights Act, for example.

Even some who have deplored the subpoenas issued to newsmen have a philosophical block against the idea of legislation to provide immunity.

"T think there are certain

C 39

Privacy

circumstances where the reporter has a duty to the system to conceal and not reveal his source," said Roger Rook, District Attorney of Clackamas County, Ore. "But when you start legislating, then you're saying the legislature has the power over the press."

Writing in last November's issue of the magazine Commentary, Alexander M. Bickel, the Yale professor who was chief counsel for The New York Times in the Pentagon papers case, said, "Law can never make us as secure as we are when we do not need it.

"Those freedoms which are neither challenged nor defined are the most secure. In this sense, for example, it is true that the American press was freer before it won its battle with the Government over the Pentagon papers in 1971 than after its victory. . . . We extend the legal reality of freedom at some cost in its limitless appearance. And the cost is real."