

# House Panel Disagrees on Shield Bill

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Seven members of a subcommittee of the House Judiciary Committee tried in vain today to reach a consensus on a news men's privilege bill.

The working session, open to the public under new House rules, illustrated the extensive disagreements that still prevail in Congress on whether courts and grand juries should be prohibited from forcing reporters to testify about their sources of news.

The legislative debate has been fueled by a ruling of the Supreme Court last June that newsmen have no inherent constitutional right to defy subpoenas. The Court virtually invited Congress to write legislation, an idea that has gained momentum since the jailing of several reporters and warnings from the press that serious investigative journalism was being stifled.

Testing, chiding, cajoling one another, the Representatives today essentially restated their positions on a multitude of variables: Should the privilege be absolute or qualified? Should it apply only to confidential sources or to nonconfidential matters as well? Should it cover only newsmen or also authors? Should it apply only to the Federal courts or also to the states?

## Some Motion Observed

While the subcommittee chairman, Robert W. Kastenmeier of Wisconsin, fell short of achieving agreement on these points, some members displayed enough flexibility to cause the subcommittee's counsel, Herbert Fuchs, to remark, "It seemed to me that there was motion."

For example, the ranking Republican, Thomas F. Railsback of Illinois, said that although he opposed in principle any bill that would apply to the states, he would not try to defeat such a measure if he agreed with its other provisions.

This has been a critical area of dispute, with most of the subcommittee's Democrats favoring a so-called "preemptive" measure that would cover state courts as well as Federal courts. They have argued that most subpoenas of newsmen have come from the state, not the Federal, authorities.

But the Republican minority has adopted the Nixon Administration's position that preemptive legislation is at best

unwise and perhaps unconstitutional. One factor that is influencing the deliberations is the likelihood of a Presidential veto of any bill that pre-empts state laws or that creates a sweeping immunity without exceptions.

In both the House and the Senate, the pertinent subcommittees have virtually abandoned the absolute, unqualified protection sought by press organizations such as the American Newspaper Publishers Association.

## Almost No Response

When Mr. Kastenmeier asked this morning who on his subcommittee agreed with the provisions of the publisher-endorsed bill sponsored by Jerome R. Waldie, Democrat of California, he received virtually no response.

In the Senate Judiciary Committee's Subcommittee on Constitutional Rights, chaired by Sam J. Ervin Jr. of North Carolina, staff members have been trying to unite the proponents of legislation around a single approach, specifically the bill sponsored by Mr. Ervin.

The Ervin measure would give a reporter the right to refuse to testify about confidential sources and unpublished information except when he had witnessed a crime. The bill would pre-empt state laws by creating a minimum immunity; states could go beyond it if they wished.

"They're not going to get anything strong out of the subcommittee," said Lawrence Baskir, the subcommittee's counsel.

He added that a key factor now was the press's attitude toward qualified immunity. Some news executives and reporters have said that they would prefer no legislation to a qualified bill, and if this view takes hold in the press, Mr. Baskir said, a number of Senators now favoring absolute immunity will probably go with the press and oppose a qualified bill.

So far, he said, he has been unable to get clear reaction from the press to Senator Ervin's bill.

The Republican minority of the House subcommittee has drafted a two-tier measure and is seeking the Justice Department's support. The bill, sponsored by William S. Cohen of Maine, would bar the subpoenaing of reporters without exception to appear before grand juries, agency hearings and legislative committees. But it would require such testimony in open trials if the information was relevant and unobtainable elsewhere.

That is the kind of compromise that may find support if the press backs it, according to some members of Congress.

"There's a poisoned atmosphere [in Government-press relations]," said Mr. Cohen. "We'd like to take some action to change it."