

# Agnew Fought On Leaks

## Effort to Find News Sources Held Frivolous

By Edward Walsh

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The Justice Department asked federal Judge Walter E. Hoffman yesterday to reverse himself and prevent lawyers for Vice President Spiro T. Agnew from questioning reporters about their sources for stories on the federal criminal investigation of Agnew.

Hoffman also was asked by the government to reject the contention by Agnew's lawyers that the federal grand jury investigation of the Vice President be stopped because of alleged prejudicial publicity. The Justice Department argued that news accounts of a grand jury investigation are "legally irrelevant" and that there is no precedent for stopping an investigation because of them.

At the same time, lawyers for the nine reporters subpoenaed by Agnew's lawyers last week asked Hoffman to delay the reporters' scheduled appearance Thursday for questioning by Agnew's lawyers in Baltimore.

Informed sources said last night that Hoffman rejected the request for a delay almost immediately.

Hoffman was quoted by sources as saying: "I am not going to grant an extension on anything. There will be no hearing. I will be in Baltimore Wednesday" (for questioning of Justice Department officials about the source of news leaks).

The lawyers for the subpoenaed reporters had asked Hoffman to hold a hearing today on their request for a one-week delay in the reporters' scheduled appearance until Oct. 18. They sought the additional time to prepare motions and arguments attempting to quash the subpoenas as a violation of the First Amendment's guarantee of freedom of the press, the lawyers said.

It was not clear last night what action the lawyers for the reporters would take in the wake of Hoffman's swift rejection of

See PROBE, A6, Col. 1

### PROBE, From A1

a possible delay. They could appeal the judge's refusal to delay the proceedings to the Fourth U.S. Circuit Court of Appeals in Richmond, or file motions to quash the subpoenas today or Wednesday.

The rapidly moving legal developments yesterday appeared to put lawyers for the Vice President on a collision course with both the press and lawyers for the Justice Department in Agnew's attempt to halt the federal grand jury investigation of his possible violation of bribery, extortion, conspiracy and tax

In a brief filed in Baltimore and given to Hoffman yesterday, the Justice Department said that its own top officials would testify under oath Wednesday that there has been no "campaign" of news leaks against Agnew.

Calling Agnew's lawyers' charges about news leaks "frivolous" and their subpoena of the reporters a "fishing expedition," the Justice Department asked Hoffman to reject Agnew's contention that he is the victim of prejudicial publicity deliberately leaked by department officials.

The Justice Department brief, written by Solicitor General Robert H. Bork, as well as a separate brief by lawyers for the subpoenaed reporters, also strongly suggested, without stating flatly, that Agnew's own attorneys may be the source of some news accounts about the investigation.

The Justice Department brief and the motion for a delay in the scheduled appearance of the reporters were responses to attempts by Agnew's lawyers to halt the grand jury probe and prove the Vice President's charge that Justice Department officials have deliberately leaked information about the case to the press.

In a motion filed with Hoffman Sept. 28, Agnew's lawyers asked for an end to the probe, arguing that the Constitution prohibits the indictment of a president or vice president until he is impeached and removed from office, and charging that news leaks about the case have made it impossible for Agnew to receive a fair hearing from the grand jury or at any subsequent criminal trial.

The Justice Department asked Hoffman Friday to reject Agnew's claim to constitutional protection, arguing that the President — but not the Vice President — is immune from criminal prosecution.

The same day, lawyers for Agnew served subpoenas on nine reporters and Time and Newsweek magazines. The subpoenas demanded that the reporters appear in Baltimore at 9 a.m. Thursday to testify under oath about their sources for stories about the Agnew investigation.

In the past, news organizations have resisted attempts to force disclosure of confiden-

tial sources, and some reporters have gone to jail on charges of contempt of court rather than identify their sources.

Agnew's lawyers also have subpoenaed top Justice Department officials, including according to unconfirmed reports, Attorney General Elliot L. Richardson, Assistant Attorney General Henry E. Petersen, head of the department's criminal division, and George Beall, the U. S. attorney for Maryland who is in charge of the Agnew investigation.

The Justice Department officials are scheduled to be questioned by Agnew's lawyers Wednesday. Hoffman has told lawyers involved in the case that he plans to be present for the questioning of both government officials and reporters, and to rule immediately on issues that arise.

Hoffman's planned attendance at the questioning has been interpreted by some legal sources as a sign that reporters who refuse to disclose their sources could be jailed almost immediately, lending a sense of urgency to the attempts to quash the subpoenas.

The grand jury that is investigating allegations that Agnew has accepted kickbacks from Maryland architects and engineers is scheduled to hear more evidence Wednesday and Thursday, an informed source said yesterday.

Hoffman is scheduled to hear oral arguments Friday in Baltimore on Agnew's request for a halt to the investigation and to rule on the request early next week. In addition, Agnew's lawyers have asked Hoffman to hold a separate hearing on the source of news leaks.

In the brief asking Hoffman to reject Agnew's contention about news leaks, the Justice Department argued that "the mere fact that grand jurors have seen publicity unfavorable to an individual under their investigation has never been considered a proper ground even for dismissal of an indictment."

Moreover, the brief argued, the source of news leaks also is irrelevant. "A grand jury exposed to 'unfavorable' publicity that has been 'leaked' by the prosecution is in no different a position from that of any grand jury that is exposed to similar information uncovered by diligent investigative reporters."

Questioning reporters, the department argued, would serve no purpose except to introduce into the case the controversial issues of newsmen's rights and First Amendment guarantees.

"Since we believe that there is no need for a hearing in any event, we do not support the effort . . . to compel the testimony of newsmen as to their sources in this situation," the brief said. "Any hearing should begin and end with the depositions of Department of Justice officials."

While asserting there were no legal grounds to halt the grand jury probe because of

publicity, Solicitor General Bork said the Justice Department believes that "manipulation of the news media for prosecutorial purposes" should never be condoned.

"Our only point here," Bork wrote, "is that the overriding importance of the ends of the criminal process, the protection of the public against crime and corruption, normally require that the remedy in cases of prosecutorial abuse be vindication of the innocent at trial, not immunity for innocent and guilty alike."

The Justice Department brief also charged that Agnew's lawyers failed to produce any evidence supporting their claim that department officials are the source of news leaks. Rather, the government brief charged, Agnew's lawyers "are engaged in an attempt to confuse the issue and halt a legitimate investigation by the common defense tactic of trying the prosecutor."

Justice Department officials, noting that Agnew's lawyers may claim that federal prosecutors are attempting to indict Agnew on the basis of publicity, rather than evidence, also offered Hoffman a chance to inspect in private a summary of the evidence the prosecutors have gathered against Agnew in the Maryland investigation.

"This court may then determine whether the Vice President is in fact in danger of unwarranted indictment based upon insufficient evidence," the brief said.

To buttress their arguments, Justice Department officials gave Hoffman a copy of a report by Acting Assistant Attorney General Glen E. Pommerening, who was assigned by Richardson to investigate Agnew's charges about leaks to the press.

The report said that all Justice employees known to be familiar with the Agnew case denied under oath that they were the sources of news leaks.

Pommerening said his investigators had interviewed 134 employees, and all denied giving the information to newsmen and said they did not know who had. The Internal Revenue Service interviewed 29 of its personnel and also found no leaks, Pommerening said.

His report suggested that the news stories may have been obtained by persons outside the department. During the weeks when information on Agnew's potential involvement was known only to the department or to the U.S. attorney's office in Baltimore, there were no disclosures in the press, the report said.

By the time stories began to appear, it continued, the information was rather widespread and some of it had been made available to the Vice President and to persons in the White House.

It also noted that there is now "a Byzantine-like relationship in the Baltimore business, political and social commu-

nity" that contributes to "the general aura of gossip and rumor which has been widespread . . ." Some defendants have the same attorney and several lawyers are former Justice employees, it noted.

Several news reports were attributed directly to the Department of Justice, and the information contained in those reports "may have been damaging to the Vice President," Pommerening continued, but "it was generally inaccurate."

He advanced two theories to explain those news reports. The source may have been on the periphery of the Agnew investigation and did not have deep knowledge of the facts, or content of the disclosures was deliberately changed to protect the source's identity, Pommerening said.

In the brief submitted with their motion requesting a delay, the lawyers for the subpoenaed reporters and news organizations argued that Agnew's attorneys have neither the need nor the legal grounds to demand the testimony and written materials sought in the subpoenas.

Asserting that the issues raised by the serving of the subpoenas last week "are among the most serious ever to come before this court," the lawyers for the reporters charged that "the sweep of these subpoenas is virtually unprecedented, seeking as they do testimony from more than 10 representatives of the media, and all drafts, notes and other unpublished material."

The subpoenas served on the reporters demanded that they bring with them to Baltimore Thursday "all writings and other forms of record (including drafts)" that reflect who their sources were for stories about the Agnew investigation.

"The interests of the press involved in this case extend far beyond news coverage of a criminal investigation," the brief for the reporters argued. "At stake is the right and duty of the press to alert the voters and their representatives to activities which may constitute grounds for impeachment—a political as opposed to a judicial process."

In a brief filed last week that rejected Agnew's contention that he is immune from criminal prosecution unless he is first impeached and removed from office, the Justice Department also said that if the Vice President is indicted it would delay bringing him to trial to give the House of Representatives an opportunity to begin impeachment proceedings. Earlier, the House leadership, saying that the case "is before the courts," rejected the Vice President's request for a special House investigation of the allegations that would not be a formal impeachment proceeding.

In a direct challenge to Agnew's request for a halt in the grand jury investigation, the lawyers for the subpoenaed reporters contended that the courts do not have power to

interfere with a grand jury proceeding or the functions of federal prosecutors.

Even if the courts had such power and "massive publicity" were a valid issue in the case, the lawyers said, the Vice President "may have waived any right to assert such a claim because (he) has generated much of the publicity himself . . . and it is possible that (he) or his attorneys have been responsible for many of the press leaks of which he complains."

Since the investigation became public Aug. 7, Agnew has held two nationally televised press conferences and delivered one nationally televised speech on the subject. In the speech, delivered in Los Angeles Sept. 29, the Vice President accused Assistant Attorney General Henry E. Petersen of a "malicious and outrageous" attempt to "destroy me politically" through deliberate leaks to the press.

Petersen, head of the Justice Department's criminal division, has been defended both by President Nixon and Attorney General Richardson.

Lawyers for the reporters refused to elaborate yesterday on their assertion that Agnew's lawyers themselves may be the source of news leaks. In a letter to The Washington Post that was published last week, the Vice President said his lawyers are prepared to sign affidavits that they did not discuss with reporters what happened at one meeting at which Agnew's possible resignation and acceptance of a guilty plea in the case were discussed.

The lawyers for the reporters argued that to uphold the subpoenas, the courts would have to extend substantially the meaning of a 1972 Supreme Court decision that ordered reporters to testify before grand juries. In that case, known as the Branzburg case, the Supreme Court held in a 5-to-4 decision that reporters could be compelled, under penalty of imprisonment for contempt of court, to tell grand juries about criminal conduct they have witnessed even if the testimony violated a confidential relationship with their sources.

In the Branzburg case, the reporters' lawyers argued, the Supreme Court found that the impairment of First Amendment rights involved in forcing reporters to testify before grand juries was slight compared to "the public interest in law enforcement and in ensuring effective grand jury proceedings."

"The present civil subpoenas demanding wholesale discovery, not only by oral testimony, but also by means of documents, have a much greater adverse impact on First Amendment rights and require the striking of a different balance than in Branzburg," they said.

Other objections to the subpoenas to reporters made by the lawyers included assertions that:

- At least one court has held that there is no right to be free from prejudicial publicity during a grand jury investigation.

- Agnew's lawyers have not exhausted all other sources in attempting to find the origins of leaks to the press. Although not spelled out in the brief, these other sources presumably would include Justice Department officials, attorneys for other persons involved in the Maryland investigation and the key figures in the probe itself.

- In the past, courts have refused to hold hearings on the sources of alleged preju-

dicial publicity after government officials swore under oath that they were not responsible for news leaks.

- A ruling by Hoffman upholding Agnew's claim to a constitutional shield from prosecution would make the publicity controversy moot.

The brief also contended that most of the subpoenas that were served on reporters were technically invalid. The subpoenas were issued by the federal court in Baltimore and only one of them was served in Maryland, on William Sherman, a reporter for the New York Daily News, at a Baltimore hotel where Sherman has been living for the last two months.

The other subpoenas were served on reporters in Washington and New York, outside the jurisdiction of the federal court for the Maryland district and, therefore invalid, the brief argued.

In another development yes-

terday, the Reporters' Committee for Freedom of the Press—an independent group that battles—said it would attempt to intervene in the case on behalf of reporters who relied or may in in th

in the future rely on confidential sources to report the Agnew case.

In a statement, the committee urged all reporters covering the case to continue seeking information from confidential sources.

"The Vice President, through his attorneys," the committee said, "will have effected a substantial suppression of news if the mere serving of these subpoenas deters members of the working press from reporting important information about the Agnew case given by confidential news sources."

*Contributing to this story were Washington Post Staff Writers William Chapman and Bill Richards.*