

# The saga goes on: Channel 8 vs. courts

*Prosecutor says he will subpoena WFAA reporter*

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While the debate is still going on in local broadcast circles about whether WFAA-Channel 8 struck a reasonable compromise or set an unhealthy local precedent with the courts over their right to subpoena non-public information, a new development occurred Thursday that could throw the matter back onto the battlefield and cost the station much of what it thought it might have gained.

It goes like this:

- Monday: Channel 8 Executive News Editor Marty Haag said the Belo Broadcasting station would fight a subpoena ordering the station to hand over a never-aired taped interview with Deno Victor Loredo, the man accused of killing another motorist on North Central Expressway.

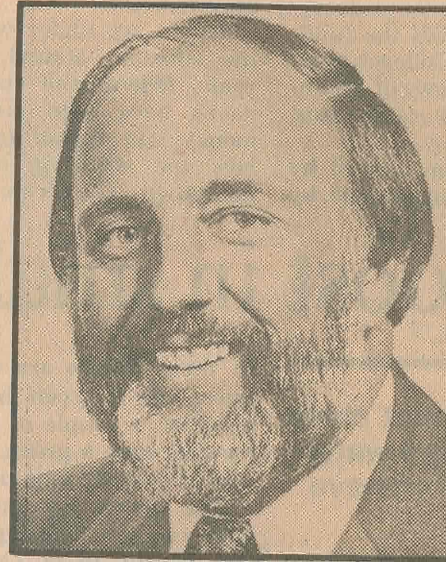
- Tuesday: Sources told the Times



John Criswell

Herald that Channel 8 had shown the tape to the district attorney's office and that the subpoena had been withdrawn.

- Thursday: An attorney for Channel 8 declined to comment on whether the tape had been shown but explained some of the background thinking for trying to "strike a balance" between the defendant's rights and the media's rights. Later in the day, Assistant District Attorney Marshall Gandy declined to comment on whether he had seen the tape or why the subpoena had been withdrawn, but said that he would be issuing yet another subpoena — this time for Channel 8 re-



Marty Haag

porter John Criswell to testify about his interview with Loredo at the suspect's trial.

Unless ground rules for that testimony have been set, Channel 8 still could wind up in a costly legal battle, and Criswell could go to jail if he refuses to answer certain questions. In short, the station may have to draw the line on how far it is willing to let the courts into its newsroom, which it appears to have avoided.

A lot has been going on behind closed doors this week in terms of one of the most important issues confronting the media — how far it is willing to go in terms of allowing the court to

review outtakes (film, audio, video, computer or paper tapes or print-outs never published or aired) of reporters' and editors' notes.

From the media point of view, the heart of the matter is the ability of a newspaper or broadcast operation to assure confidentiality to sources and to maintain the public's general confidence that they function on a relatively independent basis.

Local reaction is running like this:

- KDFW-Channel 4 News Director Wendell Harris said that while he always consults counsel when presented with a subpoena for outtakes, the station has a policy of not turning them over.

"I don't want to try and tell Marty Haag how to run his operation," Harris said, "though he seems to want to tell us how to run ours, but we have a firm policy that we won't release outtakes or reporters' notebooks. That goes to the very heart of a free press."

- KXAS-Channel 5 Executive News Producer Rick Thompson said much the same. Thompson said that most tapes are routinely "recycled," so unless a subpoena is issued immediately it's unlikely that the material would even be available. He said he would not consider turning over any material not aired without a subpoena being issued. "It would have to be subpoenaed," he said, "and then we'd fight it."

University of Texas-Austin professor and national expert on media law,

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# Compromise or precedent?

## *Subpoenas' influence worries media executives*

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said, "Based on the limited facts I'm working with here, I'd say the station [Channel 8] probably did the reasonable thing if they showed the prosecutor the tape."

Teeter, who is incoming president of the Association of Education in Journalism, is co-author of "Law of Mass Communication," headed for its fifth edition and used in virtually every university in the country to teach mass-media law.

"They didn't hand the tape over without a subpoena being issued, as I understand it," Teeter said. "It doesn't seem that they walked in and volunteered saying, 'Sure, let us help any way we can.' It's a tough call. The feeling is: Cops should be cops, courts should be courts and journalists should be journalists. But members of the press are citizens, too. There are some duties involved in that."

Teeter was out of town and could not be reached for comment following Gandy's confirmation that he would still subpoena Criswell.

• John McIlhaney, an attorney for Channel 8, refused to confirm the showing of the tape, saying, "What we have is an unidentified source, telling the Times Herald [that the tape was shown]." He said that doesn't mean it happened. Times Herald sources say it did in fact happen.

In terms of the issues, McIlhaney said, "The real problem is that there are some very legitimately competing interests as to the need or not for tapes or outtake material that haven't been published.

"So that the courts, or many of the courts that have looked at it, have tried to strike a balance between the competing interests. There is the defendant's or the prosecution's right to subpoena all available information. . . . Particularly the Sixth Amendment to the U.S. Constitution gives a criminal defendant the right to subpoena material in behalf of his defense. That's one constitutional principle. . . .

"On the other hand, there's the competing interest of the media and the public through the media

based on First Amendment."

McIlhaney said that if everybody could always subpoena everything in the hands of reporters or materials that their editors hadn't verified, the press would have a hard time doing its job.

McIlhaney said Channel 8 is not offering to let the courts see anything they want to help them decide if they want to subpoena it and is trying to avoid setting any kind of precedent like that with the Criswell tape.

• Dave Lane, president and general manager of Channel 8, referred questions on the case to McIlhaney.

### Channel chatter

Garry M. Lewis has been named general manager of radio stations KNOK-FM and KHVN-AM, E.G.G. Dallas Broadcasting, which owns the stations, announced.

Before joining the Fort Worth stations, Lewis was general sales manager for WTOP and WKTS in Washington, D.C.

KNOK describes its format as "urban contemporary."