

Post
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The Wrong Subpoena

THE HOUSE ETHICS Committee's vote to subpoena CBS correspondent Daniel Schorr, in an effort to find out who gave him the secret House report on the CIA, is both silly and wrongheaded. It is silly because the House did not really get excited about the leaking of the report until excerpts of it appeared in the Village Voice, by which time it had already been leaked to both CBS and the New York Times and pretty well picked clean in news reports and newscasts. The committee's strained effort to find the source from which Mr. Schorr obtained the copy that reached the Voice is, therefore, a classic case of locking the barn door after the horse is stolen. The subpoena is wrongheaded because it forces to a confrontation one of those delicate and difficult questions of law and public policy that are only worth carrying to the inevitable Supreme Court test when the matter at hand is of genuine concern, in terms of the national interest and security, and when the issue is presented in the clearest possible terms. We do not mean to downgrade the underlying issue in the Schorr case. At stake is a principle vital to a free press. The central question is whether the First Amendment guarantee of a free press protects a journalist's right to keep a confidential source confidential, as Mr. Schorr has pledged to do in this instance, or whether that guarantee can be overridden by the constitutional power of Congress to conduct investigations. For our part, we find it hard to envisage a circumstance when a newsman's right to honor a commitment of confidentiality could be overridden without grave danger to the First Amendment. But even if there could be such a circumstance, there is so much that is frivolous and vindictive about the House's pursuit of Mr. Schorr, and so little about the case that invites a great deliberation of its constitutional implications, that it is hardly worthy of a great constitutional testing. The American political system works best when it spares itself such win-or-lose collisions and proceeds by a route of institutional accommodation and common sense.

If it were vitally important to the nation's security for the House to determine the source of precious information, then the ethics committee might conceivably have grounds for pressing its case. But to squeeze a journalist and, by this example, to try to intimidate the whole of the press, when the information in question is neither precious nor private, is absurd. The committee's subpoena is a mistake. The House, which has an infinite capacity for parliamentary inventiveness under pressure, should save itself

and the committee from the error.

Allow us to underline the nature of the real problem. It is not that someone leaked a document labelled (better, mislabelled) *secret* to a journalist but that the House failed in the first instance to institute a procedure that offered even the flimsiest safeguards against leaks. The Senate Intelligence Committee had set a good example by providing for a process of negotiation to work out disagreements over the release of classified information originally provided by the executive branch. But the House Intelligence Committee too casually granted the executive branch an exclusive veto over release. It was in this context of a quite avoidable congressional-executive logjam that the successive leaks of the House Intelligence Committee's report took place.

The solution lies not in futile hunts for scapegoats in the press, or in sanctimonious crying over spilled milk, or even in elaborate security precautions rigged on the premise that the public is the enemy from which information must be kept at all costs. The solution lies in establishment of a responsible and orderly congressional-executive procedure for the sharing of classified information.

And the real question is whether the House Ethics Committee has a sufficient grasp of the problem and enough sense of purpose to draft such a procedure in the form of legislation. The record is not encouraging. First, the foolish agreement with the White House; then the leaks from the report, including leaks of information that the committee apparently had promised not to make public; then the vote not to publish the report officially—and never mind that the gist of it had already dribbled unofficially—as if this would make it all right; and finally the ultimate affront to the dignity of the House—the appearance of verbatim chunks of the report in the Village Voice. A prudent legislative body would not wish to attract further attention to such a record. But not this crowd. Somehow it thinks it can find vindication in hounding Mr. Schorr, who may be a prickly sort of fellow, but who was only doing—in his own inimitable way—his job. There does not now seem to be any way of stopping the committee from demonstrating publicly its inability to get from Mr. Schorr the information it wants about his source. Once the committee has established the existence of this dead-end, however, it could save itself and the House further frustration by calling a halt to the whole unfortunate performance. It's getting to be, among other things, embarrassing.