

8/5/70

Dear Hal,

The story in this morning's Washington Post is too meaningless to copy and send you. It reports merely, as part of the story, that the Court of Appeals has granted a stay in the return of the subpoena issued Tom. The enclosed letter relating to this is entirely in confidence.

Some time ago, when I was disappointed at the reaction, indeed, total lack of reaction, even the minor civilities, I told Paul to make no more of my materials available to Garry. I then said and I now insist that cooperation be a two-way matter. And I have had it from the black anti-white attitude. My experiences with COUP I need not recount. I've also had it about people being busy. You know my working habits.

However, with every day it becomes more tragic that there was no interest in getting this work printed and available. It could have done much good, most of all for those who were least interested in helping in any way. I have yet to get a single black response, for example, and you cannot imagine the number of approaches I made, or their diversity.

At some time in the future, some of this may be of some value to Tom. If that time comes, you know pretty much what I have.

There may be more meaningful stories on this and on Brown's testimony in your papers or on the AP wire. If so, I'd like to keep the file up to date. I also do not expect to see the NYTimes today. They may carry a decent story.

I do not know how well the present cases are reported in the law books, or how well Gross, Garry's Washington lawyer, is aware of them. But among the questions I think should not be ignored are the legislative purpose served by the hearing, whether it is within the jurisdiction of this committee and its subcommittee (government operations), whether or not it is in an area in which Congress can legislate (first amendment), and whether, if there is a possible legislative purpose, that is, indeed, the purpose of this committee and its subcommittee (where may material can also be of some value). If it picks out but a single aspect (black/left), then it is not pursuing a genuine legislative purpose, for historically, all of this has been of the extreme of the right and most often by racists (white). Even good lawyers miss the obvious, if it is outside their experience and something they either did not study or have forgotten. Unstler's blunder with the Rep Brown bombing is incredible. He had an opportunity any lawyer should have regarded as magnificent and he apparently was entirely unaware of it.

With each day, disgust and dismay increase, as does the beginning of a feeling of futility. More and more I recall, as my age (of which I also become more conscious) permits, those inexcusable errors which made Hitler possible. If this does not and will not stop my work, it also does not facilitate it, nor does it work a good influence upon it.

I did write Paul later yesterday, as I told you I would. He can bring you up to date on the status of the pending litigation.

Sincerely,

Court Bars Senate Unit's Subpoena For Data on Left-Wing Organization

8/5/70

By Peter Osnos

Washington Post Staff Writers

For the second time in its history, the U.S. Court of Appeals here yesterday blocked a subpoena issued by a congressional committee seeking information about the operation of a left-wing organization.

In a brief order, the court indefinitely stayed a subpoena issued to Thomas W. Sanders, editor of a Berkeley Calif. publication called "Black Politics," by Sen. John McClellan's Permanent Subcommittee on Investigations.

The subpoena, which ordered Sanders to appear today, sought a wide array of data, but focussed on the identity of "George Prosser," pseudonym for the author of several articles in the publication.

Lawyers for Sanders argued that requiring him to reveal the names of the authors appearing in "Black Politics" and some of his confidential sources of information would violate freedom of the press.

The Court of Appeals gave no reason for stopping the subpoena, but said it wished to consider the issues raised

more fully. The order was signed by Judge J. Skelly Wright and senior Judge Charles Fahy.

In June, a different panel of the court blocked a subpoena issued for bank records of the United States Serviceman's Fund, an antiwar group, by the Senate Internal Security Subcommittee.

The USSF contended its contributors would be intimidated by having their identities revealed to a Senate committee. The case is still before the appeals court for a final determination.

Courts have historically been most reluctant to intervene in the activities of Congress. The USSF case set a major precedent for temporary delays when persons subpoenaed can convince the court that their constitutional rights are imperiled.

The issues in the Sanders case, which is backed by the American Civil Liberties Union, are similar to those raised by newspapermen objecting to orders that they turn over their notes to grand juries.

Gerald Stern, Sanders' lawyer, argued that since the First Amendment is at stake, a full hearing is necessary to determine whether a "compelling governmental interest" outweighs the constitutional protection of information.

Black Politics, a little-known magazine which apparently suspended publication, calls itself an "independent journal whose purpose is to provide a forum for vanguard theories and ideas that deal with currently curcial issues."

The magazine states it is antiwar and is part of the "black liberation movement." Its policy of publishing articles by anonymous authors, Stern wrote in court papers, is like that of many newspapers that omit the names of persons who write letters to the editor.

Bishop Is Retiring

VATICAN CITY, Aug. 4 — Pope Paul has accepted the request of Msgr. Walter A. Foery, 80, bishop of Syracuse, N.Y., to retire for reasons of old age, the Vatican announced today.