GOP Subpoenas Aimed At 4 Publications Denied

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U.S. District Court Judge Charles R. Richey yesterday barred President Nixon's re-election committee from requiring reporters and officials of four publications, including The Washington Post, to testify and turn over documents concerning the Watergate bugging incident.

In an oral opinion delivered after three hours of argument, Judge Richey said: "This court cannot blind itself to the possible chilling effect the enforcement of these subpoenas would have on the flow of information to the press and, thus, to the public.

"This court stands convinced that if it allows the discouragement of investigative reporting into the highest levels of government, that no amount of legal theorizing could allay the public's suspicions engendered by its actions and by the matters alleged in this lawsuit."

JUDGE CHARLES R. RICHEY
... "possible chilling effect"

The Committee for the Re-Election of the President in February issued subpoenas to

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reporters and officials of The Washington Post, The Washington Evening Star-News, The New York Times and Time Magazine.

The re-election committee demanded, in addition to the testimony of 11 persons, that they produce all notes, tapes, story drafts, and other documents concerning the June 17 break-in and bugging of the Democratic National Committee's Wagergate headquarters as well as materials concerning other acts of political espionage.

Officials of the re-election committee are being sued by and in turn are suing officials of the Democratic Party in three lawsuits growing out of the Watergate incident. Lawyers for the re-election committee contended that they needed the testimony and materials from the journalists in connection with the litigation.

The four publications, in separate briefs, opposed the subpoenas on two basic grounds: that they were not permissible under the federal rules of civil procedure governing civil lawsuits in federal courts and that the subpoenas violated the First Amendment right of freedom of the press.

The First Amendment argument relied on the argument, supported by the sworn statement of more than 30 reporters, that the information sought would reveal confidential sources, endangering the ability of reporters to pursue investigative reporting and thus denying the public important information.

Richey rejected the rules of procedure contention of the subpoenaed journalists. Referring to the journalists as "movants" since they had brought the motion to quash the subpoenas, he said the subpoenas "are not so broad as to be unreasonable and oppressive and therefore are valid under the federal rules of civil procedure."

Turning to the constitutional argument, Richey acknowledged that the Supreme Court last summer had refused "to recognize even a qualified newsman's privilege from the disclosure of confidential news sources."

But in his oral opinion, Richey attempted to distinguish the present case from the Supreme Court's ruling that New York Times reporter Earl Caldwell and two other reporters were not shielded from testifying before grand juries by the First Amendment.

The three suits are not criminal cases, Richey said, although "their importance in the eyes of this court transcends anything yet encountered in the annals of American judicial history."

Second, Richey said, the journalists are not involved on either side of the suit. The re-election committee officials, Richey said, "have not demonstrated that the testimony and material sought here go to the heart of the claim.

"What is ultimately involved in these cases between the major political parties, as I said at the outset, is the very integrity of the judicial, as well as the executive, branches of our government and our political processes in this country," Richey said.

"For, without information concerning the workings of government, the public's confidence in that integrity will inevitably suffer. This is especially true where, as here, strong allegations have been made of corruption within the highest circles of government and in a campaign for the Presidency itself."

The re-election committee officials have a right "to receive evidence going to the substance of their claims," Richey said. "Yet there has been no showing that the alternative sources of evidence have been exhausted or even approached as to the possible gleaning of facts alternatively available from the movants herein.

"In the face of these considerations, it appears to the court that what is asked for here, in effect, is for the doors to the reporters to be completely opened," Richey said. "The scales, when balanced, however, are heavily weighed in favor of the movants."

Richey raised the cautionary note that "it may be that at some future date the parties in this case will be able to demonstrate to the court that they are unable to obtain the same information from sources other than the movants, and that they have a compelling and overriding interest in the information thus sought.

"Until that time, this court will not require movants to testify at the scheduled depositions or to make any of the requested materials available to the parties."

Rchey, who was appointed to the bench by President Nixon in 1971, rejected any notion that journalists have an absolute privilege not to testify under the First Amendment. Such a ruling, he said, "would be clearly improper" under the Supreme Court ruling last summer.

Kenneth Wells Parkinson, lawyer for the re-election committee officials, said no decision could be made on whether Richey's ruling will be appealed until he consults with his clients.

The 10 persons sought to testify were: Washington Post publisher Katharine Graham, managing editor Howard Simons, and reporters Bob Woodward and Carl Bernstein; New York Times reporter John Crewdson; Star-News reporters Patrick Collins, Jeremiah O'Leary, James Polk and former Star-News reporter Joseph Volz; and Time magazine correspondent Dean Fischer.

Joseph A. Califano Jr. represented The Washington Post. Floyd Abrams appeared for The New York Times, Francis L. Casey Jr. for the Star-News and John H. Pickering for Time magazine.