

Post 11-6-71

F. Y. I.

In our business (For Your Information), there are people known as "sources" who are highly regarded, carefully cultivated, and sometimes vigorously protected. They are the people who provide us with information, such as the Pentagon Papers or, more in point, the list of six prospective nominees to the Supreme Court, which other people don't want made public. They are essential, at least in our view, to the proper functioning of a free press in a democratic society for without them far more of the news that reaches you would consist only of that which the government wants you to know. Indeed, they are regarded as so essential throughout the news business that this industry is unusually united in a case now pending before the Supreme Court in which the government wants to force a reporter to reveal to a grand jury information the reporter insists he got only through promising he would not reveal it. So you must pardon us if we grin a bit over the near frantic efforts being made by the American Bar Association and, to a lesser extent, the Department of Justice to establish who told us what and when concerning the Supreme Court nominations and the list of six. Consider this fragment from the Bar Association's Committee's almost unbelievably detailed effort to prove its innocence:

... It is believed that The Washington Post correspondent who wrote the story received his information early in the evening of Wednesday, October 20. One source states that this reporter had his story between 6:00 and 6:15 p.m. As of that time, most of the Committee had not disbanded. Except for four who had been required to leave, none of the Committee members could have received a call from a reporter. Of the four who left early, one had gone directly to Appleton, Wisconsin, without knowing the final vote of the Committee. A second had entered a waiting automobile which drove him directly to Hartford, Connecticut, for a business meeting. The third had gone directly to a hospital to visit his wife who was to undergo an operation early the following day. The fourth had gone directly to the airport for a 6:20 plane to St. Paul, Minnesota. Accordingly, none of the members who left prior to 6:00 p.m. were available for press inquiry and none received any. The next Committee

member to leave was caught in a subway tie-up and did not reach his hotel until after 7:00 p.m. The others left about 6:30 p.m., going directly to various airports, except for one person who went to dinner with his wife and one who returned to his hotel well after 7:00 p.m.

None of them talked with any reporter. Under the circumstances, it was virtually impossible for a reporter to have found any of them.

Both before and since this memo was written, The Department of Justice has firmly asserted that none of its officers, either, was our source. Both sides are playing the game in dead earnest, one in an attempt to regain the foothold it has lost in the nominating process and the other in an attempt to justify its withdrawal of that foothold.

The whole affair, of course, is really a tempest in a teapot. It doesn't really matter what the source was, except to the extent that we relied upon its accuracy—a reliance that proved to be well-founded. The administration ought to have known, and there is evidence that it did know, that a committee cannot conduct a broad investigation of six relatively unknown persons without knowledge of that investigation becoming public somewhere along the line. It ought also to have recognized that once the existence of that investigation became known, various reporters would go to work in an effort to ferret out its results. In such a situation, sooner or later somebody will talk.

There is, we suggest, a simple lesson in all this, which is for the administration to worry more about quality and less about secrecy. For one thing, the more qualified a prospective nominee is, the less intensive the inquiry needs to be, and the less likely his or her name is to leak; fewer people would have to be contacted since those whose opinions count the most would know him personally; in addition, the naming of a person of his stature would reduce the element of surprise, not to say shock, which is often what leads confidential sources to talk.

For another thing, if the name of a Powell did reach public print prematurely, together with an ABA rating of "highly qualified," the breach of secrecy would scarcely matter—there would be nothing for the administration to be ashamed about.