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The Watergate Subpoenas

Attorneys are going to court today in an effort to win a delay in the return dates of subpoenas which would require reporters and executives of four publications (including this one) to make available massive amounts of material and information—some of it highly confidential—in connection with their coverage of the so-called Watergate Case. The ultimate objective of the attorneys is to persuade a Federal District judge to quash the subpoenas altogether, on grounds that compliance with their incredibly sweeping demands is barred by the First Amendment. It will hardly surprise you to learn that this newspaper is in agreement with the arguments its legal counsel will be making to the court, and it is not our purpose here to pursue this argument or to plead with the judge as to how to rule. We would, however, like to set down what we believe to be the heart of this matter.

By way of background, the subpoenas in question grow out of a civil suit for damages filed by the Democratic Party against the Committee to Re-Elect President Nixon and a countersuit for libel filed on behalf of Mr. Maurice Stans, former Secretary of Commerce in the Nixon Administration and financial chief of the Nixon campaign. The Democrats are claiming the damages as a consequence of the break-in at Party headquarters at the Watergate, and Mr. Stans is arguing that the attempt to pin the blame on him for this is libelous; in other words, what we have in these civil suits is a partisan political shoving match.

If the legal action is political in its origins, it is very nearly ludicrous with respect to the character and the targets of the subpoenas which have been served at the request of counsel for Mr. Stans. Why, for example, are this newspaper's publisher and managing editor included among those ordered to give testimony in this matter and also to bring a mind-boggling collection of material along with them, while in the case of the three other publications involved (Time Magazine, the New York Times, and the Washington Star-News) only the staff members who reported and wrote the stories on the Watergate affair have been called? One can only guess at the answer, but our guess is that Mr. Joseph Alsop had it about right in a column on the opposite page yesterday. It was his supposition that these "dragnet" subpoenas could not have been issued by the Republicans without at least implicit White House sanction and that somewhere at the bottom of it all is a spirit of reprisal on the part of the White House which, in turn, derives from the attention given during the fall election campaign by the press in general, and this newspaper in particular, to the Watergate and related reports of political espionage and sabotage.

If that were all there were to it, of course, it would amount to nothing more than a petty act of revenge. But that is not all there is to it, as Mr. Alsop also pointed out:

> *"The dragnet subpoenas amount to a demand for full disclosure of the inner workings of the newspaper business, including reporters' sources . . . the subpoenas will rightly be resisted up to the Supreme Court, if necessary, but at heavy expense for all the incidental costs of resistance. For these reasons, the dragnet subpoenas constitute an unquestionable, gross and unjustifiable invasion of the freedom of the press."*

That is exactly our view of it; whatever the relative consequence of this partisan exchange of civil suits, the constitutional issue raised by these subpoenas is as clear and as profound as any that has yet been forced by a court test, despite the great flood of subpoenas against newsmen in the last few years. In fact, nothing could better illustrate the crucial significance of confidential relationships between reporters and sources in investigative reporting than the Watergate stories first broken in this newspaper. For one thing, in almost every case there was necessarily heavy reliance on anonymous sources—on information that could not be attributed by name to the informants for all the obvious reasons which cause investigators, prosecutors or others in such sensitive situations to consider their careers and their welfare when revealing information which is certain to embarrass if not incriminate people of power in high places.

What is more, just about every allegation in these news stories that bore on the criminal case just tried was subsequently confirmed by court proceedings—so that there is no question here of irresponsible or reckless reporting, even if that had strict legal relevance. On the contrary, what the public got was an accurate account of the particular nature and workings of the campaign to re-elect the President. It got this account despite the best efforts of the White House and the President's campaign managers to delay investigations and to suppress the facts. And it got this account only because sources were willing to talk in confidence to reporters, secure in their faith that these confidences would be respected. That is the nub of the threat posed by these subpoenas: if judges and prosecutors and defense lawyers can force reporters to reveal their confidential sources and make public information not published (because very often it was given on that condition) then the flow of information from confidential sources will dry up and a vital source of news—which is to say, information—which the public is entitled to know about will disappear.

It would be the height of irony if out of the reporting of the Watergate story—which was something of a classic of its kind for the enterprise and energy that went into it, for its caution with fact and its care—should come a court ruling or an ultimate court opinion which would make this sort of news reporting incredibly more difficult if not impossible.