

mines the national morality and performs a profound disservice to society.

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WALTER WEIR is certainly qualified to answer his own query: "What Is an Advertising Agency?" And I agree with everything he had to say about the confusion, uncertainty, and fierce ferment now bedeviling both agencies and their clients. It is for these very reasons, however, that his question deserves to be answered.

Why are managements, government, our youth, and embattled consumers alike now scrutinizing advertising as perhaps never before? Could it be because the industry has not redefined itself in the light of contemporary developments?

Every industry needs the power of a basic concept or idea to sustain it. But that idea is usually derived from its most visible or dominant (or most needed) products, and as an industry becomes increasingly successful and complex, it can easily lose sight of what it is and where it is going. And so despite their growth, the proud, dedicated, and vital agencies with which America is blessed now seem to have lost—at least temporarily—their sense of mission and purpose.

Why have so many other outside services usurped what Mr. Weir calls "the place they [the agencies] once enjoyed in splendid isolation"? Why do agencies keep addressing themselves to narrower and narrower sectors of total communications' needs and budgets? And have they truly identified for what they are now most needed by business, and by the larger society of which all are a part?

Make no mistake about it, the next decade is destined to become "the Societal Seventies." In this era of instant—and total—communication, agencies would seem to be more important than ever before to top business executives who (in addition to fulfilling their inexorable growth and profit goals) are determined to demonstrate social responsibility and the ability of business to solve problems of all kinds. What is an agency's proper role in all of this? I'm not sure that meaningful clues can be found in terms of just an advertising agency. Perhaps it would help to rephrase Weir's question thusly: What must a great advertising agency always know more about—and do more of—than any other organization? The answers then become simple. Deceptively simple, as "truth" always is. These six are—and always have been—the most important:

1) A great advertising agency must be a repository for the most authoritative, complete, and integrated knowledge available about mankind. Or, if you will, the human condition.

2) It must possess and pursue the most skilled expertise available (in both empirical and hypothetical areas) on how human beings absorb information and conviction, and how they communicate with each other most directly and with the least misunderstanding.

3) It must experiment constantly with how to best mesh these two

fields of skills and knowledge so as to be able to communicate faster and with greater certainty via all appropriate vehicles.

4) It must get results for those whom it serves, and be able to prove the same.

5) It must employ a large part (perhaps even the major part) of its expertise and energies in dedicated "midwife" fashion to help usher in the future. And its talents should always be available at cost or gratis to good causes if economically feasible.

6) It must constantly demonstrate and practice to perfect its knowledge of people and communications—and its own integrity as an organization—in its day-to-day relationships with its own people, its clients, its suppliers, the industry's professional societies, and the various communities of which it is a part.

Were an agency truly to do these things as best it knows how, were an agency to innovate in these areas and forget other siren lures, most of its problems would solve themselves.

What is an advertising agency? The only possible answer for the 1970s is: "An organization expert at interpreting mankind to mankind—in the service of improving society." And that, I submit, is a high calling, indeed! May God make Madison Avenue worthy of it.

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#### View from the Postal Worker

RICHARD L. TOBIN's editorial "Patronage, Privilege, and Postal Service" [SR, Jan. 17] reveals a certain lack of communication. Not many facts are getting through, but a lot of propaganda is. Former Postmaster General O'Brien, now actively promoting the Postal Corporation, was quoted as having recently said, "If the country's telephone system were run the same way as the Post Office Department, the carrier pigeon would have a great future." In October 1967, when he was Postmaster General, O'Brien pointed with pride to a Roper survey indicating that 95 per cent of all Americans were satisfied with the postal service. He said, "I fully agree that the mail service is good now. We have said that all along, and we are pleased that the American people agree with us." Is it possible that Mr. O'Brien is a self-serving political loser seeking a cushy job?

There is a persistent myth concerning postal unions. Calling them "as strong a lobby group as ever fed upon Capitol Hill," and again "the most formidable lobby on Capitol Hill," Tobin admits, "wage scales on the outside are generally better than anything a postal employee can look forward to." How does he reconcile the awesome power of postal unions with the inadequacy of postal salaries? The truth is that postal workers have always been paid less than a living wage. I was with the Post Office for twenty-seven years, and I never knew a fellow employee who didn't moonlight, have a wife that

#### The Subpoena Siege

Have the News Media Become Too Big to Fight?

Alan M. Adelson

#### Training English Journalists

RE: John Tebbel's "Can Journalism Schools Improve the Press?" [SR, Jan. 17]. I am afraid Mr. Tebbel has some erroneous ideas regarding the training of journalists in England. He is correct in his reference to the regrettable fact that so far "every effort to make journalism education a part of university training has failed," though some of us who have been concerned with these efforts have not by any means given up hope. As far as I know—and I have been personally involved as a past chairman of Britain's National Council for the Training of Journalists—there has been no opposition from newspaper proprietors or trade unions, as is stated in Tebbel's article.

It is true that the NCTJ (with Mr. Alec Newman as its director) is now working under the aegis of the Printing and Publishing Industry Training Board, but it is vigorously pursuing its original policies for the training of young journalists that involve carefully planned courses, including the new and popular one-year pre-entry course for selected applicants with specified educational qualifications. There is certainly no truth whatever in Tebbel's assertion that on-the-job training for young journalists "may soon disappear in the new educational bureaucracy controlling British universities." Frankly, I do not understand this statement at all; it does not make sense, as on-the-job training is not controlled by the NCTJ and, in any event, has nothing whatever to do with British universities since, as yet, they are not involved in journalism education.

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## THE SUBPOENA SIEGE

# Have the News Media Become Too Big to Fight?

by ALAN M. ADELSON

Though they weren't reporting it on their newscasts or in their columns, the giants of the American news media were receiving strange subpoenas between October and February. The documents demanded that television networks and stations, newspapers, and magazines turn over to grand juries in several states the raw materials of their reporting about the Black Panthers and the SDS Weathermen. The subpoenas were shockingly broad because they seemed to be based on the assumption that everything the news media turn up in the course of their work is fair game for use in controversial investigations and prosecutions. Such an assumption means that the privilege of secrecy between a priest and his confessor or a psychiatrist and his patient cannot also be guaranteed to a reporter and his news source.

Somehow, during those four months, the news media neglected to defend fully the right to privacy with their sources. Faced with legal demands that they cooperate with the government, several of the most prominent news institutions actually turned over films and reporters, accounts of interviews and disturbances. For weeks they kept their part in the investigations secret, even at times misleading one another. The result was that each thought it was essentially alone and without any choice in the situation.

Finally, the news of what had been happening with the news broke at the end of January. Media executives saw they hadn't been alone in the issue after all, and decided their vital methods of news gathering had been threatened. And so at last came the traditional statements defending freedom of the press from government intrusion and harassment. The deans of journalism schools and civil libertarians joined in, and eventually Attorney General John Mitchell admitted that the subpoenas had been something of a mistake in the first place.

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Although much still remains unreported about what happened inside those media offices during the four-month subpoena siege, executives are now admitting that they made some dangerous mistakes by not digging in for a defense of the traditional independence of news organizations. And as they ponder the difficult legal questions raised by the subpoenas, they are also beginning to confront this disturbing possibility: The burgeoning of the news media into great corporate complexes has brought with it tremendous handicaps that hinder them in waging the age-old battle to defend basic freedoms.

That at least is what a review of what can be learned of the media's response to the subpoenas seems to show. In the early days of mass American media there were gigantic journalistic empires. But there was no question who was running them. And while William Randolph Hearst or Joseph Pulitzer may have made a practice of sacrificing journalistic purity to promote journalistic prosperity, the choice was theirs. But when *Time* magazine in October received a subpoena demanding its files on a rampage by Weathermen in Chicago, it immediately turned the question over to its corporate attorneys. According to several accounts, the lawyers saw not only no alternative to complying with the subpoenas but little reason not to. As Barton Clausen of the American Civil Liberties Union puts it: "Corporate attorneys don't even know about press freedom." While that judgment may be a bit harsh, the accepted practice for media attorneys is to worry about protecting first profits and the stockholder interests, and then the freedoms and prerogatives of the journalists.

"We simply didn't regard the situation back then as seriously as we do now that we know the full magnitude of the number of subpoenas that were issued," admits Donald M. Wilson, vice president of *Time*, Inc., in charge of its corporate and public affairs. "We now wish we hadn't given the stuff over to the government."

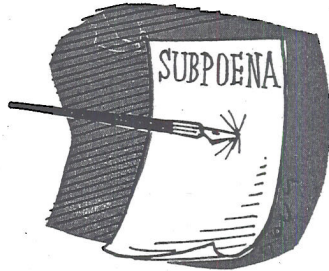
One of the chief reasons *Time* gave in the first time, Mr. Wilson indicates,

is that it didn't recognize from its own subpoena that it was faced with a whole new relationship between the government and the press. "We regarded it as a rare, onetime case. Now that we are confronted with a great number of similar subpoenas, the situation seems very different."

Ironically, *Time* was actually notified that it wasn't alone in the situation. In a rare bit of communication between two bitter rivals, an editor at *Newsweek* called his counterparts over at *Time* in October to say his shop had been subpoenaed and to inquire if *Time* had also been asked to provide evidence. But because the subpoena was considered a purely legal matter at *Time*, its editors didn't even know about the subpoena, which was in the hands of the magazine's lawyers. No, the *Time* editors said, we haven't heard anything. And *Newsweek*, after casting about for someone to make their stand with, began to go it alone in secret talks with the Justice Department.

Officials at the Columbia Broadcasting System admit that an internecine conflict broke out between the news department and the corporate lawyers over whether the network should deliver its films and notes on the Black Panthers. Knowing nothing of the possibility that a subpoena was coming before it arrived, CBS News President Richard S. Salant suddenly found himself confronted on Friday, January 16, with two Secret Service officers and a subpoena demanding he hand over by the following Monday all the film and tape shot for a report on the Black Panthers that had been broadcast on the program *60 Minutes*.

As far as Mr. Salant is concerned, the question of compliance with the subpoena was still being debated (he strongly opposed handing over anything) when it was decided they ought at least to get the footage in question together. And the network's archivist, having been instructed to gather up the films and tapes called for in the subpoena, mistakenly thought he was also supposed to hand them over when a few days later the Secret Servicemen again appeared and demanded them. "I'd like to get it all back, but I



don't know how," says Mr. Salant plaintively.

But like *Time* and *Newsweek*, CBS made no public mention of the whole business. By one account, attorneys for all three companies not only advised against any hope of winning a court battle but suggested that everyone keep the whole question quiet. But a week later Jack Gould, the enterprising television reporter for *The New York Times*, learned at a party that CBS had been subpoenaed. He called Mr. Salant, who readily admitted the subpoena had come, although even he apparently still didn't know of the mixed-up compliance. If I have my way, he told the reporter, we'll fight it. The *Times* ran the story on page one—fair notification for the other besieged publications that they weren't the only ones subpoenaed. And so when *Times* reporters called to ask if rumors that they had also been subpoenaed were true, both *Time* and *Newsweek* confirmed it.

"We didn't make it public ourselves, because we were fighting, and we didn't want to put ourselves in an untenable position," says *Newsweek's* news editor, Hal Bruno. "I thought it would have been in bad taste, or unethical, to do a story we ourselves were involved in. We didn't want to try our own case in our own news columns." But *Newsweek* ended up doing a story in its own pages once the issue broke, and Mr. Bruno says if the magazine is again subpoenaed it might decide "to fight it in the news" from the beginning.

*Newsweek* wasn't giving the Justice Department what it was demanding very willingly. After stalling until the U.S. Attorney's office threatened a contempt proceeding, *Newsweek's* editors and lawyers handed over the files on the Weathermen's disturbances. But *Newsweek* was deeply concerned over the whole issue of violating the confidences of its sources, and so, by their own description, the reporters and editors "scissored" out of the files any identification of the people who had spoken to them "off the record." Convinced it was in an unwinnable legal battle, *Newsweek* fell back on its "prepared position."

The matter is hardly a foolish or petty one. Privacy is as essential in news gathering as it is in the confessional or a doctor's office. Without its being guaranteed, the system simply won't work. News sources constantly insist that their identities not be revealed before they consent to tell what they know and believe. Ironically, government officials are perhaps touchiest in this respect. That's why so much news is mysteriously attributed to "high officials." The practice

is so common hardly anyone questions it. Newsmen have always had to work like this. And since that's the way they have to work, they've always been vigilant about protecting their right to operate that way—even on occasion going to jail themselves rather than breaking a confidence and revealing who provided them with a particular piece of information.

It is easy to see how the system could be sabotaged by such subpoenas. What would happen, for instance, if the government's own device boomeranged back on it and the press were subpoenaed to make public its notes from an off-the-record briefing by the Attorney General on certain prosecutions? Not only could the official be deeply embarrassed, but in all likelihood he'd cut out that sort of briefing altogether. And the public would end up that much more ignorant of what transpires within the Justice Department.

But strong arguments have been made in condemning *Newsweek* for accepting its lawyers' advice and delivering anything other than its own published reports. Sidney Zion, who was once an assistant U.S. attorney himself and who has now launched a

new investigative magazine, says any compliance is tantamount to support. He was forced to testify as a prosecution witness when the government tried Dr. Benjamin Spock and others last year for conspiring against the draft, he recalls. Nearly fifty reporters were called and asked, in effect, merely to verify what they had written for their publications. Mr. Zion was a reporter for the *Times* at the time, and to him it seemed the government's chief purpose in forcing him to appear was to make it look as if the prestigious *New York Times* supported the prosecution. "I was there to lend the name of the *Times* to the case against Dr. Spock," he says.

When the issue arose last year, Zion suggested to an editor at the *Times* that his being subpoenaed to appear at the Spock trial was a violation of the First Amendment guarantees of press freedom, he recalls. But he says he was told not to make an issue of it and to answer.

Things were very different when, after the CBS, *Time*, and *Newsweek* subpoenas had come to light (along with several other similar demands for reportage), Earl Caldwell of the *Times* was subpoenaed on February 2



"This is Stan Hinkle, your friendly neighborhood butcher  
If you don't pay your bill, I'll see you in court."

to testify before a grand jury in San Francisco investigating the Black Panther Party. Unlike its media colleagues, the *Times* printed the story immediately and noted it had asked for the advice of its attorneys. Finally, the next day, the *Times*, CBS, *Time*, *Newsweek*, and others went on record as deploring the threats to press freedom that the subpoenas represented. The *Times* indicated its lawyers were backing Caldwell and were looking for a way to prevent the subpoenas from throwing up a barrier between reporters and their sources.

And in a flood came the somewhat hedging declarations from other news organizations of their intent to fight the next unjustified subpoena to hit them. "It is the intention of CBS to contest demands of this nature as soon as appropriate cases are presented. We have instructed our attorneys to proceed accordingly," said Dr. Frank Stanton, president of that network.

"It will be this company's policy to analyze each subpoena carefully and weigh its relevance to trial proceedings or criminal actions. Should we believe that there is no immediate relevance and that a law enforcement body is on a 'fishing expedition' for information, we will take appropriate legal action to contest the subpoena," said Hedley Donovan, editor-in-chief of *Time*.

"Under pressure of subpoena we may be legally compelled to submit our files, but we believe that all confidential sources must and will be protected. We have been subpoenaed at various times by both the government and the defense, and our position has

been consistent. We have not revealed the identity of confidential sources to anyone, and we intend to resist by all the means at our disposal any unwarranted uses of subpoena power," declared Osborn Elliott, editor-in-chief of *Newsweek*.

Interestingly, in their statements neither *Time* nor CBS noted their own previous capitulations to subpoenas. In fact, CBS by that time had received a second subpoena, this one asking for every bit of footage it had shot of the Weathermen. The network still hasn't indicated if that subpoena is one its lawyers deem "appropriate" to contest.

There is little agreement about whether or not the media could win a legal battle over rights to remain out of a judicial investigation. The Supreme Court has never ruled on such a case, though lower courts have gone against the media in most of the precedents. But not all attorneys are as pessimistic as the media's own law firms on the chances for a favorable ruling that would defend the media's right to refuse to act as arms of the prosecuting process. And some experts are already deploring the stalemate that has resulted in the controversy with the Attorney General's vaguely pledging to "negotiate" with the media over what will be subpoenaed.

"We cannot leave the defense of freedom of the press solely to the whims of corporate officers and lawyers of the media," says Frank Askin, a professor of law at Rutgers University and a former journalist. "We the people of the United States gave the media the protection of the First Amendment, not to strengthen their bargaining po-

sition or to enhance their profits, but to play the necessary role of disseminating information."

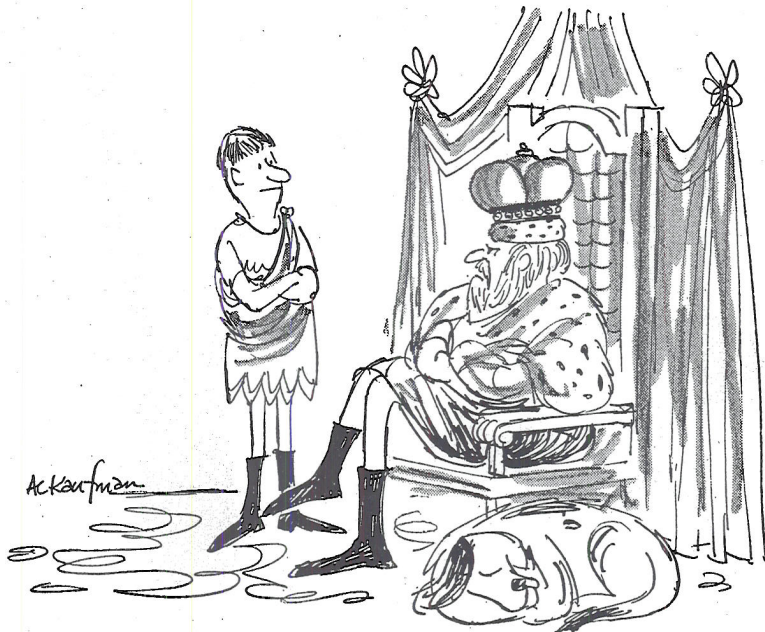
In a treatise to be published in *Inside Media* by Media Mobilization, a group of New York journalists concerned about the declining independence of the media, Professor Askin outlines possible legal grounds for fighting subpoenas such as those issued for information on the Panthers and Weathermen.

Federal subpoenas must be "reasonable," according to law, and "relevant to proper government concerns," he says. It could be argued then that the government has no proper interest in political and philosophical beliefs and associations such as are involved in the investigations of the two radical groups. "The question then becomes: Can the government compel the media to give it what it can't properly gather itself?" he says. "And that is a question which should not be left for negotiation between the media and the Justice Department."

But if such matters aren't to be left for the media and the government to negotiate, what are the alternatives? Askin raises the prospect of legislation ruling out subpoenas in the first place, or a landmark legal battle, which, if successful, could give the medium the right to decline to give evidence when it feels that by doing so it would be aligning itself with only one of the contesting elements of society and thereby be cutting itself off from the others.

But none of that really seems to solve the problems of how to cope with a news medium so burdened with corporate responsibilities that it won't bother to fight to defend itself. There are still a number of news organizations and individual journalists who take being subpoenaed to testify as a compliment rather than a threat. Like having their reportage read into the *Congressional Record*, being called into court is considered an acknowledgment that they have uncovered vital facts. Jack Mabley, associate editor and a daily columnist of *Chicago Today*, admits he saves all his subpoenas as mementos. "I still have a subpoena from 1939, when I was called by a grand jury investigating warehouses in Champaign, Illinois," he notes.

And Norman E. Isaacs, president of the American Society of Newspaper Editors and executive editor of the *Louisville Courier-Journal*, warns that the fight for journalistic freedom may not be up to the journalists to direct. "I get kind of truculent over things like these subpoenas, and I'd fight them. But I don't own the property. I'm the editor, but what happens when they serve the corporate types? I can't answer that."



"I don't mind being king. It's just that I look like that damned margarine commercial!"