

Subpoenas to Post In Bug Suit Fought

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Lawyers for The Washington Post told a federal judge yesterday that the newspaper's constitutional rights will be destroyed if it is forced to turn over to the President's re-election committee materials gathered in connection with its reporting of the Watergate bugging and other related incidents.

The Post and three other publications filed motions to quash subpoenas issued by the Committee for the Re-election of the President demanding that they make available notes, story drafts, files, documents and other materials as part of three civil suits that grew out of the bugging of Democratic Party headquarters at the Watergate. The other publications are The New York Times, The Washington Evening Star-News and Time magazine.

The motions filed by The Post before U.S. District Judge Charles R. Richey relied on four major points to support its argument against subpoenas issued to two executives of the Post and two of its reporters:

- Federal rules of civil procedure do not allow subpoenas directed to officials and reporters of a newspaper not involved in the litigation. The four publications, The Post's brief says, "are asked to open their doors to the political party in power, reveal all their files, reveal the identities of confidential sources who will suffer reprisals, reveal everything that the authors of the subpoenas can think of—and for what reason? No legiti-

mate reason is clear. All that is clear is the desire of the administration, through its re-election committee, to find out what The Washington Post and other publications know about it and who told them."

- The information the re-election committee seeks is available elsewhere. Re-election-committee officials "know more than anyone" about the financing and planning of the Watergate break-in, The Post brief asserts. In addition, "vast quantities of material" already have been filed with federal agencies identical to what the subpoenas seek.

- The First Amendment guarantee of a free press bars the re-election committee from demanding the materials sought in a civil suit. "If any federal rule says that The Post, an unrelated nonparty, must now submit to an unbridled romp through its most sensitive files for unspecified purposes, by an organization publicly hostile to The Post and The Post's news sources—if any federal rule can say that, then the pre-existing constitutional rights of this newspaper have not only been 'abridged' and 'modified': they have been destroyed," the brief says.

Forcing The Post and the other publications to turn over the materials sought and thus to disclose confidential

sources, the brief says, would result in a severe curtailment of the press's ability to report the news. "The First Amendment claim here is that of the public—the right of know—and that of the press, and of individuals through the press—the right to report information of public importance which some government officials would prefer to conceal," the brief says.

"Even with the cooperation of individuals intimidated by the parties who seek these subpoenas, it has been difficult for The Washington Post to learn and tell the public the Watergate story—a story not ended," the brief states. "Without those sources, it would be impossible."

- The constitutional guarantee against unreasonable searches and seizures bars the subpoenas, which ask, "in effect, for this court to move the newsroom of The Washington Post into the offices of Richard Nixon's re-election committee, where he or his lieutenants may rummage at will through the files, papers, communications, drafts and most intimate techniques of Post news reporting."

The re-election committee and several of its officials, who are involved in three civil suits against the Democratic National Committee and some of its officials, issued 10 subpoenas to members of the press, including Post publisher Katharine Graham, managing editor Howard Simons and reporters Bob Woodward and Carl Bernstein.

Papers filed on behalf of reporters for The New York Times, The Evening Star-News and Time Magazine also argue that the subpoenas represent a threat to the rights of a free press.

"It is at the very core of press freedom that notes, drafts and the like may not be obtained since the kind of governmental scrutiny of the decisions of the press as to what to publish made possible by such production is itself inconsistent with the First Amendment," a brief filed on behalf of New York Times reporter John Crewdson says.

A brief filed by lawyers for the re-election committee said that under a recent Supreme Court ruling reporters do not have a privilege shielding them from revealing sources. "It is also clear to many that the press has been known to use its First Amendment power to excess and that the media have thus become more than a check on our judicial institutions," the re-election committee brief says.

"It has been further suggested that the press will not stop in its quest for First Amendment privilege until it has the power to obtain access to government records and meetings in the name of the present and future capacity to obtain information for the public about what its servants do," the brief says.