

A new attack on freedom of the press

## US Justice Department subpoenas reporter's phone records

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In a clear attack on the freedom of the press, the US Justice Department recently violated its own internal guidelines in order to obtain the home telephone records of AP reporter John Solomon, who was covering the ongoing federal investigation of New Jersey Senator Robert G. Toricelli. Toricelli, a Democrat, is being investigated in connection with contributions to his 1996 Senate campaign.

The reporter's personal records were sought solely in order to uncover Solomon's source of information inside the Justice Department. This is part of a broader effort by the government to plug up leaks from within its own ranks in an attempt to limit public access to government activities.

Solomon reported from information leaked to him in early May of this year that Toricelli had been overheard on a wiretapped phone talking about fundraising with a relative of an individual involved in organized crime. Just recently, Solomon received a letter from US Attorney Mary Jo White of Manhattan, dated August 20, informing him that his phone records had been turned over to the Justice Department in May. The records sought covered the period immediately before and after his article on the Toricelli investigation appeared.

Federal guidelines in place since the Nixon administration stipulate that subpoenas for such information should only be sought when the information is essential to the investigation of a crime. They state that the government must pursue "all reasonable alternative investigative steps," and that the reporter should be informed in advance, unless doing so would impede the investigation. In this case, however, discovering the source of Mr. Solomon's article had no impact on the investigation of Toricelli, and the reporter received notification only several months after his phone records

had been turned over.

In addition, it was revealed last week that the official who gave final authorization to the subpoena was former deputy attorney general and newly appointed director of the Federal Bureau of Investigation (FBI), Robert Mueller III. Mueller's last day in his former position was immediately after the authorization was granted, May 15. Earlier reports had instead named the current deputy attorney general, Lawrence Thompson, who took over the post from Mueller, as authorizing the subpoena for the phone records.

The attorney general would normally make such a decision, but John Ashcroft, who holds that position in the Bush administration, had earlier recused himself from involvement in the Toricelli investigation because he served in the Senate with Toricelli, who last year raised funds for Ashcroft's Democratic opponent in Missouri.

The initial letter to Solomon stated that the acting deputy attorney general had given the authorization, but did not identify who this was. The AP states that the Justice Department confirmed upon being questioned that it was Thompson who made the decision. One official in the Bush administration suggested that perhaps Thompson was unfamiliar with the guidelines and ramifications of his decision, and that this was why he gave his assent to the subpoena.

The Justice Department has declined to comment on the source of the approval since it was revealed that Mueller was the deputy attorney general at the time the subpoena was issued. However, from various news reports it seems clear that Mueller did in fact authorize the action. That it was Mueller who made the decision, and not Thompson, is significant in that it confirms that the decision was made deliberately, and cannot simply be passed off as a blunder by a new appointee. It could also point to stepped-

up moves by the new administration to abridge free speech and freedom of the press.

As FBI chief, Mueller is now at the head of a government agency already notorious for its violation of basic rights and contempt for democratic principles. This has been exposed in such incidents as the persecution of Los Alamos scientist Wen Ho Lee as well as the withholding of documents in the case of Oklahoma City bomber Timothy McVeigh. Mueller's final decision at his last post indicates the direction he plans to take at his new one.

The White House has come out in support of the Justice Department, suggesting that such procedures are for the Justice Department to determine, as long as they do not violate the law. Further tying the decision to the Bush administration is the fact that it is the director of Public Affairs—the chief spokesperson of the Justice Department—who is consulted in the case of any subpoena directed at a member of the media. Mindy Tucker, who was a senior spokeswoman for Bush during the presidential campaign, currently holds this post and recommended allowing the subpoena to be processed.

By obtaining the reporter's phone records, the administration is announcing that it intends to uncover the government sources of any leaks. As Lucy Dalglish, executive director of the Reporter's Committee for Freedom of the Press, noted, "They're trying to identify who in their own bunch has gone bad and they're doing it at any cost." The source of the leak can now be prosecuted for divulging information contained in government wiretaps to the public.

Various news media and freedom of the press groups have denounced the decision. John P. Wolman, executive editor of the AP, noted, "We know of nothing that comes close to justifying such a gross invasion of the editorial process." An editorial in the *Los Angeles Times* stated, "There are places in the world where a government can do what it wants without fear of public scrutiny, where whistleblowers know better than to talk to reporters. The United States is not such a country because it has a First Amendment guarantee of a free and independent press. What about this does the justice department fail to understand?"

Other commentators have noted that revelations in connection with the Pentagon Papers, the Iran-Contra affair and Watergate—which involved gross government conspiracy and secrecy—would not have been uncovered without internal leaks. The subpoena of Solomon's records is part of an escalating attack on basic democratic

rights, as the government seeks to prevent and repress any opposition to its policies. It should be noted that the media has been complicit in this attack—from the drive to impeach Bill Clinton to the theft of the presidency in last year's election—but speaks out now when its immediate interests are threatened.

Even so, the media is incapable of seriously resisting threats to its own freedom. This is clear in its reaction to a related development that took place in the Senate this past week. Arizona Senator Richard A. Shelby, the ranking Republican member of the Senate Select Committee on Intelligence, attempted to push through legislation that would make it a crime for current or former government employees to leak any classified information. Shelby is seeking to have the language attached to the fiscal year 2002 intelligence authorization bill.

Representatives of the major media succeeded in convincing the Bush administration to table the initiative until next year, so that some sort of face-saving accommodation could be reached between the government and the media. Executives from the National Newspaper Association, CNN, the *Washington Post* and the *New York Times* issued a statement declaring that the legislation would amount to a criminalization of "all unauthorized disclosure of classified information" and "would destroy the delicate balance that has been achieved in this country between the public's right to know and the legitimate demands of national security."

These "legitimate demands of national security" are precisely the measures that the government pursues in order to conceal its own activity from the American people. The legislation would have the same purpose as the subpoena—to crack down on government leaks and increase the government's capacity to curtail freedom of the press. Shelby is confident that the measure will pass next year, and no veto is expected from the Bush administration.



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