

More revelations of Justice Department crackdown on the press

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According to a report Tuesday in the *New Yorker*, the Obama administration's investigation into a State Department leak to James Rosen, the chief Washington correspondent of Fox News, extends well beyond what was originally thought and includes seizing the phone records of the reporter's parents and dozens of other individuals, including White House staffers and other Fox News reporters.

United States Attorney for the District of Columbia Ronald C. Machen, Jr., the prosecutor in the case of alleged leaker and former State Department weapons expert Stephen Jin-Woo Kim, has seized records associated with more than 30 different phone numbers.

Because the last four digits of all of the phone numbers have been redacted by court order, only the three-digit area codes and exchange codes are available. Five of these numbers have area codes and exchange codes registered to Fox News. Two of the numbers have area code 202 and exchange code 456, which belong to the White House, whose switchboard number is (202) 456-1414.

The US attorney also seized records which correspond to James Rosen's personal cellular phone, and another set of records which may be from a number registered to *Time* magazine.

These revelations come to light after the *Washington Post* reported Monday that FBI agent Reginald Reyes filed an affidavit in support of a warrant request alleging that Rosen himself engaged in criminal activity in receiving classified information from Kim about North Korea. A judge granted the search warrant, and the Justice Department seized Rosen's personal emails and phone records and tracked his movements.

Rosen was never charged with any crime, while Kim faces a possible 10-year prison term under the reactionary Espionage Act of 1917. Kim has filed a

plea of not guilty.

The *New Yorker* report relied on a discovery document, in this case, a list of attached electronic documents related to the prosecution of Kim, filed in court on October 13, 2011. The document is a letter from US Attorney Machen to the attorneys defending Kim. It makes reference to 2,111 pages of unclassified information subpoenaed in the investigation, including several sets of bank and credit union records, several sets of Yahoo! Email records and one set of Gmail email records—the latter appearing to belong to Rosen—, IP address records and wireless phone records.

Also listed is surveillance video from the American Red Cross, other surveillance video and security badge information from Kim and media personnel, apparently including Rosen, though his name is not specified. The letter indicates that much more documentation of subpoenaed information, including classified information, will be forthcoming in the case.

The latest report reveals that the investigation into Kim's supposed leak was even broader than was initially thought, and this too comes on top of last week's reports that the DoJ seized phone records for some 21 phone lines registered to the Associated Press in an investigation of a leak of information on US intelligence operations in Yemen.

Last Tuesday, the director and legal defense directors of the Reporters Committee for Freedom of the Press issued a protest letter to Attorney General Eric Holder and Deputy Attorney General and copied Machen. The letter denounced the subpoena of AP phone records as being overly broad, secretive and illegal. Some 52 press organizations endorsed the letter, including CNN, Dow Jones and Company, Forbes Inc., The New York Times Company and Reuters America LLC.

The Department of Justice is engaged in at least two

other leak investigations at present. One involves the leak of information to the *New York Times* about the infamous “Kill Lists” of targets for drone assassination reviewed by president Obama. The other concerns an attempt by the United States and Israel to infect the computer systems of Iranian nuclear facilities with the Stuxnet worm, information which was also leaked to the *Times*. The administration has indicted six current and former officials under the Espionage Act of 1917, more than all previous administrations combined.

While denunciations of Obama and the Department of Justice abound in editorials and blogs from news sources all over the political spectrum, the hostility they express to the president’s attack on the free press is by no means universally held.

Several commentators have come out in defense of “plugging leaks” by virtually any means.

Jack Shafer, writing an opinion column for Reuters, makes the case that perhaps Eric Holder was right, and the leak for which AP phone records were subpoenaed could really have been “very, very serious.”

Shafer wrote last Tuesday:

“Journalists gasp and growl whenever prosecutors issue lawful subpoenas ordering them to divulge their confidential sources or to turn over potential evidence, such as notes, video outtakes or other records. *It’s an attack on the First Amendment, It’s an attack on the First Amendment, It’s an attack on the First Amendment*, journalists and their lawyers chant.”

The *Washington Post*’s veteran national security writer, former CIA informant Walter Pincus, went so far as to state that whoever leaked the information around the AP story “not only broke the law but caused the abrupt end to a secret, joint U.S./Saudi/British operation in Yemen that offered valuable intelligence against al-Qaeda in the Arabian Peninsula.”

He says later, “It was inevitable that the leak to the AP would generate an FBI probe. Given past leak investigations in the Bush and Obama administrations, journalists at the AP and elsewhere know they could face scrutiny. *Like it or not, they are part of a crime.* The leaker or leakers had taken an oath under the threat of prosecution to protect the information.” (Italics added)

Most significantly, the *New York Times* on Monday lent space in its pages to a statement by three former Department of Justice officials: Jamie Gorelick, deputy

attorney general under Bill Clinton; William P. Barr, attorney general from 1991 to 1993; and Kenneth L. Wainstein, assistant attorney general for national security from 2006 to 2008. The statement, titled “Stop the Leaks,” made a crude and legally untenable case for the actions of the Justice Department.

“As former Justice Department officials who served in the three administrations preceding President Obama’s, we are worried that the criticism of the decision to subpoena telephone toll records of A.P. journalists in an important leak investigation sends the wrong message to the government officials who are responsible for our national security.”

Apologizing for the Obama administration’s gross violations of the First Amendment, the authors continue:

“But after eight months of intensive effort, it appears that they still could not identify the leaker. It was only then—after pursuing ‘all reasonable alternative investigative steps,’ as required by the department’s regulations—that investigators proposed obtaining telephone toll records (logs of calls made and received) for about 20 phone lines that the leaker might have used in conversations with A.P. journalists. They limited the request to the two months when the leak most likely occurred, and did not propose more intrusive investigative steps.”

The authors do not address the requirement that the DoJ must first ask for the records in question from the media outlet itself *before* issuing a subpoena. They presume that the unsubstantiated assertion by attorney general Holder that asking for the records would have jeopardized the investigation: i.e., evidence would have been destroyed.

The letter is significant in its expression of a consensus within the ruling class that the methods of suppressing any leaks are beyond reproach. Journalists who would communicate leaks should likewise be prosecuted, if necessary to protect national security.



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