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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

December 6, 2001

The Honorable Larry Thompson
Deputy Attorney General
Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Deputy Attorney General:

As the Ranking Member of the Crime and Drugs Judiciary Subcommittee, I am writing to you to make further inquiries about an issue which is causing me increasing concern: the use of subpoenas by the Department of Justice to obtain information from, or about, members of the news media.

In particular, the tardy response on November 28, 2001 to my letters of September 4 and 6, 2001, raises more questions about subpoenas to the media in general and the specific case of Associated Press reporter John Solomon, whose home telephone records were subpoenaed earlier this year without his knowledge.

I emphasize that I am not inquiring about this subject to unearth the specifics of any grand jury investigation or the details of a criminal investigation. Rather, I simply wish to get to the bottom of what happened and why it did.

Thus far, the Justice Department has failed to demonstrate that it followed its own rules and regulations when it obtained a subpoena for Mr. Solomon's home telephone records without any notification or negotiation.

This is the heart of the matter for which I have written to you. The integrity of government agencies and the Justice Department in particular depends on its compliance with the spirit and the letter of established laws, rules and regulations. Please revisit your response to the

September 4th letter in light of the comments above and respond again to the questions I raised.

This issue is even more troubling because a subpoena was issued for Mr. Solomon's home telephone records apparently in an attempt to identify the source of information he included in a May 4, 2001, article. As you know, a reporter's ability to promise anonymity to a source in sensitive matters is crucial to the news-gathering process and keeping government agencies accountable for their actions. Attempts to identify a reporter's sources create a chilling effect on whistleblowers and others who speak out and expose government action.

This raises doubts about how much caution the Department of Justice exercises when seeking information from, or about, members of the media – an action that no doubt should be rare and done only when the needs of justice are exigent and great.

In fact, your response states that the Justice Department in 17 cases sought information “that could lead to the identification of a reporter's source or implicated source material.”

While your response provided a good deal of information, it is lacking in context.

Specifically, there is no way to match your information about the number of times Justice authorized subpoena requests without prior notification or negotiation (eight in total) with the types of crimes under investigation or prosecution. Thus, it is impossible to judge whether the Justice Department, in the case of Mr. Solomon, acted in accordance with its previous behavior.

Also, for the 17 approved subpoena requests seeking information that could identify a reporter's source, you do not provide information on the types of crimes under investigation for which these 17 subpoenas were approved.

I do appreciate the research and effort that went into an accounting of the Justice Department's historical use of subpoenas to the media. I'm also somewhat encouraged, however, to find in your response that the Justice Department engaged in prior notification and negotiation in 80 of the 88 authorized subpoena requests to the media from 1991 through September 6, 2001.

Your response warrants another series of questions. I request an answer by Tuesday, January 8, 2002.

1) You state that information sought in 17 authorized subpoena requests “could lead to the identification of a reporter's source or implicated source material.” This reply is too vague to be of any use, and you must be more specific. For example, a subpoena for a reporter's notes could be authorized solely to discover a source (whose name is contained in the notes) or solely to gather more details about a published article without regard for a source.

More specifically, for how many authorized subpoena requests was the intent or purpose to discover a reporter's source? What were the crimes under investigation or prosecution for

these authorized subpoena requests? How many of these were for documents, testimony, toll records, or some combination thereof? For each of those categories, how many were made with prior notification or negotiations?

2) On page three of your response, you list a category of crimes under investigation or prosecution for which the 88 subpoena requests were authorized. However, this information also is of very limited value because you provide no accounting for how they correspond to the type of information (documents, testimony or source identity) sought with the subpoena. In your reply, please match each specific crime with the information sought. For example, for the crime of arson, you should list seven entries and the type of information sought by the authorized subpoena request for those seven arson crimes.

To allay your potential concerns about grand jury secrecy, I am excluding from this specific request the following information: the names of suspects for these cases, any mention of when the crime, investigation or prosecution took place; any reference to the location or judicial district where the crime, investigation or prosecution took place.

3) On page four of your response, you state that in the five authorized subpoena requests for toll records that were carried out with no prior notification, the Justice Department delayed notification for another 45 days in only one case. By this, am I to presume you mean the case of Mr. Solomon earlier this year? Also, you state the request for the additional 45-day delay was approved by the "Assistant Attorney General for the Criminal Division." By this, am I to presume you mean Robert Mueller, who held the position at the time? Also, provide details of the four cases where authorized subpoena requests were authorized for toll records and no prior notification was given. Your descriptions of these cases should be comparable in detail to the 33 instances you explained in your November 28, 2001 letter.

4) Explain what prompted the investigation that led to the subpoena of the phone records, starting with the very initial causes, steps and decisions. Please explain the exact, first event that set this situation in motion. Was the impetus for the investigation and subsequent subpoena external or internal?

Regardless of whether the impetus for the investigation and subsequent subpoena was external or internal, what government official made the initial decision to move forward with an investigation that led to the subpoena?

If it was internal, was it from within Justice Department headquarters, the FBI or a U.S. Attorney's office? If the impetus for the investigation and subsequent subpoena was external, what form (verbal or written) did it take and to whom was it addressed? Did a complaint lodged with the Justice Department spark the investigation and subsequent subpoena? Was that complaint based in any way on a May 4, 2001 story by AP reporter John Solomon? Who made the complaint?

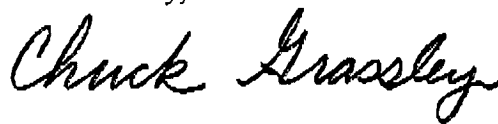
Does the Justice Department have criteria to seriously consider complaints which lead to investigations and subpoenas of the media? If so, what are they? Provide documentation of the criteria and proof they were followed. Who has the status to lodge such a complaint? Must a complainant be an attorney representing a person under investigation by the FBI? What kind of records does the Justice Department make for complaints that lead to investigations and subpoenas? Please enclose those records, including the name of the complainant, in your response to me.

5) At the start of your investigation into disclosure of grand jury information to Mr. Solomon, did you, as a reasonable alternative, interview and/or polygraph the limited number of persons who had access to the information in question (contents of a 1996 wiretap of Sen. Robert Torricelli)?

6) Were there any contacts between Justice personnel and phone company personnel prior to the approval of the subpoena for Mr. Solomon's home telephone records? If so, provide details of that contact, such as the names of the personnel, the dates they communicated and the nature of the communication.

Again, let me emphasize that I am not seeking to have you disclose details of any grand jury proceedings or specifics of a criminal investigation. Rather, in accordance with my responsibilities as a senior member of the Judiciary Committee to conduct oversight, I wish to have a full accounting for why and how the Justice Department issued a subpoena for the home telephone records of Mr. Solomon -- and whether the Justice Department followed its own guidelines. I hope your next reply -- which I anticipate receiving by Tuesday, January 8, 2002 -- is even more informative than the first one.

Sincerely,



Charles E. Grassley
Ranking Member
Subcommittee on Crime and Drugs



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

November 28, 2001

The Honorable Charles E. Grassley
United States Senate
Washington, D.C. 20510

Dear Senator Grassley:

This responds to your letters, dated September 4 and 6, 2001, which requested information about both a subpoena for the personal telephone records of John Solomon, a reporter for the Associated Press, and other subpoenas issued to journalists on behalf of the Department during the past ten years. Due to the constraints imposed by Federal Rule of Criminal Procedure 6(e) and the Department's policy regarding pending matters, we are unable to provide complete information in response to your questions regarding the subpoena to Mr. Solomon. We would like to clarify, however, that it was not an administrative subpoena.

Your September 4th letter also requested information regarding the technical procedures involved when the Department obtains phone records pursuant to a subpoena. Such subpoenas are issued to the relevant telecommunications carrier, which, in turn, provides the requested records to the Department. Queries as to what technology a carrier uses to gather the responsive data can best be answered by that carrier; the Department is not involved in that process and does not utilize independent technical methods to gather subpoenaed data itself.

Additionally, your September 4th letter inquired as to the Attorney General's views on when a subpoena should be issued to a member of the media. As you know, that question is addressed in Federal Regulations set forth at 28 C.F.R. § 50.10, which explain that they are "intended to provide protection for the news media" and that "the approach in every case must be to strike the proper balance between the public's interest in the free dissemination of ideas and information and the public's interest in effective law enforcement and the fair administration of justice." The Attorney General's view is that these regulations are very clear in their purpose and intent.

Finally, your September 4th letter sought confirmation that the Attorney General and members of his staff have recused themselves from any investigation involving Senator Torricelli. As the Attorney General previously advised (see the attached letter to House Judiciary Committee Chairman Sensenbrenner), we can confirm that the Attorney General and some members of his staff are so recused.

In response to your September 4th and 6th letters, we have obtained information from the Department's Criminal Division, which is the Department component responsible for the majority of the subpoenas to news media recipients in the last ten years. The Criminal Division has provided information indicating, as of September 6, at least 88 instances in which subpoenas were authorized in connection with members of the news media since 1991, including 12 for telephone records.¹ This total reflects 15 subpoena requests in addition to those we informally disclosed to your staff in early September based on available information at that time. The enclosed chart sets forth additional information about the types of subpoenas and years that requests were authorized. The data pertains to the number of subpoena requests that were received by the Criminal Division and authorized during the relevant time period. While each request usually seeks authority for one subpoena, it is possible that a request could seek authority for more than one subpoena. A more precise total for the number of subpoenas authorized is not available as many of the requests do not seek authorization for a specific number of subpoenas but, instead, describe the information sought and the organization and/or individual who are believed to possess the information. Similarly, extensive resources would have been required to compile data regarding subpoena authority requested by other Department components, which were likely to total a small fraction of the number authorized by the Criminal Division.

The responses set out below are based upon information provided by the Criminal Division and are as specific as permissible under Federal Rule of Criminal Procedure 6(e) and applicable Departmental policy regarding disclosure of information concerning pending investigations.

1) How many of these subpoenas, by category, involved a reporter's source(s)?

Pursuant to 28 C.F.R. § 50.10(f)(4), subpoenas seeking unpublished information are authorized by the Department only after a determination has been made that the circumstances surrounding the request are exigent. Subpoenas seeking the name of a reporter's source, as well as information which may lead to the identification of a source (unpublished work product, material utilized in preparing a broadcast or publication, or testimony that is not limited to verification of published information) are all subject to the same stringent standards. Of the 88 subpoena requests authorized by the Attorney General in Criminal Division matters between 1991 and September 6, 2001, 17 sought information that could lead to the identification of a reporter's source or implicated source material.

2) How many of these subpoenas, particularly the subpoenas for toll records, were done without notifying the reporter?

The Department's press regulations, at 28 C.F.R. § 50.10(d), provide for prior

¹A chart previously released by the Department indicated that there were 13 subpoena requests authorized for toll records but, in fact, one of those pertained to a document other than a toll record. The correct number of requests authorized for toll records is 12.

negotiations with, and prior notice to, the affected news media concerning subpoenas for telephone toll records only if the responsible Assistant Attorney General determines that prior negotiations with the affected news media would not pose a substantial threat to the integrity of the investigation for which the toll records are sought. Between 1991 and September 6, 2001, the Attorney General has authorized 12 subpoena requests for obtaining media telephone toll records. The Assistant Attorney General for the Criminal Division determined that prior negotiation was appropriate in seven cases. With respect to each of the remaining five, negotiations would have posed a threat to the integrity of the investigation and notice of the issuance of the subpoena was delayed.

In each of the remaining 76 subpoena requests, which did not seek toll records, the news media was served directly with the subpoena(s), which afforded advance notice of the materials or testimony that would be required.

3) How many of these subpoenas, by category, were administrative subpoenas?

None of the subpoenas authorized were administrative subpoenas.

4) What was the crime(s) in question for each subpoena?

In some instances, the underlying investigation or prosecution involved more than one crime. The following lists, by category, the crime(s) under investigation or prosecution in the matters pursuant to which the 88 subpoena requests by the Criminal Division were authorized:

Bombings (10), fraud (9), public corruption (8), arson (7), murder (5), securities fraud (5), child pornography (4), RICO (4), attempted bombing (3), narcotics trafficking (3), unlawful disclosure of tax information (3), terrorism (3), threatening a public official (3), violation of a court order (3), rioting (2), wire fraud (2), and one each of armed robbery, bank fraud, bomb threat, damage to USDA property, embezzlement, espionage conspiracy, extortion, fund-raising for a terrorist organization, interception and disclosure of wire communications, kidnapping, mail fraud, money laundering, murder conspiracy, perjury, price fixing, providing false information to the USDA, stalking a federal agent, and stealing part of airplane involved in a crash.

5) How many subpoenas of reporters have been requested, and then been denied, at either the administrative or judicial level for the past ten years?

The Criminal Division has identified seven instances in which requests by United States Attorneys' offices have been formally denied by the Department. More typically, requests for authorization to subpoena members of the news media that do not meet the requirements of 28 C.F.R. § 50.10 are withdrawn upon discussion with the Criminal Division prior to, or early in, the formal process for obtaining the approval of the Attorney General. We do not maintain records of the informal contacts in which Department attorneys and prosecutors in the field discuss subpoena requests and reasonable alternative means for obtaining the needed evidence or information are identified.

6) How many subpoenas involved prior negotiations with the affected members of the news media as required by Justice Department regulations?

As required by 28 C.F.R. § 50.10(e), negotiations with affected news media or their representatives were pursued as a prerequisite for obtaining authorization of all subpoenas that were to be issued to the news media for documents or testimony, unless it was determined that the integrity of the investigation involved would be compromised. Such a determination was made regarding 3 of the 76 requests for permission to subpoena documents or testimony that were authorized since 1991.

With respect to subpoenas to service providers for telephone toll records, the Department's regulations require prior negotiations only "where the responsible Assistant Attorney General determines that such negotiations would not pose a substantial threat to the investigation in connection with which the records are sought." 28 C.F.R. § 50.10(d). As noted in our response to question 2, such a determination was made, and negotiations with the affected news media were undertaken, in 7 of the 12 Criminal Division matters in which subpoenas for telephone toll records were authorized during the past ten years.

7) How many times has the news organization been notified only at the end of the 90-day period?

28 C.F.R. § 50.10(g)(3), which requires that the news media be notified within 45 days of the service of a subpoena for telephone toll records, permits the government, with the approval of the responsible Assistant Attorney General, to delay notification for one 45-day period. Of the five subpoenas for toll records where notification was delayed, our records reflect only one request from the United States Attorney's office for a 45-day extension of the notification requirement. That request was approved by the Assistant Attorney General for the Criminal Division.

8) Please provide a brief description of every subpoena, including affected parties, material or testimony requested, underlying crime any other related information and finally, what information or material was ultimately provided.

Below is a brief description of trial subpoenas that have been authorized by the Attorney General since 1991 to members of the news media. Due to the constraints imposed by Rule 6(e) of the Federal Rules of Criminal Procedure, information about matters occurring before federal grand juries, including authorizations for grand jury subpoenas to members of the news media, have not been included.

The United States Attorneys who request authorization for subpoenas to members of the news media do not routinely report to the Criminal Division regarding what information was produced in response to a press subpoena. Accordingly, the information below also does not

include a description of the information or material that was ultimately obtained in response to the trial subpoenas.

1. A subpoena was authorized on September 9, 1996, for the testimony of an *Austin* (Texas) *American-Statesman* reporter to verify the contents of a published interview with a defendant, for use at the defendant's trial for the production and interstate transport of child pornography.
2. A subpoena was authorized on April 17, 1992, for an aired videotape in the possession of KJEO-TV in Fresno, California, of an interview with a defendant, containing a confession of his activities as a narcotics trafficker.
3. A subpoena was authorized on January 8, 1992, for a partially-aired videotape taken by NBC of the surveillance and arrest of a defendant for narcotics trafficking. Prosecutors sought the subpoena in response to the court's order that the government obtain the videotape and produce it to the defendant in discovery.
4. A subpoena was authorized on April 14, 1994, for a *Washington Post* reporter's testimony verifying the contents of his published interview with a defendant at his trial for murder.
5. A subpoena was authorized on January 19, 2001, for a Telemundo reporter's testimony authenticating a mostly-aired videotape of her interview with a fugitive defendant, for use at his co-conspirators' trial for conspiracy to commit espionage and murder.
6. A subpoena was authorized in August 1993, for an aired videotape and for the notes and authentication testimony of two *60 Minutes* reporters. The videotape contained an interview with a defendant, which was needed for his trial for bank fraud and receiving kickbacks.
7. A subpoena was authorized on December 4, 2000, for the testimony of CNN employees regarding the receipt of threats faxed to CNN and Ted Turner, for use at a defendant's trial for intent to extort by threat and transmission of a threat.
8. A subpoena was authorized on May 30, 2001, to the editor of the *Mattoon Journal Gazette* of Mattoon, Illinois, for a copy of a partially-published letter from a defendant, for use in his trial for conspiracy, fraud, and money laundering arising from a fraudulent loan scheme.
9. A subpoena was authorized on November 26, 1993, for the testimony of a *Worth* magazine reporter, verifying the contents of his published interview with two defendants, for use at their trial for stock manipulation.

10. A subpoena was authorized on June 6, 1997, for an aired videotape in the hands of WFLD-TV, Chicago, Illinois, and for the testimony of a television reporter to verify the contents of his taped interview with a defendant, for use at his trial for extortion, fraud, and racketeering.
11. A subpoena was authorized on February 12, 1999, for the testimony of two reporters of suburban Chicago's *Daily Southtown*, to verify the contents of a published interview with a defendant at his trial for conspiracy to defraud.
12. A subpoena was authorized in February 1993, for the rebuttal testimony of two *Lexington (Kentucky) Herald Leader* reporters to establish that a defendant was not engaged in narcotics trafficking as a newspaper source.
13. A subpoena was authorized on July 12, 1994, for the testimony of a reporter for the *Advocate* in Baton Rouge, Louisiana, to verify statements made by a defendant in a published interview which established the defendant's obstruction and guilty knowledge, for use at his trial for wire fraud, obstruction, and perjury arising from a scheme to defraud investors.
14. A subpoena was authorized on July 12, 1994, for the testimony of two reporters for the *Times-Picayune* of New Orleans, Louisiana, needed to authenticate a published interview with a defendant, for use at his trial for public corruption and fraud against St. Tammany Parish.
15. A subpoena was authorized in May 1996, for an aired videotape and for the testimony of a reporter for WDSU-TV, New Orleans, Louisiana, verifying the contents of a taped interview with a defendant, for use at his arson trial. The district court's decision granting the television station's motion to quash the subpoena was overturned, and the subpoena was upheld, by the United States Court of Appeals for the Fifth Circuit.
16. A subpoena was authorized on November 2, 1999, for the testimony of a cameraman for WDSU-TV, New Orleans, Louisiana, about false exculpatory statements made by a defendant, for use at his arson trial.
17. A subpoena was authorized on September 20, 2000, for the testimony of an Associated Press reporter, authenticating a published interview with a defendant, for use at his trial for public corruption.
18. A subpoena was authorized in December 1997, for the testimony of a *Boston Globe* reporter, authenticating a published interview with two police detectives and a defense attorney, for use at their trial for police corruption and extortion.

19. A subpoena was authorized in October 1998, for the partially-published notes of a *Boston Globe* reporter, for use as impeachment evidence at a defendant's trial for RICO offenses.
20. A subpoena was authorized on March 19, 1991, for the testimony of a *Detroit Free Press* reporter needed to verify published statements made in his interview with a defendant former state court judge at his trial for RICO offenses.
21. A subpoena was authorized on March 7, 1992, to WCCO-TV, Minneapolis, Minnesota, for videotapes and recordings of interviews with a defendant and for authentication of them, for use in his trial for creating, selling, and distributing child pornography.
22. A subpoena was authorized on November 22, 1999, for the testimony of a reporter for the *Columbus (Nebraska) Telegram* to verify false statements made in an interview with the defendant, an official with Hudson Foods, at his trial for providing false information to the United States Department of Agriculture regarding contaminated beef.
23. A subpoena was authorized on August 23, 1991, to a *Forbes* magazine reporter for testimony verifying statements made by a defendant in a published interview, for use in his trial for securities fraud.
24. A subpoena was authorized on March 23, 2000, to a *Village Voice* reporter for notes or tapes of interviews with a defendant, and for his testimony authenticating published articles concerning the interviews, for use in the defendant's perjury trial.
25. A subpoena was authorized on January 19, 2001, to WHNS-TV, Asheville, North Carolina, for a videotape of a partially-broadcast interview with a defendant, and for testimony authenticating the interview, for use in the defendant's trial for kidnapping and murder.
26. A subpoena was authorized on July 7, 1999, to an editorial writer for the *Youngstown Vindicator*, for testimony verifying false exculpatory statements made by a defendant public official, in a published interview, for use in his trial for RICO and Hobbs Act violations.
27. A subpoena was authorized on December 28, 1995, to KWTV, Oklahoma City, for a partially-aired videotape taken the day of the Oklahoma City bombing, for use in the prosecutions of Timothy McVeigh and Terry Nichols for bombing the Alfred P. Murrah Federal Building.
28. A subpoena was authorized on January 23, 1997, to a photojournalist and Channel 5 News, Oklahoma City, for a partially-aired videotape taken the day of the Oklahoma City bombing and for testimony authenticating the videotape, for use for use in the prosecution of Timothy McVeigh for bombing the Alfred P. Murrah Federal Building.

29. A subpoena was authorized in 1991, to a reporter for the *News and Courier*, a Charleston, South Carolina, newspaper, for testimony verifying the contents of a published interview with a defendant public official, for use in his trial for violating the Hobbs Act.
30. A subpoena was authorized on November 7, 1991, to five reporters from various South Carolina newspapers for testimony verifying the contents of published interviews with a defendant public official, for use in his trial for violating the Hobbs Act.
31. A subpoena was authorized on April 16, 1991, to a *Pottsville* (Pennsylvania) *Republic* reporter for testimony describing the contents of her unpublished interview with a defendant, for use at his trial for murder.
32. A subpoena was authorized on April 25, 1991, to WRC-TV, Washington, DC, for testimony authenticating a partially-aired videotape of an interview with a defendant, for use at his murder trial.
33. A subpoena was authorized on February 16, 2001, to two reporters for *Wired* magazine, for testimony authenticating published statements made by a defendant, for use at his trial for the interstate stalking of a federal officer.

9) What petition rights are available for the media to refuse to comply with these subpoenas, with administrative subpoenas as well as situations where the media is not notified of the subpoena?

In all cases in which negotiations are undertaken, the affected news media has an opportunity to present its views to the requesting Federal official, and thereafter to the Department, until a determination has been made regarding authorization of the subpoena. To the extent that the nature of the case permits, the Department attempts to accommodate the interests of the trial or grand jury with the interests of the media. In all cases, the news media has the opportunity to petition the Federal District Court, by motion, to quash any subpoena as to which it is the responsive party.

Of course, subpoenas for toll records are directed to the telephone service provider; the affected news media is not the responsive party. Where the Assistant Attorney General responsible for the matter has determined that negotiations would not pose a substantial threat to the investigation in connection with which the toll records are sought, negotiations are pursued and the member is given reasonable and timely notice of the subpoena. Although the news media is not the party that would be compelled to produce the toll records, the District Court may determine that the news media has standing, as an affected party, to file a motion to quash the subpoena.

10) The regulations require that any information obtained as a result of a subpoena issued for toll records shall be closely held so as to prevent disclosure of the information to

unauthorized persons or for improper purposes. 28 C.F.R. § 50.10(g)(4). Please describe how this is done and please inform us of any internal oversight and review of this process.

All United States Attorneys' Offices have procedures for maintaining secure information, including telephone toll records. In addition, telephone toll record subpoenas are generally issued pursuant to grand jury investigations and are protected from disclosure by Federal Rule of Criminal Procedure 6(e). We are unaware of any allegations that such records have been handled or disclosed improperly.

11) For how many of these subpoenas, were both reasonable alternatives pursued and were negotiations conducted? Please provide details of the alternatives pursued and negotiations conducted.

Reasonable alternatives were pursued in all cases where reasonable alternatives existed. As explained in the response to question 6, negotiations were conducted with respect to 73 of 76 requests for authorization to subpoena documents or testimony, and in 7 of the 12 matters in which subpoenas for telephone toll records were authorized.

After negotiations, the news media often has no objection to being served with a subpoena. In many instances, the member of the media agrees to comply with a subpoena when properly served, or objects to a subpoena but agrees that it will not move to quash the subpoena in court. In several instances, the media has consented to a press subpoena after the prosecutors narrowed the proposed subpoenas to address the media's concerns.

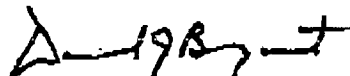
Some alternative investigative means that have been pursued prior to requesting authorization to subpoena a member of the news media include questioning individuals who are not members of the news media, issuing subpoenas to non-media individuals who may have the same information as a member of the news media, obtaining the telephone toll records of non-media individuals, attempting to obtain cooperation from one defendant against another, and generally looking for other evidence.

Authorization requests for press subpoenas often present situations where there are no reasonable alternative means to obtain the information. As detailed in the response to question 8, many subpoena requests involve an interview between a member of the news media and a defendant. In those cases, the only alternative source for the information is the defendant or target, whom we may not wish to alert and who has a privilege against self-incrimination. An investigation in which a member of the news media is suspected of committing a crime similarly may lack alternative means to obtain information, as his or her employer or another member of the news media may be the only witnesses with relevant information. In some investigations, obtaining the telephone toll records of thousands of individuals who may have communicated telephonically with a member of the news media is not a reasonable alternative to obtaining the toll records of the single member of the news media.

Please be assured that the Department of Justice takes very seriously issues regarding freedom of the press. It is a critical component of our society that the media be allowed great leeway to investigate and report the news. We cannot, and should not, however, ignore our responsibility to investigate and prosecute crimes. The Department's policy with regard to the issuance of news media subpoenas is designed to balance our responsibilities to the fair administration of justice with the need to protect reporters from forms of compulsory process that might impair the news gathering function. We believe that the above information demonstrates that the Department has performed this balancing act very well.

Please do not hesitate to contact me if you have additional questions or would like additional assistance regarding this or any other matter.

Sincerely,



Daniel J. Bryant
Assistant Attorney General

Attachment

Subpoenas to Members of the News Media
Ten-Year Breakdown 1991-2001

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	Totals
Documents and Testimony	0	3	1	0	2	1	2	0	1	2	0	12
Documents Only	2	8	3	2	7	2	4	1	2	0	3	34
Testimony Only	6	2	3	4	0	1	3	2	4	2	3	30
Toll Records	0	3	1	0	2	1	3	0	1	0	1	12
Totals*	8	16	8	6	11	5	12	3	8	4	7	88

* This chart sets forth the numbers of requests to subpoena the news media that were processed by the Criminal Division and approved by the Attorney General between January 1, 1991, and September 6, 2001.



Office of the Attorney General
Washington, D.C. 20530

June 21, 2001

The Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Sensenbrenner,

During my recent testimony before your Committee regarding Department of Justice Reauthorization legislation, Ranking Member John Conyers inquired about any involvement of mine with the Department's investigation of Senator Robert Torricelli. I thought it would be helpful to provide you with the following information.

As has been publicly reported, the Justice Department under the prior administration began investigating allegations of fund raising misconduct by Senator Torricelli. Shortly after assuming the office of Attorney General, I voluntarily recused myself from involvement in all matters arising out of allegations of fund raising misconduct by Senator Torricelli. Several members of my staff similarly recused themselves from these matters. Consequently, the Deputy Attorney General has and will continue to exercise the Attorney General's responsibilities in this case.

I take my responsibilities as Attorney General very seriously. Accordingly, I have never been briefed by anyone at the Justice Department about any aspect of the Torricelli investigation, other than on issues related to my recusal. I know nothing about the investigation except what I have learned in public media accounts. As Attorney General, I have never discussed substantively the Torricelli investigation with anyone, nor tried to exercise influence over that investigation. At all times I have acted consistently with the responsibilities that accompany my recusal in this matter. My staff members who are recused on this matter have assured me that they have handled this matter in the same manner.

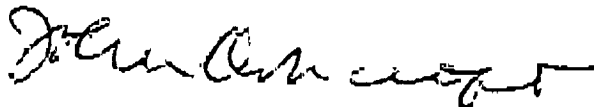
Ranking Member Conyers also raised concerns about allegations of Justice Department leaks to the media regarding the Torricelli investigation. As Attorney General, I have a broad concern about any leaks involving pending investigations and cases, and will work vigorously in cases over which I retain authority to uphold the standards of integrity which Department

The Honorable James F. Sensenbrenner, Jr.
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personnel are required to maintain. The Deputy Attorney General has responsibility for addressing any allegations of leaks by Department officials in the Tomricelli matter, and I am confident he will treat such allegations with the appropriate seriousness.

I hope this is helpful. Thank you for your interest in this matter.

Sincerely,



John Ashcroft
Attorney General

cc: Congressman John Conyers
Senator Patrick Leahy
Senator Orrin Hatch
Deputy Attorney General Larry Thompson