

THE
REPORTERS
COMMITTEE
FOR
FREEDOM
OF THE
PRESS

Suite 900
1815 N. Fort Myer Drive
Arlington, VA 22209-1817
(703) 807-2100
rcfp@rcfp.org
http://www.rcfp.org
Lucy A. Dalglish
Executive Director

STEERING COMMITTEE

- GAIL APPELSON
Reuters America Inc.
- SCOTT APPLEWHITE
The Associated Press
- ROSEMARY ARMAO
South Florida Sun-Sentinel
- CHARLES R. BABCOCK
The Washington Post
- CHIP BOK
Akron Beacon Journal
- EARL CALDWELL
Pacifica Radio
- REBECCA CARR
Cox Newspapers
- WALTER CRONKITE
CBS News
- GARY DECKELNICK
Asbury Park Press
- RICHARD S. DUNHAM
Business Week
- ASHLEA EBELING
Forbes Magazine
- SARA FRITZ
St. Petersburg Times
- STEPHEN GEIMANN
Bloomberg News
- FRED GRAHAM
Court TV
- JOHN C. HENRY
Houston Chronicle
- NAT HENTOFF
The Village Voice
- KAREN GRAY HOUSTON
Fox News
- PETER JENNINGS
ABC News
- STEPHEN LABATON
The New York Times
- TONY MAURO
American Lawyer Media
- DOYLE MCMANUS
Los Angeles Times
- WILSON F. MINOR
Factual Reporting Service
- SANDRA PEDDIE
Newsday
- DAN RATHER
CBS News
- DAVID ROSENBAUM
The New York Times
- CRISTINE RUSSELL
Freelance
- TIM RUSSERT
NBC News
- GERALD F. SEIB
The Wall Street Journal
- CAROLE SIMPSON
ABC News
- SAUNDRA TORRY
USA Today

*Affiliations appear only
for purposes of identification.*

April 8, 2004

The Hon. John D. Ashcroft
United States Attorney General
Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Benigno G. Reyna
Director, United States Marshals Service
Washington, DC 20530-1000

Nehemiah Flowers
U.S. Marshal, Southern District of Mississippi
James O. Eastland Courthouse Building
245 E Capitol Streets, Suite 305
Jackson, MS 39201

Dear Attorney General Ashcroft, Director Reyna and Marshal Flowers:

We are writing to protest an incident that took place on April 7, 2004, when two reporters were ordered to erase recordings of a speech made by Supreme Court Justice Antonin Scalia at the Presbyterian Christian High School in Hattiesburg, Miss. According to press accounts, Deputy U.S. Marshal Melanie Rube forced reporters with The Associated Press and *The Hattiesburg American* to erase their recordings.

The actions taken by the federal marshals not only violate fundamental tenets of press freedom, but directly violate the law set forth in the Privacy Protection Act, 42 U.S.C. § 2000aa (a), which states that government officers and employees investigating a criminal offense may not “search for or seize any work product materials possessed by a person reasonably believed to have a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication.”

This statute makes clear that it is the policy of the U.S. government to provide special protections for the press against searches and seizures by law enforcement personnel, except in limited circumstances. The exceptions allow federal officers to search and seize materials from members of the news media only when a member of the press has committed a crime unrelated to the possession or withholding of the materials or where there is a necessity to

prevent death or serious bodily injury. See 42 U.S.C. § 2000aa (a) (1) and (2). It is clear that the statute's purpose is to provide maximum protection for the news media against seizures of work product. This policy was violated during the April 7 seizure and erasure of the tape recording devices of the two reporters by the deputy marshal.

In addition, the Department of Justice guidelines concerning interactions with news media, found at 28 C.F.R. § 50.10, provide procedures that must be followed by Department of Justice employees during investigations that involve a member of the news media. According to the guidelines, subpoenas to journalists require that before seeking a subpoena for the materials or records of a member of the news media, members of the Department must first pursue negotiations with the member of the news media. 28 C.F.R. § 50.10 (c) and (d). Indeed, the guidelines explicitly state that: "the prosecutorial power of the government should not be used in such a way that it impairs a reporter's responsibility to cover as broadly as possible controversial public issues." 28 C.F.R. § 50.10.

Of particular emphasis and importance is the guidelines' requirement that all Department employees obtain the approval of the Attorney General before seeking to compel a journalist to turn over materials. The U.S. Marshal did not seek the approval of the Attorney General before demanding that the two reporters erase their tape recordings. The guidelines provide that these actions are not permissible and that failure to obtain prior approval when issuing a subpoena to a member of the news media may "constitute grounds for an administrative reprimand or other appropriate disciplinary action." 28 C.F.R. § 50.10 (n).

While the Mississippi situation did not involve a search warrant or a subpoena, it should go without saying that the protections granted for those situations apply with equal or greater force in situations of even less urgency. The very language of the subpoena policy, which emphasizes exploring alternative sources and negotiating with the media before attempting to obtain journalistic work product, presupposes that such demands will be made through legal processes, not through on-the-scene demands with the threat (even if not stated explicitly) of eviction or arrest for non-compliance.

This is a serious situation that requires attention to ensure that all members of the Justice Department are aware of the Privacy Protection Act requirements regarding searches and seizures involving a member of the news media, as well as the Department's own guidelines on subpoenas to members of the news media.

Letter to Attorney General Ashcroft, et al.
April 8, 2004
Page 3

We ask that at a minimum, the U.S. Marshals be made aware of and follow the policies of the Privacy Protection Act and the guidelines set forth in 28 C.F.R. § 50.10. But we also urge that all such officials be reminded of the important interests at stake when dealing with the news media.

Sincerely,

Lucy A. Dalglish
Gregg P. Leslie
Kirsten D. Murphy
The Reporters Committee for Freedom of the Press

cc:

James Comey
Deputy Attorney General
Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530

Mark Corallo
Director, Office of Public Affairs
Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530