

## REVIEW & OUTLOOK

### Those AP Subpoenas

The same press corps that has blessed every Obama Administration enforcement action and regulatory intrusion has suddenly concluded that the feds are dangerously overreaching. The reason? The government is now investigating the press. Welcome to the club, but we'd also add some context to the shouts of media outrage.

The press is exercised because the Justice Department issued a subpoena for the phone records of Associated Press reporters and editors as part of a criminal probe into a national-security leak. Some of the loudest protests are coming from those, such as the New York Times, that cheered the criminal pursuit of the leak to conservative columnist Robert Novak during the Bush years in the Valerie Plame case. (See "Prosecutor of the Times," Feb. 23, 2005.)

Then the target was Scooter Libby (who wasn't even the leaker) while now it's someone who leaked to their mainstream comrades at AP. Such double standards are one reason the public mistrusts the media.

In this case, Justice is investigating because the leak may have done serious national-security damage. Mr. Holder said on Tuesday that it was one of the worst leaks he's seen in government. Our own security sources support his claim.

The AP story at issue seems to be the May 7, 2012 report that the U.S. had broken up a plot to bomb a U.S.-bound airliner with a sophisticated new device that was difficult to detect. Government sources say the story led to the public suspicion that the U.S. had a source inside al Qaeda, and that the source's cover was essentially blown. They add that the leak makes it that much harder for the CIA to recruit future agents from inside terrorist networks.

AP says it withheld the story for several days at White House request, but then published it a day before the government was going to disclose the story anyway. The White House denounced the story at the time, blaming AP for the disclosure even as it confirmed that it had foiled the plot.

Without a top-secret clearance, we can't judge these competing claims. But it's certainly possible the AP story harmed U.S. anti-terror efforts, with benefits to the public interest that are far from obvious. Americans learned from the story that al Qaeda was still actively planning threats, in this case a year after Navy SEALs killed Osama bin Laden. This contradicted the re-election claim of President Obama that al Qaeda had been "decimated."

But if the AP story did contribute to compromising a source inside al Qaeda, news of a foiled plot hardly seems worth the price. Balancing the potential damage to national

security against the public's right to know is the obligation of responsible publications. Deciding when not to publish is often the

**The press corps finally discovers a case of government overreach.**

more public-spirited choice, especially in a nation that protects a free press from forces (like al Qaeda) that would destroy it. Too often these days the media default is to publish a story no

matter the potential damage.

This is the context in which the Justice Department subpoenaed the records over two months of some 20 phone lines assigned to AP and several bureaus. On the merits, the media's Nixon analogies are overwrought. Justice issued subpoenas to telephone data providers that could object if the requests were extralegal. The subpoenas were also approved at an appropriately high level—by the Deputy Attorney General after Mr. Holder recused himself.

One fair media complaint is that this dragnet was too broad, violating normal Justice practice of narrowly tailoring requests that concern the media. Justice also failed to tell AP about the subpoenas in advance and not for weeks, when typically the media would have been informed immediately. Such blanket subpoenas and secrecy can have an intimidating effect on the press, which may have been the Justice Department's intent. Or perhaps the feds didn't want to risk alerting the AP's sources that their calls might have been tracked.

Whatever the motive, this overreach is typical of the Obama Administration's attitude toward the law in many areas—non-recess recess appointments (see nearby editorial), EPA regulation, selective enforcement of immigration and drug laws, or its own media leaks about the bin Laden raid intended to improve its terror-fighting image. The difference this time is that the press was the target.

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Amid this week's media backlash, the White House is trying to make amends by reviving a federal "shield law" to protect against having to disclose government sources. Some of our colleagues are cheering, but count us skeptical. We like the shield law known as the First Amendment. Any legislation needs to be vetted for unintended consequences that would protect some journalists but not others, or that would undermine the balance of rights (such as a free press vs. fair trial) that are inherent in the Constitution and typically settled on a case by case basis.

Regarding AP and the Obama Administration, both sides might have exercised better judgment. But the matter should be negotiated without a prosecutorial fishing expedition or Constitutional showdown. Meantime, maybe the press corps will be more skeptical the next time the political class starts calling for bankers to be hung in the public square.