



New England **First Amendment** Coalition

[www.northeastern.edu/firstamendment:center/](http://www.northeastern.edu/firstamendment:center/)

May 17, 2013

Attorney General Eric Holder  
Deputy Attorney General James M. Cole  
U.S. Department of Justice  
Via email: [askdoj@usdoj.gov](mailto:askdoj@usdoj.gov)

Dear Sirs:

The troubling revelations this week that the Justice Department brushed aside regulations, legal provisions and First Amendment ideals to pursue a broad and unprecedented intrusion into the phone records of one of the world's largest news organizations, The Associated Press, indicates that a failure of supervision or leadership has occurred on your watch. We write to express our extreme dismay and to ask that remedial actions be taken immediately to mitigate the damage that has been done to the reputation of your department and restore our country's faith in the proper administration of justice.

Our First Amendment protections for freedom of the press embody our founders' vision that only an unfettered press can protect the free flow of information upon which any true democracy depends. James Madison wrote of the Virginia Resolutions that "a law inflicting penalties on printed publications would have a similar effect with a law authorizing a previous restraint on them. It would seem a mockery to say that no laws should be passed preventing publications from being made, but that laws might be passed for punishing them in case they should be made."

The Federal Farmer had this to say: "[T]here are certain unalienable and fundamental rights, which in forming the social compact, ought to be explicitly ascertained and fixed — a free and enlightened people in forming this compact, will not resign all their rights to those who govern, and they will fix limits to the legislators and rulers which will soon be plainly seen by those who are governed as well as by those who govern and the latter will know they cannot be passed unperceived by the former and without giving a general alarm." Such limits have been passed by the intrusion on the cellular, office and home telephone records of

**EXECUTIVE DIRECTOR**

**Rosanna Cavanagh, Esq.**  
30 Exchange Terrace, 3rd Floor, Providence, R.I. 02903  
[rosacavanagh.nefac@gmail.com](mailto:rosacavanagh.nefac@gmail.com) (401) 649-2511

**OFFICERS**

**Mary Jane Wilkinson**, President  
Scituate, Mass.

**Thomas Fiedler**, First Vice President  
Boston University College of Communication

**Justin Silverman, Esq.**, Second Vice President  
Newton, Mass.

**Andrew Marsters**, Clerk  
University of New Hampshire, Durham

**Terrence Williams**, Treasurer  
The Telegraph, Nashua, N.H.

**Lance Johnson**, Communications Officer  
Waterford, Ct.

**DIRECTORS**

**Jonathan P. Albano, Esq.**  
Bingham McCutchen LLP, Boston

**Dan Barrett**  
ACLU Vermont

**Robert Bertsche**  
Prince Lobel, Boston

**Karen Bordeleau**  
The Providence Journal

**Peter Caruso, Sr., Esq.**  
Caruso & Caruso, Andover, Mass.

**Joseph V. Cavanagh, Jr., Esq.**  
Blish & Cavanagh, Providence

**William Chapman, Esq.**  
Orr & Reno, Concord, N.H.

**Daniel Cotter**  
New England Newspaper and Press Association  
Dedham, Mass.

**Laura Crimaldi**  
Associated Press, Providence

**Lynne DeLucia**  
Connecticut Health I-Team  
New Haven, Conn.

**Michael Donoghue**  
Burlington (Vt.) Free Press

**Timothy Dwyer**  
The Day of New London, Conn.

**Richard Gagliuso**  
Gagliuso & Gagliuso, Merrimack, NH

**George Geers**  
Plaidswede Publishing, Concord, NH

**Thomas E. Heslin**  
The Providence Journal

**Tom Kearney**  
Stowe (Vt.) Reporter

**Mo Mehlsak**  
The Forecaster, Falmouth, Maine

**Maggie Mulvihill**  
N.E. Center for Investigative Reporting, Boston

**Sean P. Murphy, Esq.**  
The Boston Globe

**Mitchell Pearlman**  
University of Connecticut, Storrs

**Ebony Reed**  
Associated Press, Boston

**Elizabeth Ritvo, Esq.**  
Brown Rudnick, Boston

**Walter V. Robinson**  
Northeastern University, Boston

**David Rosen**  
David Rosen Communications, Waltham, MA

**Sigmund D. Schutz, Esq.**  
Preti Flaherty, Portland, Maine

**Gregory Sullivan, Esq.**  
Nackey S. Loeb School of Communications  
Manchester, N.H.

**Tim White**  
WPRI, Providence

**Janet Wu**  
WCVB-TV, Boston

New England First Amendment Coalition, Inc.

individual reporters and an editor; AP general office numbers in Washington, New York and Hartford, Connecticut; and the main number for AP reporters covering Congress. The alarm has now been raised.

The paramount importance of protecting our free press as a check on unbridled government authority is even recognized in the Patriot Act, passed in the height of the post 9/11 security concern. Section 215 states, for instance, that “The Director of the Federal Bureau of Investigation or a designee of the Director...may make an application for an order requiring the production of any tangible things (including books, records, papers, documents, and other items) for an investigation to protect against international terrorism... **provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the First Amendment to the Constitution**” (emphasis added).

The very regulations of United States Justice Department with regards to subpoenas of the news media and particularly their telephone records, 28 CFR § 50.10, recognize the importance of the “public’s interest in the free dissemination of ideas,” which our free press furthers and enables. These regulations contain five provisions regarding narrowing the scope of such subpoenas, seeking information from alternative sources, an obligation to inform the subject and negotiate for information, the approval of the Attorney General and balancing of interests in “free dissemination of ideas and information and the public’s interest in effective law enforcement”. Somehow all five criteria were ignored in this case. There was no attempt to narrow the scope of the records obtained, no information given to The Associated Press prior to obtaining such an incredible number of phone records, no attempt to negotiate, purportedly no approval by the Attorney General, and utter disregard of the public’s interest in free dissemination of ideas and information.

We join with groups around the nation including the Reporters Committee for Freedom of the Press, the National Press Club, The Society of Professional Journalists, and the California Newspaper Publishers Association to call on your department to immediately turn over seized phone records to The Associated Press.

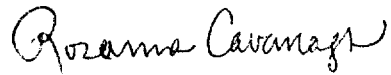
Furthermore, we call upon you to lead with regards to the enactment of a federal shield law which would protect journalists and their newsgathering materials. Without such a law in place, future journalists will become unnecessary martyrs, spending hundreds of days in jail to protect anonymous sources whose important role throughout our country’s history as a check against corruption can not be denied.

New England First Amendment Coalition, Inc.

We also seek that you should direct your staff to suspend any further issuance of subpoenas for telephone records or data of members of the press until further training on the Justice Department's guidelines can be undertaken.

We thank you in advance for your careful attention to this matter.

Sincerely,



Rosanna Cavanagh  
Executive Director,  
New England First Amendment Coalition