

Newspaper Settles Lawsuit Against U.S. Marshals Service Over Scalia Tape

On Sept. 28, 2004, the *Associated Press* (AP) and the *Hattiesburg American* settled their lawsuit against the U.S. Marshals Service over the erasure of journalists' recordings of a speech given by Supreme Court Justice Antonin Scalia in April 2004, after the Department of Justice (DoJ) acknowledged that the action violated federal law.

On April 7, 2004, when Scalia spoke on preserving the Constitution at the Presbyterian High School in Hattiesburg, Miss. Two reporters, Antoinette Konz of the *Hattiesburg American*, and Denise Grones of the AP, sat in the front row. Both women planned to record Scalia's speech to assist them in accurately writing their articles. But approximately 40 minutes into the Justice's speech, following Scalia's policy of prohibiting video or audio recordings of his speeches, Deputy U.S. Marshal Melanie Rube approached the reporters and demanded that they erase their recordings. Rube erased Grones' recording after Grones showed her how to operate her digital tape recorder; Konz erased her tape at Rube's request.

Scalia later sent letters of apology to the two reporters, acknowledging that the experience was "an upsetting and indeed enraging experience" but that "[i]t has been the tradition of the American judiciary not to thrust themselves into the public eye, where they might come to be regarded as politicians seeking public favor." (See "U.S. Marshal Orders Reporters to Erase Scalia Speech Tapes" in the Spring 2004 issue of the *Silha Bulletin*.)

On May 9, the AP and the *Hattiesburg American* filed a civil rights lawsuit against the Marshals Service in federal court in Jackson, Miss. The suit alleged that the seizure and destruction of the tapes violated the reporters' First Amendment guarantees of freedom of the press, Fourth Amendment protections against unreasonable searches and seizures, Fifth Amendment due process requirements, and the Privacy Protection Act. The Privacy Protection Act, 42 U.S.C. § 2000aa (2004), prohibits government search or seizure of a journalist's "work product materials" except in limited situations such as if the journalist is involved with criminal activity or when the search or seizure would prevent death or serious injury. The suit sought damages of \$1,000 for each reporter, as well as reasonable attorneys' fees. The news organizations further sought an

injunction that would bar the government from performing similar seizures in the future.

On September 10, the DOJ conceded that the actions of the U.S. marshals violated the Privacy Protection Act. The DOJ agreed that each reporter was entitled to \$1,000 damages as well as payment of their attorneys' fees. On September 28, the AP and the *Hattiesburg American* agreed to settle, dropping the matter of the injunction against the government.

Charlotte Porter, AP bureau chief for Louisiana and Mississippi, told the AP, "I'm glad to see this matter behind us and hope that the new policies will prevent cases like this in the future."

Jon K. Broadbrooks, the *Hattiesburg American's* executive editor, told the AP that the settlement "provides a level of guarantee that it will operate within the boundaries of the law in the future."

On December 23, the *Hattiesburg American* reported that the U.S. Marshals Service has changed its policy on how agents will handle the media while providing security for judicial officials. Agents are now forbidden to seize recordings or cameras from reporters at public events. Responsibility for security screening and enforcement of rules regarding decorum, photography or audio and video taping is now placed on the event organizer or host.

The *Hattiesburg American* learned of the change in policy after filing a Freedom of Information Act request. However, requests for a copy of the final investigative report on the April 7 incident involving Scalia, Konz and Grones, as well as copies of the interviews relating to the investigation, were denied. Leonard Van Slyke, an attorney for the *Hattiesburg American*, said that the government denied the request for those documents claiming privacy concerns for the individuals involved. Van Slyke called the denial "unwarranted."

— Elaine Hargrove
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