Written by **Selwyn Duke** on June 25, 2015

When the Feds Quash Free Speech with Legal Tyranny

Imagine you run a website and are ordered by the federal government to divulge personal information on article commenters. Now imagine that the feds also issue a gag order preventing you from revealing what they're up to.

This is precisely what happened with award-winning libertarian website Reason.com

Site editor Nick Gillespie related his travails just today at the *Daily Beast*, and it's a story many will find chilling. His problems began after he blogged about the life sentence handed down to Ross Ulbricht, founder of Dark Web website Silk Road, by a judge named Katherine Forrest. Not surprisingly, agitated Ulbricht defenders took to his piece's comments section and, par for the Internet course, savaged Forrest. As Gillespie writes, they suggested "that, among other things, she should burn in hell, 'be taken out back and shot,' and, in a well-worn Internet homage to the Coen Brothers movie *Fargo*, be fed 'feet first' into a woodchipper. The comments betrayed a naive belief in an afterlife [note, my libertarian friend Gillespie, that people without that 'naïve' belief in an afterlife generally have a naïve belief in government] and karma, were grammatically and spelling-challenged, hyperbolic, and… completely within the realm of acceptable Internet discourse, especially for an unmoderated comments section." Gillespie then continued:

> But the U.S. attorney for U.S. District Court for the Southern District of New York thought differently and on June 2 issued a grand jury subpoena to Reason for all identifying information we had on the offending commenters — things such as IP addresses, names, emails, and other information. At first, the feds requested that we "voluntarily" refrain from disclosing the subpoena to anybody. Out of a sense of fairness and principle, we notified the targeted commenters, who could have moved to quash the subpoena. Then came the gag order on June 4, barring us from talking about the whole business with anyone outside our organization besides our lawyers.

To top it off, this gag order even prohibited *Reason* from mentioning the gag order. As Gillespie put it, "You can't even respond honestly when someone asks, 'Are you under a court order not to speak?'"

It cannot be overemphasized that the comments in question were *not true threats*, but simply the kind of blowing off of steam that occurs millions of times weekly on the Internet. In other words, the feds' action was an outrageous abuse of power, something any of us could be subject to dare we utter words which our government overlords don't approve of. This, by the way, is the opinion of legal blogger Ken White of Popehat — who himself is a former federal prosecutor.

Before relating his commentary, let's be clear on how this can touch any of us. Imagine you publish an article the state dislikes, which Gillespie seems to imply was the case with the Ulbricht piece; all government attorneys need do is take a gander at its comments section, find the ever-present hyperbolic posts, and under the pretense that they're "threats" issue a subpoena against you. Then, as Gillespie writes, you're forced, "at serious financial cost and disruption of your business, to dance to a tune called by the long arm of the law." The result?

Maybe you stop covering those issues the government finds "sensitive."

Or perhaps you eliminate your comments section, in which case the average citizen loses his voice.

And maybe that average citizen even ends up spending months in jail and facing eight years in prison, which is the plight of a teenager I wrote about here.

In other words, the government is saying, "Yeah, you have freedom of speech — *wink*, *nod*. And you can exercise it in a way we don't like. But it *will* cost you." Free speech isn't free when you have to pay for it.

This technique of using judicial persecution where goals cannot be accomplished legislatively is nothing new for the Left. Just consider how, unable to pass further gun-control laws, governments then filed lawsuits against firearms manufacturers; or how the Boy Scouts were sued years ago by atheists, homosexuals, and a girl who wanted to be a boy scout. Some may say this is the plaintiffs' right, as everyone deserves his day in court, but it takes on a different flavor when the goal isn't winning but destroying. Presenting organizations with the prospect of years of bankrupting legal fees is an act of compulsion that modifies behavior. As Mark Steyn has noted, "The process is the punishment."

Now let's return to former federal prosecutor Ken White, who elaborated on the government abuse of power:

> First, the subpoena. Some have argued that the Department of Justice must have had information spurring them to use the grand jury to pierce the anonymity of people engaged in protected political speech. Not so. As Reason's report shows, Assistant U.S. Attorney Niketh Velamoor never articulated any specific basis to fear the bluster of these commenters — any more than he did when I spoke to him.
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> Saturday I interviewed Mike Alissi, publisher of Reason, who confirmed that Velamoor never suggested that he had any basis to view these as true threats. In fact, he seemed uninterested in the distinction between protected speech and true threats, and refused to narrow the subpoena to carve out the patently non-threatening "special place in hell" commenter. There is no secret ticking time bomb, no *wizard with a woodchipper*, no classified justification.
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> This was the Department of Justice targeting speech because it could.

This is no rash accusation. Three of the "offending" Internet commenters had links back to their personal web pages, and a couple of others could be found via a few minutes on Google. Why subpoena someone for public-domain information?

Maybe because obtaining the information wasn't the true goal.

White provides many more details than I can relate here, so I suggest you read his whole piece. Among other things, however, he points out that United States Magistrate Judge Frank Maas issued the gag order without due justification, as he apparently just "took the government's word for it, because of course, the government never misleads federal judges," writes White. White also mentions that Maas is a colleague of Judge Forrest, the jurist the *hoi polloi* had the temerity to criticize — in fact, the two work in the same courthouse.

White further states that while Velamoor violated a legal rule (details at White's site), he won't be disciplined because "Courts have decided that it would be *too burdensome* to require federal prosecutors to abide by local ethical rules, rules that apply to literally every other lawyer in the United States." As a result, Niketh Velamoor gets away with being, as White puts is, "a goon hiding behind a badge."

Also know that the only reason *Reason* is talking now is because the gag order has been lifted. But this is, Mark Steyn writes, "not because this goon Velamoor has decided to straighten up and fly right, but because once Popehat uncovered the story and others picked it up there was no longer any secrecy to protect."

And that's the bottom line. The government wanted its abuse of power kept secret. "And chew on this," wrote Gillespie, "There's every reason to believe that various publications, social media sites, and other platforms are getting tens of thousands of similar requests a year. How many of those requests are simply fulfilled without anyone knowing anything about them?" And how much valid information may we be denied because of the state's end run around the First Amendment?

The government's legal army, funded with our tax money, can be a perpetual-motion machine of pain and persecution. Its actions induced in *Reason's* staff anxiety and fear; moreover, had Velamoor "chosen to push his power play," wrote White, he "could have bankrupted *Reason*." And we have every reason to expect there will be more victims, as our country and its government become more morally bankrupt all the time.