

## Eye on Washington by Nicholas F. Benton

### Thornburgh stifles freedom of press

*The Supreme Court ruling on the Grumman case gives the government a license to withhold information.*

**A** December decision by the Supreme Court upholding a government action to withhold information has alarmed many who are concerned about freedom of the press. The decision upheld the government's right to keep information from the Grumman Corp., under investigation in the "Ill Wind" Department of Justice probe of defense contract fraud.

To build its legal defense, Grumman had resorted to the Freedom of Information Act (FOIA) to obtain correspondence related to a routine audit in 1978 by the Defense Contract Auditing Agency. The DCAA declined Grumman's request and two days later turned the records over to the FBI, which subsequently also refused to release them. The FBI justified its action citing a clause in the FOIA law which "exempts from disclosure records or information compiled for law enforcement purposes."

By upholding the FBI position in its ruling, the Supreme Court effectively "extended the exemption to records not originally created for, but later collected for, law enforcement," asserted an *Editor and Publisher* Dec. 23 editorial which deplored the ruling. The editorial cited Justice John Paul Stevens's dissenting opinion, which called the DCAA switch of records "a naked transfer of otherwise non-exempt documents from a civilian agency to the FBI. Such a transfer is not a compilation."

Justices Thurgood Marshall and Antonin Scalia added in their dissents that the majority decision "lends itself to abuse so readily that it is unlikely to have been intended."

Jane Kirtley, executive director for the Reporters Committee for Free-

dom of the Press, told *Editor and Publisher*, "The decision will give government agencies virtual unlimited license to withhold any kind of information by simply sweeping it into FBI files."

*Editor and Publisher* said the decision, based on "some convoluted reasoning . . . puts another roadblock in front of reporters who try to report what is going on at the Department of Justice."

The reference to "roadblocks at the Department of Justice" concerned the climate of secrecy that has taken over at the DOJ under the reign of Attorney General Richard Thornburgh.

Thornburgh has been on a crusade allegedly aimed at cutting down "leaks" by DOJ personnel. Last August, DOJ leakers were threatened with criminal investigations and potential prosecution under theft-of-government-property laws.

Ron Ostrow, a veteran *Los Angeles Times* reporter who has covered the DOJ for 23 years, told *Editor and Publisher*, "You're finding in all parts of Justice a great reticence to disclose basic information that the public certainly has a right to know. . . . You've unleashed people who before felt some pressure to make information public. You've freed them to go back to their secretive ways. . . . People who don't like being watched are reveling in this."

A recent *Washington Post* editorial added, "It appears that Mr. Thornburgh is heading in the direction of stonewalling inquiries, punishing those who talk to the press and centralizing control in his own office. . . . It won't work and it shouldn't."

Journalists are complaining that it is not "leaks" of sensitive information about ongoing criminal investigations that have dried up, but even the most routine information that the public has a right to know.

In the past year, the staff of the DOJ's Public Affairs Department has been cut in half, limiting it to 14 authorized jobs. The *Post* also reported that new Immigration and Naturalization Service regulations bar local offices from talking to reporters without getting clearance from Washington first.

Ostrow reported that one top DOJ official he lunched with was subsequently interrogated about the interview. "That sent out a chilling message to people at that rank that it would be better to not have any communications with reporters," Ostrow told *Editor and Publisher*.

United Press International's DOJ correspondent Dan Carmichael told the same magazine, "It can be difficult to get the most routine information, and many people are afraid to be seen talking to reporters, even in the cafeteria." He added, "To Thornburgh, any information he doesn't control is a leak. Period."

Thornburgh on Nov. 29 put his stamp of approval on a set of proposed new Bureau of Prisons regulations that would allow prison officials to deny reporters interviews with prisoners, and would ban prisoners from writing paid or by-lined newspaper stories. Three hours later, he retracted his statement saying only, "The proposals were submitted prematurely and without my personal review."

On Dec. 11 the *Legal Times* reported that attorney Allen Hausman, one-time assistant director of the Civil Division at the DOJ, had been demoted for helping a reporter gather information for *American Lawyer*, a legal newspaper.