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OP-ED COLUMNIST

A Justice's Sense of Privilege

By BOB HERBERT

Antoinette Konz is a young education reporter for The Hattiesburg American, a daily newspaper with a circulation of about 25,000 in Hattiesburg, Miss. Ms. Konz, 25, has only been in the business for a couple of years, so her outlook hasn't been soiled by the cranks and the criminals, and the pretzel-shaped politicians that so many of us have been covering for too many years to count.

She considered it a big deal when one of the schools on her beat, the Presbyterian Christian High School, invited her to cover a speech that was delivered last Wednesday by Supreme Court Justice Antonin Scalia.

About 300 people, many of them students, filled the school's gymnasium for the speech. They greeted Justice Scalia with a standing ovation.

Ms. Konz and a reporter for The Associated Press, Denise Grones, were seated in the front row. They began to take notes. And when Justice Scalia began speaking, they clicked on their tape recorders.

What's important about this story is that Justice Scalia is a big shot. Not only is he a member in good standing of the nation's most august court, he's almost always among those mentioned as a possible future chief justice.

Compared with him, Ms. Konz and Ms. Grones are nobodies.

Justice Scalia, the big shot, does not like reporters to turn tape recorders on when he's talking, whether that action is protected by the Constitution of the United States or not. He doesn't like it. And he doesn't permit it.

"Thirty-five minutes into the speech we were approached by a woman who identified herself as a deputy U.S. marshal," Ms. Konz told me in a telephone conversation on Friday. "She said that we should not be recording and that she needed to have our tapes."

In the U.S., this is a no-no. Justice Scalia and his colleagues on the court are responsible for guaranteeing such safeguards against tyranny as freedom of the press. In fact, the speech Mr. Scalia was giving at the very moment the marshal moved against the two reporters was about the importance of the Constitution.

Ms. Konz said neither she nor Ms. Grones wanted to comply with the marshal's demand.

"It was very distracting, very embarrassing," she said. "We were still trying to listen to what he was saying."

The marshal, Melanie Rube, insisted.

The A.P. reporter tried to explain that she had a digital recording device, so there was no tape to give up. Ms. Konz said the deputy seemed baffled by that.

Eventually both recordings were seized.

If this had been an old-time Hollywood movie, the Supreme Court justice would have turned a kindly face toward the marshal and said, in an avuncular tone: "No, no. We don't do that sort of thing in this country. Please return the recordings."

But this is the United States in the 21st century where the power brokers have gone mad. They've deluded themselves into thinking they're royalty, not public servants charged with protecting the rights and interests of the people. Both recordings were erased. Only then was the reporters' property returned.

When agents acting on behalf of a Supreme Court justice can just snatch and destroy information collected by reporters, we haven't just thumbed our nose at the Constitution, we've taken a very dangerous step in a very ugly direction. The depot at the end of that dark road is totalitarianism.

I called Jane Kirtley, a professor of media, ethics and law at the University of Minnesota, and asked her what was wrong with what the marshal did. She replied, "Everything."

Not only was it an affront to the Constitution to seize and erase the recordings, Ms. Kirtley believes it was also a violation of the Privacy Protection Act, a law passed by Congress in 1980.

"It protects journalists not just from newsroom searches," she said, "but from the seizure of their work product material, things like notes and drafts, and also what's called documentary materials, which are things like these tapes, or digital recordings."

Ms. Konz told me: "All I was doing with that tape recorder was making sure that I was not going to misquote the justice. My only intention was to report his words accurately."

After the encounter with the marshal, she said, "I went back to the office and I just felt absolutely — I just felt horrible."

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