Twitter Thread by Virgil Abt

Virgil Abt
@abtnatural

Pleased to learn that a federal criminal grand jury's subpoena to Twitter to get my personal info was quashed by the judge, despite my association with sketchy accounts like @Popehat and @associatesmind, whom the court refused to do any favors.
(Thread ...)

IT IS, THEREFORE, ORDERED that the Findings, Conclusions, and Recommendation of the United States Magistrate Judge are accepted. Movant Twitter, Inc.'s Motion to Quash Grand Jury Subpoena and Vacate Gag Order [Dkt. No. 1] is GRANTED IN PART. The Motion to Quash is GRANTED as to Twitter users @dawg8u and @abtnatural and DENIED as to Twitter users @PogoWasRight, @Popehat, and @associatesmind.

The Grand Jury Subpoena issued to Twitter, No. Dal-2017R05013-2, is hereby QUASHED as to @dawg8u and @abtnatural.

SO ORDERED this 11th day of December, 2017.

BARBARA M. G. LYNN
CHIEF JUDGE

This started in 2017 with a Twitter thread about the interesting case of John Rivello, who was indicted for assault with "a deadly weapon, to-wit: a Tweet", where the tweet contained an allegedly seizure-inducing GIF and was sent to a known epileptic, @kurteichenwald.

GRAND JURY REFERRAL

F1700215

The State of Texas vs. JOHN RAYNE RIVELLO CDC5

DOB: 6/5/1987 Sex: Male Race: White

SID No.

AIS No. <#CID#>

GJ Witness: READ IN

C	Offense	LD	Statute	Agency	TRN	TRS	NCIC Code
1	- AGG ASSAULT W/DEADLY WEAPON	F2	PC 22.02(a)(2)	TXDPD0000			13150005

INDICTMENT NO.: F1700215

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF TEXAS:

The Grand Jury of Dallas County, State of Texas, duly organized at the January Term, A.D., 2017 of the 204th Judicial District Court for said County, upon its oath do present in and to said Court at said term,

That **JOHN RAYNE RIVELLO**, hereinafter called Defendant, **on or about the 15th day of December, 2016**, in the County of Dallas, State of Texas, did then and there intentionally, knowingly and recklessly cause bodily injury to KURT EICHENWALD, a disabled person, hereinafter called complainant, by inducing a seizure with an animated strobe image, knowing that the complainant was susceptible to seizures and that such animations are capable of causing seizures, and said defendant did use and exhibit a deadly weapon, to-wit: a Tweet and a Graphics Interchange Format (GIF) and an Electronic Device and Hands, during the commission of the assault,

Enhancements

And further, Defendant did intentionally select the said KURT EICHENWALD primarily because of the said Defendant's bias or prejudice against a group identified by race, ancestry, or religion, namely: persons of Jewish faith or descent;

FILED
2017 MAR 20 AM 9:39
FELICIA PITRE
DISTRICT CLERK
DALLAS CO. TEXAS
DEPUTY

Against the peace and dignity of the State.

Foreman of the Grand Jury

Someone replied to the thread with a sarcastic dig at an FBI agent involved in the case (Nathan Hopp), and then someone else replied to that with a smiley-face emoji.

https://t.co/RcOphROvOP

https://t.co/X48C4ORZsI

Tweet

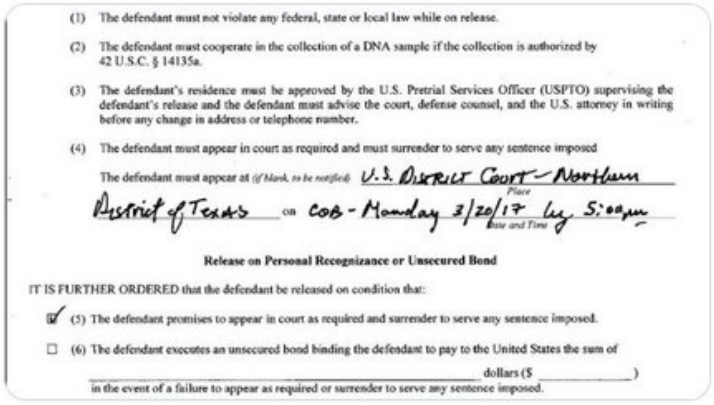
KochBroHat @Popehat · Mar 20, 2017

John Rivello waived further hearings in MD and agreed to appear in Texas, released OR into parents' custody. Still no complaint online.

4 4 8

Virgil Abt @abtnatural · Mar 20, 2017

.@Popehat Not really OR ("own recognizance"), but DR ("Dad's recognizance").



(1) The defendant must not violate any federal, state or local law while on release.

(2) The defendant must cooperate in the collection of a DNA sample if the collection is authorized by 42 U.S.C. § 14135a.

(3) The defendant's residence must be approved by the U.S. Pretrial Services Officer (USPTO) supervising the defendant's release and the defendant must advise the court, defense counsel, and the U.S. attorney in writing before any change in address or telephone number.

(4) The defendant must appear in court as required and must surrender to serve any sentence imposed

The defendant must appear at (*if blank, to be notified*) U.S. District Court – Northern (*Place*)
District of Texas on COB - Monday 3/20/17 by 5:00pm (*Date and Time*)

Release on Personal Recognizance or Unsecured Bond

IT IS FURTHER ORDERED that the defendant be released on condition that:

☑ (5) The defendant promises to appear in court as required and surrender to serve any sentence imposed.

☐ (6) The defendant executes an unsecured bond binding the defendant to pay to the United States the sum of _____ dollars ($ _____)
in the event of a failure to appear as required or surrender to serve any sentence imposed.

3 3 3

Keith Lee @associatesmind · Mar 20, 2017

where'd you pull this from?

1

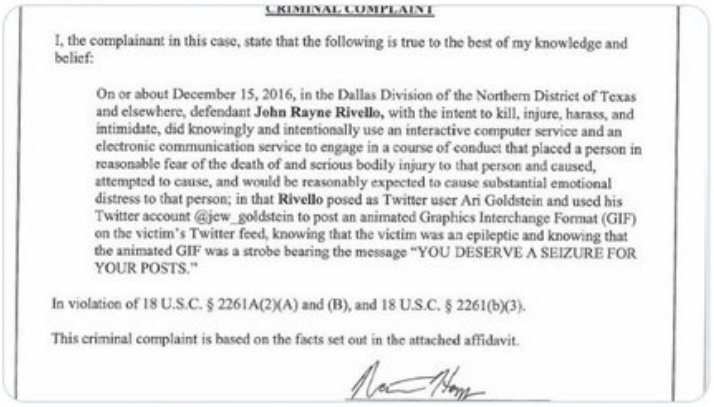
KochBroHat @Popehat · Mar 20, 2017

dMD

1 1

Virgil Abt @abtnatural · Mar 20, 2017

.@Popehat @associatesmind U.S. v. John Rayne Rivello now unsealed in Texas.
drive.google.com/open?id=0B9wNz...



CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief:

On or about December 15, 2016, in the Dallas Division of the Northern District of Texas and elsewhere, defendant **John Rayne Rivello,** with the intent to kill, injure, harass, and intimidate, did knowingly and intentionally use an interactive computer service and an electronic communication service to engage in a course of conduct that placed a person in reasonable fear of the death of and serious bodily injury to that person and caused, attempted to cause, and would be reasonably expected to cause substantial emotional distress to that person; in that **Rivello** posed as Twitter user Ari Goldstein and used his Twitter account @jew_goldstein to post an animated Graphics Interchange Format (GIF) on the victim's Twitter feed, knowing that the victim was an epileptic and knowing that the animated GIF was a strobe bearing the message "YOU DESERVE A SEIZURE FOR YOUR POSTS."

In violation of 18 U.S.C. § 2261A(2)(A) and (B), and 18 U.S.C. § 2261(b)(3).

This criminal complaint is based on the facts set out in the attached affidavit.

5 39 37

Mike Honcho
@dawg8u

Replying to @abtnatural @Popehat and @associatesmind

Nathan Hopp is the least busy FBI agent of all time.

2:07 PM · Mar 20, 2017 · Twitter Web Client

2 Quote Tweets **3** Likes

> Nathan Hopp is the least busy FBI agent of all time.
>
> — Mike Honcho (@dawg8u) March 20, 2017

Because that last, single-emoji reply was by someone the FBI was investigating (in a matter completely unrelated to Rivello), the feds reacted by demanding Twitter hand over all its information on everyone in the thread (for the suspicious act of being replied to by randos).

AO110 (Rev. 12/89) Subpoena to Testify Before Grand Jury

UNITED STATES DISTRICT COURT

Northern District of Texas

TO:

Twitter, Inc.
Attn: Trust and Safety
1355 Market Street, Suite 900
San Francisco, CA 94103

SUBPOENA TO TESTIFY
BEFORE GRAND JURY

SUBPOENA FOR:
☐ PERSON ☒ DOCUMENT(S) OR OBJECT(S)

YOU ARE HEREBY COMMANDED to appear and testify before the Grand Jury of the United States District Court at the place, date, and time specified below.

PLACE	COURTROOM
1100 Commerce Street Third Floor Dallas, TX 75242	Grand Jury Room
	DATE AND TIME June 6, 2017; 9:00 a.m.

YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):*

PLEASE SEE ATTACHMENT.

☐ Please see additional information on reverse.

This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.

CLERK		DATE
(By) Deputy Clerk		May 11, 2017

This subpoena is issued on application of the United States of America	NAME, ADDRESS AND PHONE NUMBER OF ASSISTANT U.S. ATTORNEY Douglas W. Gardner, AUSA United States Attorney's Office 816 Congress Avenue, Suite 1000 Austin, TX 78701 Office: 512-916-5858

* If not applicable, enter "none".

Dal- 2017R05013 - 2

Twitter, through @PerkinsCoieLLP partner John K. Roche, admirably fought this subpoena on behalf of its users, three times: before a USMJ, then a USDJ, then the MJ again. The result was this sealed 35-page opinion (now unsealed): https://t.co/HKlPBXe10E

The court rightly ruled that "Twitter has explained its clear interest in ferociously advocating for its users' First Amendment rights".

The government has shown a substantial relationship between its investigation of Justin Shafer and the information it seeks from Twitter regarding just one user: advertising and data-mining, and has suspended users whose tweets conflict with Twitter's corporate standards. But that argument misses the mark. The closeness requirement focuses on similarity of interests and whether the litigant asserting third-party standing "can reasonably be expected to properly frame the issues and present them with the necessary adversarial zeal." *Munson*, 467 U.S. at 956; *see also In re Deepwater Horizon*, 857 F.3d at 252-53 ("The whole purpose behind this 'close relation' factor is to ensure that the [appellant] will act as an effective advocate for the party whose interests it seeks to represent." (internal quotations and citation omitted)). And here, Twitter has explained its clear interest in ferociously advocating for its users' First Amendment rights Twitter benefits most when its users have an accessible, unrestrained means of expression.

But the court only protected 2 of 3 anonymous speakers. @PogoWasRight had been in contact with @JShafer817 and blogging that his prosecution seemed to be vindictive, and these mere contacts were deemed sufficient to make her anonymity unworthy of 1A protection.

The government has shown a substantial relationship between its investigation of Justin Shafer and the information it seeks from Twitter regarding just one user: @PogoWasRight. At oral argument on Twitter's Motion to Quash Subpoena and Vacate Gag Order, the government presented evidence that @PogoWasRight frequently contacted Justin Shafer via his Twitter account @JShafer817, dating back to January of 2014. *See* Dkt. No. 20 at 10, lines 8-10. Special Agent [redacted] testified that, in addition to several tweets where @JShafer817 mentions @PogoWasRight, there are multiple private, direct messages, between the two accounts. *See id.* at 19, lines 10-11. Special Agent [redacted] also testified that on multiple occasions, Justin Shafer sought to ask his wife to reach out to @PogoWasRight to provide information regarding Shafer's case. *See id.* at 15, lines 23-25.

In light of these multiple confirmed and direct contacts, plus Shafer's interest in discussing his own case with @PogoWasRight, the government has made the requisite showing that identifying information for @PogoWasRight is substantially related to its investigation of Justin Shafer and his alleged crimes against Agent [redacted]. Accordingly, the Motion to Quash should be denied as to @PogoWasRight.

The weird bit is about the attempt to learn the identities of @popehat (unsecret alter ego of Ken White) and @associatesmind (whose screen name is Keith Lee with a blue check verifying that he is Keith Lee).

The feds farcically claimed Ken and Keith were not suspects, and the FBI were merely trying to get their contact information so they could ask for interviews. (They are both licensed attorneys whose up-to-date contact info is, by law, always publicly on file with their states.)

Although at various points of the government's brief and oral argument, the government alluded to its need to investigate Shafer's potential coconspirators, the government has suggested that it does not actually suspect @Popehat or @associatesmind of participating in Shafer's alleged crime. *See* Dkt. No. 20 at 25, lines 16-20. Of course, even if a user is excluded as a coconspirator, the information that user provides in an interview could nonetheless advance the government's investigation, suggesting new avenues of exploration while closing off others.

That's a pretty ridiculous excuse for demanding Twitter secretly hand over a list of all the IP addresses from which Ken or Keith had ever accessed Twitter, a list that would tend to provide a trail of where they had been at every moment they accessed Twitter from their phones.

Twitter, Inc.
Attn: Trust and Safety
1355 Market Street, Suite 900
San Francisco, CA 94103

Request:
Please provide subscriber and transactional information, from account creation date to present, for the following Twitter account(s):

@dawg8u
@abtnatural
@Popehat
@associatesmind
@PogoWasRight

From the account creation date until the present, provide the following records and information associated with the above-described Twitter accounts:

1. Names (including subscriber names, user names, and screen names);
2. Addresses (including mailing addresses, residential addresses, business addresses, and e-mail addresses);
3. Local and long distance telephone connection records;
4. Records of session times and durations, and the temporarily assigned network addresses (such as Internet Protocol ("IP") addresses) associated with those sessions;
5. Length of service (including start date) and types of service utilized;
6. Telephone or instrument numbers (including MAC addresses, Electronic Serial Numbers ("ESN"), Mobile Electronic Identity Numbers ("MEIN"), Mobile Equipment Identifier ("MEID"), Mobile Identification Numbers ("MIN"), Subscriber Identity Modules ("SIM"), Mobile Subscriber Integrated Services Digital Network Number ("MSISDN"), International Mobile Subscriber Identifiers ("IMSI"), or International Mobile Equipment Identities ("IMEI"));
7. Other subscriber numbers or identities, or associated accounts (including the registration Internet Protocol ("IP") address);
8. Means and source of payment for such service (including any credit card or bank account number) and billing records.

But the judge said this is fine, and "the undersigned
cannot see how an IP address would reveal confidential communications". Sigh.
Anyway, in conclusion ...

But the undersigned doubts what effect enforcing the Subpoena, specifically, will have on the users' First Amendment rights. As Twitter points out, the Twitter profiles for both @Popehat and @associatesmind are linked to blogs with identified creators lawyers Keith Lee and Ken White whose e-mail addresses, phone numbers, and photos are available on the their respective law firms' websites. But the availability of Lee and White's contact information detracts from Twitter's position that the Subpoena itself could chill these users' free speech. The breadth of the information that the government seeks hardly exceeds the information publicly available. Even without the Subpoena, the government can investigate @Popehat and @associatesmind to at least some degree. Whatever potential chilling effect the government's investigation will have is thus only slightly worsened by enforcing the Subpoena and requiring Twitter to provide information to confirm the users' identities.

But Twitter argues that the Subpoena does more than just confirm the user's identities. By gaining access to IP addresses, Twitter maintains, the government can gain access to other confidential or privileged information. Because the undersigned cannot see how an IP address would reveal confidential communications, this argument is unpersuasive and does not advance Twitter's First Amendment arguments.

Twitter's moderation/suspension decisions are often bad, but are not a 1st amendment issue. I appreciate that when the actual 1A shit hit the fan (i.e., actual gov't agents tried to expose our whole asses because a cop was insulted), Twitter threw down.
https://t.co/mEeZNZZRoN