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LOOKING FOR A FEW GOOD....ANSWERS, by John Aravosis

According to today's New York Times, the Navy released a statement yesterday defending its handling of the Timothy McVeigh investigation -- claiming that it had "enough evidence to identify Chief Petty Officer McVeigh as homosexual 'without further information' from America Online." Over the last two weeks, in response to repeated charges that the Navy broke federal espionage law during its investigation of Senior Chief McVeigh, the Navy keeps saying they had "enough evidence" to get McVeigh even without AOL's confidential subscriber information. This spurious argument raises a number of troubling questions.

1) Is it the Navy's policy to spy on American citizens in violation of federal law so long as it "has enough information to get you anyway"? This is akin to a cop telling a judge "sure, your honor, I burglarized the defendant's house to get evidence -- but I figured he was guilty anyway." Is the Navy immune to the law when it is investigating people it presumes to be "guilty"?

2) If the Navy did in fact have enough information to get McVeigh anyway, then is the Navy planning to charge Legalman Kaiser and Lt. Morean with perjury, followed by a court martial?

The two Navy investigators testified under oath that they did not have sufficient information to link McVeigh to his AOL "member profile" without calling AOL. Legalman Kaiser testified under oath at McVeigh's discharge hearing that "we wanted to find out the profile sheet and the name" and "I just wanted to confirm who it was from." When asked by McVeigh's lawyer "He gave you information that links members screen names with the member's actual name? Sounds like that's what you have done," Kaiser responded "Yes, that is correct." Kaiser called AOL to establish the necessary link. Kaiser's boss, Lt. Karen Morean, gave even more incriminating testimony under oath at the same hearing (quoted on CNet's news.com last Friday): "I planned to establish by whatever means I could think of whether or not this profile belonged to the screen name or not and whether or not the screen name belonged to Senior Chief McVeigh," said Lt. Karen Morean. "I didn't know what it was going to take. I didn't know if AOL was going to give me the information that I was looking for or if it was going to take some other kind of research. I didn't know at that point what it was going to involve, but I suggested obviously that the first step was to call AOL, and that's obviously as far as I needed to go."

Lt. Morean admits to not knowing whether or not the profile belonged to McVeigh's screen name. She didn't know whether or not the screen name belonged to McVeigh himself. She didn't know what it would take to make this connection. She didn't know what kind of research it would take. She didn't know what it was going to involve. And after all that doubt, she admits that once her staff called AOL, and got McVeigh's confidential subscriber information, it was all the evidence she needed.

If the Navy spokespeople are now telling the truth, and the Navy had enough information to link McVeigh to the "gay" AOL member profile without having contacted AOL, then Kaiser and Morean lied under oath. Does the Navy plan to court martial Kaiser and Morean for perjury?

3) If the Navy did have enough information to get McVeigh, are they accusing Justice Department attorney David Glass of lying to Judge Sporkin yesterday, in asserting the opposite?

Glass told Judge Sporkin that when the Navy first received McVeigh's purported email communication suggesting a link to a "gay" profile, they asked themselves: "Is this some kind of

prank message?" and "Who is sending me this message...who is it coming from?" Glass said that the government contacted AOL because they needed "to make sure this was his [McVeigh's] profile" -- they "wanted to make sure they were investigating the right person." Glass even went so far as to say that "possibly nothing would have happened with his email alone," had the Navy not been able to make the illegal link to the AOL profile.

These are not the words of a man who "has enough evidence" to get McVeigh anyway, unless of course he lied to the judge.

4) If the Navy did have enough information to get McVeigh, then why all the subterfuge in getting McVeigh's confidential subscriber information out of AOL?

* Why didn't the Navy have a subpoena, required by federal law and AOL's terms of service?

* Why didn't the Navy have a court order, required by federal law and AOL's terms of service?

* Why didn't the Navy seek McVeigh's permission, required by federal law and AOL's terms of service?

* Why didn't the Navy identify itself as a government investigator, as required under federal law?

* Why did the Navy go so far, at least according to AOL's public statement yesterday, as to pretend they were a "friend or acquaintance" of McVeigh's in order to trick AOL into releasing the confidential information?

* Why did the Navy lie to AOL and say that they were "in receipt of a fax and wanted to confirm the profile sheet" -- see Kaiser's sworn testimony -- when McVeigh had sent them no fax?

* Why didn't the Navy go through proper channels and contact AOL's appointed legal liaison who was in charge of receiving government inquiries -- a person who, according to AOL's letter of protest to the Navy Secretary, was "known to the Navy, precisely for such purposes"?

The answer is in Lt. Morean's own sworn testimony: she "planned to establish by whatever means I could think of whether or not this profile belonged to the screen name or not."
WHATEVER MEANS I COULD THINK OF, regardless of the law.

5) Did the Navy "intentionally or unintentionally" break the law in this case?

According to today's New York Times, the Navy released a statement yesterday saying: "There were no intentional violations of any Federal laws or regulation by Department of Navy personnel." When asked by the Times if there had been any "unintentional" violations of Federal privacy laws, the Navy spokesman declined to comment.

The Navy REFUSED to answer. This is as much as an admission of guilt. Ask them again, DID THE NAVY INTENTIONALLY OR UNINTENTIONALLY BREAK THE LAW IN THIS CASE? If we can't get a clear "No" to both points, then that's all the proof we need.

6) If the Navy didn't do anything wrong in contacting AOL, why did Attorney Glass tell Judge Sporkin that he "wouldn't have called AOL" if he could do it all over again?

Judge Sporkin asked Glass to imagine a hypothetical where the government wanted to connect an anonymous AOL member profile with a specific AOL subscriber. The Judge asked Glass if, in view of the requirements of federal privacy law, would he call AOL in search of that subscriber's information without a court order. Glass answered: "If I knew about the law, I wouldn't have called AOL."

If everything was kosher, why not?

7) Does the Navy believe that ignorance of the law is a legitimate defense for committing a felony?

Attorney Glass suggested in court that Navy legal staff were not familiar with the details of federal wire tapping law, and therefore should not be held accountable for spying on American citizens in violation of that law. Chris Wolf, McVeigh's attorney, immediately pointed out that ignorance of the law is no defense.

Does the Navy believe that it is legal to spy on American citizens so long as the spies are uninitiated in the complexities of federal law?

8) How does the Navy respond to the author of the "Don't Ask, Don't Tell" policy, Dr. Charles Moskos, who called their implementation of the policy in this case "pigheaded" on National Public Radio this past Monday? How does the Navy respond to Dr. Moskos' sworn declaration to the Sporkin court saying: "The Navy's actions in this case violated the 'Don't Ask, Don't Tell' policy," and "To send a suitable message to the military that investigations of this type will not be condoned, the case against Senior Chief McVeigh should be dropped"?

How can the Navy claim in the face of all this evidence that they did nothing wrong in this case?

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