



D.C. Circuit Tackles Ex-Prosecutor's Allegations of Privacy Violations

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After a nearly decade-long legal battle, the Department of Justice (DOJ) is seeking to dismiss once and for all the privacy suit of Richard Convertino, a former federal prosecutor in Detroit who alleges that the DOJ illegally gave the press details of an internal investigation into his alleged misconduct.

In February 2004, Convertino filed a complaint in the U.S. District Court for the District of Columbia, alleging that DOJ officials provided information to a newspaper reporter about the internal ethics investigation. Convertino accused the DOJ of giving David Ashenfelter, a reporter for the Detroit *Free Press*, confidential information relating to Convertino's alleged mishandling of a terror-related case.

In that underlying case, the convictions of the alleged terrorists were overturned amidst allegations that Convertino unlawfully withheld evidence from defense lawyers when he prosecuted the case. The ensuing internal DOJ inquiry into Convertino's conduct was meant to be confidential, but was leaked to the press through unknown, anonymous sources at the DOJ. Ultimately, the allegations of prosecutorial misconduct against Convertino were not substantiated.

Convertino spent nearly eight years attempting to ascertain Ashenfelter's anonymous sources, but the reporter consistently refused to name them and invoked his Fifth Amendment right to remain silent. The district court finally dismissed Convertino's privacy case last year, saying "there is simply no reason to believe that yet another delay in this case will result in discovery of that information." Convertino appealed to the U.S. Court of Appeals for the D.C. Circuit. Earlier this month, the DOJ asked the court of appeals to uphold the dismissal.

In this situation, Convertino's right to pursue privacy violations by the DOJ sits squarely in opposition to Ashenfelter's right to plead the Fifth Amendment. Although the DOJ's Office of Inspector General performed an inquiry, it was unable to determine which DOJ employee was the source of the leak. As a result of his inability to confront the source, Convertino's reputation and career will forever be tarnished by anonymous accusations of wrongdoing.

It is ironic that the department whose duty is to enforce the law and bring about justice has failed to do justice to Convertino. One of its employees disclosed confidential



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agency information to the press and will apparently go scot free. Unless the D.C. Circuit reverses the district court's decision, the federal government will not be held accountable for violating Convertino's privacy. The Court of Appeals should reverse and allow Convertino to continue his efforts to discover who leaked the information, and how the DOJ allowed it to happen.

The D.C. Circuit is scheduled to hear the Convertino case on March 12.

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The commentary and cases included in this blog are contributed by Jeff Ifrah and firm associates Rachel Hirsch, Jeff Hamlin, Steven Eichorn and Sarah Coffey. These posts are edited by Jeff Ifrah and Jonathan Groner, the former managing editor of the Legal Times. We look forward to hearing your thoughts and comments!

