FREEDOM OF THE PRESS FOUNDATION

February 6, 2026

Virginia State Bar
Office of Intake
Via email to webintake@vsb.org

***RE: Disciplinary complaint against Gordon D. Kromberg (Bar ID # 33676), Assistant U.S. Attorney, Eastern District of Virginia***

I write on behalf of Freedom of the Press Foundation, a nonprofit and nonpartisan organization dedicated to protecting journalists' rights.

Assistant U.S. Attorney Gordon D. Kromberg applied for a warrant authorizing the January 14, 2026 search of the home of Washington Post reporter Hannah Natanson and seizure of her electronic devices. The raid was part of an investigation into whether a government contractor leaked classified information. The government has said that Natanson is not a target of its investigation.[1]

According to a New York Times article published on February 5, 2026, in his warrant application to Magistrate Judge William B. Porter, Mr. Kromberg failed to disclose the Privacy Protection Act of 1980, a federal statute that limits search warrants for journalistic work product and documentary materials.[2] The warrant application (attached hereto) included a 35-page FBI affidavit but made no mention of this controlling legal authority.[3] The factual background is further detailed in the attached article, which is incorporated herein by reference.[4]

The Privacy Protection Act prohibits searches of these materials except when there is probable cause to believe that the reporter (or other target of a search, since the Act is not limited to professional journalists) has themselves committed a crime to which the materials relate. The Act makes clear that authorities cannot circumvent the exception for reporters' own crimes by deeming reporting itself – e.g. "possession" or "receipt" or protected information – a crime. It then clarifies

[1] Perry Stein and Jeremy Roebuck, *FBI executes search warrant at Washington Post reporter's home*, Washington Post, Jan. 14, 2026.
[2] 42 U.S.C. § 2000aa *et seq*.
[3] The supporting affidavit is available online at https://www.rcfp.org/wp-content/uploads/2026/01/2026-01-30-In-re-Washington-Post-search-unsealing-Redacted-warrant-affidavit.pdf
[4] Charlie Savage, "*Failure to Alert Judge to Press Law for Reporter Search Draws Ethical Scrutiny*," New York Times, Feb. 5, 2026. *See also* Charlie Savage, *U.S. Failed to Alert Judge to Press Law in Application to Search Reporter's Home*, New York Times, Feb. 2, 2026.

that the exception to the exception does not apply when there is probable cause to believe the reporter violated certain sections of the Espionage Act.[5]

The warrant application does not identify Natanson as a target of any investigation, does not inform the judge of the required probable cause finding that Natanson committed a non-newsgathering crime to authorize the search, and, as the Times reported, does not even mention the Privacy Protection Act.

As several experts note in the article, Kromberg's signature of the warrant application appears to violate Virginia Rules of Professional Conduct, Rule 3.3, "Candor Toward the Tribunal," which provides that a lawyer shall not knowingly "fail to disclose to the tribunal controlling legal authority in the subject jurisdiction known to the lawyer to be adverse to the position of the client."

The rule recognizes that the need for candor is heightened in a proceeding with no opposing counsel present to bring adverse authority to the court's attention.

The omission could not have been a mere oversight – the warrant in question was, predictably, a subject of national news, given that raids of journalists' homes during investigations of alleged leaks by government personnel are, according to experts, unprecedented. Under the Department of Justice's own policies, which were updated just last year following a very public (and misleading) announcement, the search should have been discussed with and authorized by the highest levels of the DOJ, including the Attorney General.[6]

And the consequences of the raid authorized due to Kromberg's omission are severe: Natanson is now without terabytes of material, therefore unable to complete stories in progress, her sources' confidentiality is jeopardized, and journalists and whistleblowers across the country are sure to think twice about drawing the ire of the current administration.[7] Surely, the decision to take such a drastic and alarming action – recognized by the department's own guidelines as "extraordinary measures, not standard investigatory practices" potentially subject to the Privacy Protection Act[8] – was not made lightly and Kromberg and his team were well aware of applicable law, but deliberately chose not to mention it.

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[5] 42 U.S.C. § 2000aa (a)(1), (b)(1).
[6] 28 C.F.R. § 50.10(d)(1); Lauren Harper, *FBI Raid on WaPo Reporter's Home Was Based on Sham Pretext,* The Intercept, Jan. 15, 2026.
[7] David Bauder, *Press freedom advocates worry that raid on Washington Post journalist's home will chill reporting*, Associated Press, Jan. 15, 2026; Kevin Gosztola, *Reporter Raided By FBI Lost Contact With Over 1,000 Sources*, The Dissenter, Jan. 23, 2026.
[8] 28 C.F.R. § 50.10(a)(3).

FREEDOM OF THE PRESS FOUNDATION

We request that this office take appropriate disciplinary action, up to and including disbarment, and that it expedite disciplinary proceedings due to the dire consequences for First Amendment freedoms if illegal newsroom raids and seizures of journalists' work product are allowed to go unchecked.

Respectfully submitted,

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AO 106A (EDVA Version) (03/20) Application for a Warrant by Telephone or Other Reliable Electronic Means

# UNITED STATES DISTRICT COURT

for the

Eastern District of Virginia

In the Matter of the Search of
*(Briefly describe the property to be searched or identify the person by name and address)*
The Real property and Premises at [redacted]

Case No. 1:26sw54

Type text here

## APPLICATION FOR A WARRANT BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property *(identify the person or describe the property to be searched and give its location):*

The real property and premises at [redacted] as described in Attachment A to the attached Affidavit

located in the Eastern District of Virginia, there is now concealed *(identify the person or describe the property to be seized)*:

See Attachment B to attached affidavit.

The basis for the search under Fed. R. Crim. P. 41(c) is *(check one or more)*:

- ☑ evidence of a crime;
- ☑ contraband, fruits of crime, or other items illegally possessed;
- ☐ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

| *Code Section* | *Offense Description* |
|---|---|
| 18, U.S. Code, § 793 | unlawful retention and distribution of classified and national defense information |

The application is based on these facts:

See Attached Affidavit

☐ Continued on the attached sheet.

☐ Delayed notice of _____ days *(give exact ending date if more than 30 days:* _____*)* is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

*Applicant's signature*

Reviewed by AUSA/SAUSA

Gordon D. Kromberg
*Printed name and title*

Matthew T. Johnson, FBI Special Agent
*Printed name and title*

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone *(specify reliable electronic means).*

Date: January 13, 2026

*Judge's signature*

City and state: Alexandria, Virginia

William B. Porter, United States Magistrate Judge
*Printed name and title*

# *Failure to Alert Judge to Press Law for Reporter Search Draws Ethical Scrutiny*

The Justice Department may have violated a candor rule by not disclosing a 1980 law when seeking a warrant for a Washington Post reporter's home.

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**By Charlie Savage**
Charlie Savage writes about national security and legal policy. He reported from Washington.

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The disclosure that the Justice Department failed to alert a judge about a 1980 law protecting journalists when applying for a warrant to search a Washington Post reporter's home last month is casting new scrutiny on the legal issues raised by the raid.

Specialists in legal ethics said that if the prosecutor who submitted the application, Gordon D. Kromberg, an assistant U.S. attorney in the Eastern District of Virginia, knew about the 1980 law, the failure to bring it up violated a longstanding legal ethics rule.

The Justice Department and Mr. Kromberg did not respond to requests for comment. Nor did lawyers for The Post and its reporter.

Here is a closer look.

## What happened?

The Justice Department obtained a warrant to search the home and seize the electronic devices of a Post reporter, Hannah Natanson, as part of an investigation into whether a government contractor leaked classified information to her. First Amendment scholars say such a search of a reporter's home appears to be unprecedented.

## What did the warrant application materials show?

In applying for the warrant, Mr. Kromberg told the magistrate judge, William B. Porter, that the search was to look for "evidence of a crime" or "contraband, fruits of a crime, or other items illegally possessed" related to a violation of the Espionage Act. The act criminalizes the unauthorized retention or dissemination of national security information.

The application included a 35-page affidavit by an F.B.I. agent that described the investigation into the contractor, Aurelio Perez-Lugones, and accused him of violating the Espionage Act by sending Ms. Natanson classified information. Some of that information, the affidavit said, showed up in specific Post articles.

But the application materials did not mention the Privacy Protection Act, a 1980 law that limits search warrants for journalistic work product and documentary materials.

## Are lawyers required to disclose adverse law?

Yes. A rule of professional conduct requires informing the court about adverse law, with a heightened duty in proceedings in which there is no opposing lawyer arguing before the judge.

Virginia's version of this ethics requirement, listed as Rule 3.3 "Candor Toward the Tribunal," says a lawyer shall not knowingly "fail to disclose to the tribunal controlling legal authority in the subject jurisdiction known to the lawyer to be adverse to the position of the client."

A bar association comment explaining this rule says that a lawyer has a duty to tell a judge about the existence of pertinent adverse legal authority because "the complexity of law often makes it difficult for a tribunal to be fully informed unless pertinent law is presented by the lawyers in the cause."

## Did the Justice Department violate the rule?

If Mr. Kromberg knew about the Privacy Protection Act and failed to alert the judge, he violated the rule, according to several specialists in legal ethics.

Stephen Gillers, a professor emeritus at New York University, wrote in an email that Mr. Kromberg was required "to disclose the Privacy Protection Act because it is 'controlling,' which means the judge was required to consider it in his ruling on the government's request, and because the act's provisions are 'adverse,' which means its requirements could have the effect of denying the government's request."

John S. Dzienkowski, a University of Texas at Austin law professor, said that Rule 3.3 usually came up with disclosures about adverse judicial precedents, but noted that the same would be true for relevant statutes.

"If he knows about the statute, and he is asking the judge to authorize this, and he doesn't let the judge know about the statute, then I think it's going afoul of 3.3, the candor to the tribunal rule about adverse legal authority," he said in a phone interview.

And Nora Freeman Engstrom, a Stanford University law professor, agreed, saying in a phone interview that especially in a proceeding where there was no opposing counsel, "a lawyer is obligated to inform the tribunal of all material facts and adverse law known to the lawyer."

The Privacy Protection Act is generally known by press freedom legal specialists but it hardly ever comes up in courts because the Justice Department has so rarely sought search warrants for journalists' work product. Mr. Kromberg is a national

security prosecutor who has worked on classified information cases, including the case against the WikiLeaks founder Julian Assange.

## What does the Privacy Protection Act say?

The law says "it shall be unlawful" for investigators to search for or seize journalistic work product and documentary materials, except when there is probable cause that the reporter herself "has committed or is committing the criminal offense to which the materials relate."

Lawmakers wrote that the crime by the reporter that could trigger this exception could not be mere possession of the materials unless they were child sexual abuse imagery or national security secrets covered by the Espionage Act.

But that line has a catch: It is disputed whether it is constitutionally permissible to apply the Espionage Act to ordinary news gathering activities by people without security clearances. That raises a thorny additional question for evaluating the legality of the search warrant request: whether it was legally possible — let alone whether probable cause existed — for Ms. Natanson's actions to have constituted that offense.

## What is the First Amendment question?

Because the First Amendment says Congress cannot make a law abridging the freedom of the press, it has been broadly assumed for generations that the Espionage Act would be unconstitutional if applied to ordinary acts of investigative journalism about national security matters.

But partly because that assumption is so widespread, prosecutors have never charged a traditional reporter with violating the Espionage Act for ordinary news gathering activities, leaving the First Amendment question untested.

During President Trump's first term, the department charged Mr. Assange under the Espionage Act for publishing classified files on WikiLeaks. Though he is not a traditional journalist, his actions — soliciting and publishing government secrets —

mirrored reporting practices. He struck a plea deal, so the constitutionality of those charges was never tested.

## What do such applications typically say?

It is so rare for the government to seek a search warrant for reporting materials that there is no "typical" format. But the closest precedent was in 2010, when the Justice Department applied for a warrant to read certain emails of a Fox News reporter. The submission alerted the judge to the Privacy Protection Act and made an argument for why the request complied with its limits.

The application portrayed the Fox News reporter as "an aider and abettor and/or co-conspirator" in his source's crime of leaking classified information. When that application came to light in 2013, it was treated as a scandal across ideological lines.

The Justice Department said that it had never intended to prosecute the reporter and that it had just portrayed him as a criminal to circumvent the Privacy Protection Act. A former attorney general, Eric H. Holder Jr., banned that tactic, but last year Attorney General Pam Bondi rolled back the reform.

## What would be the remedy for any ethics violation?

The legal ethics professors said someone could file an ethics complaint seeking bar disciplinary proceedings. Separately, Judge Porter, who signed off on the search warrant, could ask the department for a justification and then act if he decided the omission was a violation.

Cases in which lawyers were criticized for failing to tell the court of adverse legal authority are rare, but Professor Gillers of N.Y.U. pointed to a 2013 precedent in which a judge issued an oral admonition and criticized several lawyers by name in a written opinion. He said Judge Porter could also use the government's failure to alert against it in ruling on a motion by The Post for the return of Ms. Natanson's seized items and data.

## What would be the remedy for violating the 1980 law?

The Privacy Protection Act says a person aggrieved by a search that violates that law can file a lawsuit for monetary damages. A separate rule of criminal procedure allows those aggrieved by "unlawful" searches to seek the return of their property. The Post has cited that rule in asking that Ms. Natanson regain possession of her devices and data unrelated to the investigation of Mr. Perez-Lugones, like information identifying her other sources.

But making a claim that the entire search was unlawful would raise novel questions about how the First Amendment applies to the Espionage Act. Press freedom specialists questioned whether The Post would risk doing so in light of a conservative supermajority on the Supreme Court and concerns that it might provoke prosecutors in the case.

**Charlie Savage** writes about national security and legal policy for The Times.