

email addresses or other personal identifying information. However, I understand that the web server for the Room Eight blog records the “IP numbers” of people who post on the blog, and that such information can be used to help determine the identities of such posters, if only by telling a person who obtains the IP number what Internet Service Provider must be subpoenaed to obtain more directly identifying information.

4. Room Eight encourages both bloggers and commenters to adopt and use either their own names or pseudonyms, and to post continuously under that name so that the users of the blog can get to know the personas of individual bloggers. Although some posters on Room Eight use their own names, and Gur and I do, the great majority use pseudonyms. Many Internet posters use pseudonyms because that gives them more freedom to comment on situations and to criticize powerful figures without having to worry that they, their families, their employers, or their political associates will be intimidated or face adverse consequences from having particular comments associated with them.

5. One of the bloggers on the Room Eight blog used the pseudonym Republican Dissident. Republican Dissident routinely criticized Democrats and Republicans alike. One of Republican Dissident’s common themes was that in the Bronx, the Republicans were too deferential to the Democrats, going along with misconduct to get a piece of the patronage pie, instead of trying to compete actively and to run candidates against all Democratic office holders. Republican Dissident specifically criticized the Republican leadership for the failure to field candidates against District Attorney Robert Johnson. For example, Republican Dissident stated,

From a republican standpoint, the current Bronx GOP Leader Joseph J. Savino is not capable of mounting up a challenge to run a candidate against Robert Johnson. Mr. Savino is only concerned about his own political future to become the NYS senator for the 34th senate district, which he will never succeed at. He does not care about the Bronx County GOP at all. As a GOP leader he should be trying to run a

republican candidate for the Bronx District Attorney's position. What does he do instead, he runs an incumbent democrat, who is already the Bronx County District Attorney - Robert Johnson.

In complaining about Republican party corruption in the Bronx, and proclaiming the need to prosecute that corruption, Republican Dissident bemoaned the fact that Robert Johnson was the District Attorney because the Bronx Republican Party always endorses him for re-election. For example, Republican Dissident stated:

Wait till Fred Brown starts to cooperate with the Bronx DA's office on Jay Savino, Dawn Sandow and others, it is the beginning of the end, and they all deserve whatever the judicial system has intended for them. They all have no place in politics of city civil service jobs, they all lie and falsify. And I would get another prosecutor than Bronx DA Robert Johnson, Bronx County GP always endorses him in every election he runs in.

6. Republican Dissident ran a series of blog postings that criticized two figures in Bronx politics, J.C. Polanco and Dawn Sandow. Sandow was formerly a chair of the Republican Party in the Bronx, and is currently the Deputy Chief Clerk at the Board of Elections. The New York Times has reported that city investigators have sought information concerning the personal relationship between Sandow and Jay Savino, the head of the Bronx Republican Party. In a series of blog posts, supported by citations to newspaper articles, voter registration documents, and other public documents, Republican Dissident asserted that Sandow was breaking the law in several respects, including by registering to vote from the Bronx so that she could meet the residence requirement for city employment, even though, he claimed, she was living in Rockland County. He repeatedly complained that Sandow was not being prosecuted for these crimes. Many anonymous posters chimed in with criticisms of Sandow, many of them caustic and many of them accompanied by harshly critical illustrations. For example, one poster used a graphic that showed Sandow as a witch

on a broomstick; another made reference Dawn Sandow changing Osama bin Laden's diapers, and showed him in diapers suspended from a pair of hands and arms. Other Republican Dissident posts criticized Bronx Republican leader Jay Savino, associated him with a Mafia figure, and predicted that he would be indicted. Other posters chimed in with criticisms of Savino and further predictions that he would go to jail. It appears that a majority of the posts whose authors are sought by the subpoena from the Bronx District Attorney seek individuals who have made this sort of public comment. I attach as Exhibit A the set of blog postings that the District Attorney has provided to our counsel to show exactly which anonymous posters he seeks to compel us to identify.

7. I believe that the anonymous commenters felt free to make their criticisms only because they could do so anonymously. I further believe that many of our users would stop participating in the discussions on our web site if they concluded that they could no longer do so anonymously, or that their identities could be subpoenaed on the mere say-so of the Bronx District Attorney.

8. Unlike in most of America, the Republican and Democratic parties of the Bronx do not function exactly in opposition to one another, but instead have a long history of cooperation. They cooperate because the Democratic Party is the dominant party of the overwhelmingly Democratic county. Since the indictment and removal of State Senator Guy Vellela in 2004, there have been no Republicans elected to the New York State legislature or the New York City Council from the Bronx. As a result, the Bronx GOP survives mostly on the entitlements it gets simply by being the second-largest party in the Bronx – notably, patronage at the New York City Board of Elections, which is legally established. Bronx Republican and Bronx Democrats have a long history of co-operating in distributing this patronage and on other matters. For instance, they have in the past cooperated in selecting the top officials of the board of elections.

9. It would be reasonable, then, for a critic of the Bronx County Republican Party to be concerned that the Bronx County District Attorney – though a Democrat – was seeking his name. Though District Attorney Johnson has a sterling reputation for independence, the party affiliations can confuse the fact that in the Bronx, Democrats and Republicans are as often allies as foes.

10. I believe that there is a substantial possibility that the subpoenas that we have received represent harassment of those who criticize major figures in Bronx politics, and especially in the Republican Party, partly because it seems to be only critics whose identities are sought; partly because the District Attorney has refused to be specific about why he believes that the speakers posts reflect wrongful conduct; and partly because the subpoena was originally issued shortly after Dawn Sandow contacted Gur Tsabar to threaten prosecution because she had been criticized on Room Eight. The District Attorney has refused to be specific about why he believes that the speakers posts reflect wrongful conduct. On their face, it is difficult to conceive of how any of the criticisms posted – regardless of how tasteless – might be relevant to any grand jury investigation of alleged criminal activity.

11. In addition, I believe that it is morally incumbent on Room Eight to give notice to the anonymous speakers whose continued right to anonymity is threatened by the subpoenas, so that they have an opportunity to find lawyers to represent them to protect their privacy and their First Amendment right to remain anonymous. Indeed, when users of our blog eventually learn that anonymous posters were identified pursuant to subpoena, but were never notified that their anonymity was at stake, and thus were unable to try to persuade the Court of their continued entitlement to remain anonymous, I believe that they will be less willing to participate in our blog or on other Internet sites that allow criticism of political figures. For all of these reasons, I would

like to be able to post information about these subpoenas on the Room Eight blog. I have not done so because I do not want to be prosecuted for interfering with law enforcement.

12. The District Attorney was willing to allow us to send an email directly to Republican Dissident, the one anonymous speaker for whom we have email addresses. The anonymous commenters on his blog, however, cannot be notified in this manner.

Ben Smith

Subscribed and Sworn before me this _____ day of May, 2008

Notary Public