



Exploding The Phone

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Bibliographic Cover Sheet

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Title	How the Phone Company Interrupted Our Service
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Abstract	AT&T forced Ramparts to withdraw the issue of its magazine which included 4 pages on phone phreak technology from the newsstands. Ramparts tells the story of how this happened, how AT&T circumvented due process by avoiding the courts and using pressure tactics, and how the law which was passed on AT&T's behalf which makes it illegal to publish plans of such devices is dangerous to freedom of speech. It also mentions that Pacific Telephone is ignoring a recent court order reversing a rate increase.
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Notes	Was published some time after June, 1972.

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How the Phone Company Interrupted Our Service

IT WAS CLOSING TIME ON Thursday, May 12. The people who work at the Golden Gate Magazine Company in San Francisco's Tenderloin were leaving for the day, when a well-dressed man walked in and quietly presented a sheaf of xerox copies and his calling card, on the back of which was pencilled "Ramparts June Issue, phone freak box," and then got back in his car and drove off.

The next morning, Mr. Seely, Golden Gate's manager, received a call from yesterday's visitor. The caller identified himself as a Special Agent of Pacific Telephone and Telegraph, the Bell system's operating company in California. The conversation was brief: had Mr. Seely received the copy of the California Penal Code sections? The caller had obligingly underlined section 502.7 and its phrases that it is illegal to sell "plans or instructions" for any "instrument, apparatus or device" intended to avoid telephone toll charges, and that the penalty for violation is up-to-a-year in jail. That was all.

If Mr. Seely was aware that the Special Agent's employers were determined people with considerable influence and limitless resources for pursuing civil and criminal actions, it was not because of anything said in this conversation. There was no menace in the voice on the telephone, no demands or threats. But the iron fist was poorly concealed by the velvet glove. Mr. Seely understood very well that he was being offered "protection."

The Special Agent was, as Don Corlene says, making him a proposition he couldn't refuse. The June issue never went on sale in San Francisco.

It also didn't go on sale in other California cities where similar visits

were made. A major wholesaler in New York was contacted, although the magazine did briefly appear there and in other Eastern cities. But within a week, American Telephone and Telegraph had achieved what the CIA, Pentagon, FBI and other targets of Ramparts' journalism over the last ten years hadn't been able to bring about: the nationwide suppression of this magazine. As this is being written, trucks are stopping at wholesalers and retailers all over the country to collect the thousands of copies that AT&T claims as the spoils of a swift and silent war.

THE TACTICS OF THE BELL system were carefully chosen to place the editors of this magazine in an almost irresolvable dilemma. The harassment continued, AT&T threatening the magazine itself, noting at the time (and later on to an Associated Press reporter) that civil charges might be filed as well as a criminal complaint reaching as high as a felony conspiracy charge against the editors. It became clear that they intended to use the legions of agents and attorneys (the blue-ribbon San Francisco law firm representing all telephone systems — Pillsbury, Madison and Sutro—has 160 lawyers on its staff) to block the distribution of the magazine.

Telephone Company attorneys demanded that the copyright of the "Phone Phreak" article be assigned to the Bell System so that they could prosecute underground or other publications that might reprint it; that the film and plates from which the article had been printed be delivered up; and that Ramparts agree never to print a

NOTICE TO OUR SUBSCRIBERS

We have described in detail the legal and constitutional issues involved in our printing of the article on Phone Phreaks in the June issue of RAMPARTS. Quite independent from these problems, however, is the possibility of prosecution for anyone happening to make and use one of the devices described in this article. There are substantial risks involved, and anyone deciding to be a user of this device is vulnerable to surveillance and prosecution. We know for a fact that the Telephone Company is extremely anxious over this possibility. Caveat Emptor.

similar article in the future. Knowing that subscriber copies of the magazine had already been mailed out, they requested a copy of our confidential subscriber list so that they could place those who had received our June issue under surveillance, and that we respond with a "No Comment" when other members of the press called to ask why AT&T had confiscated our magazines.

Demands that we entrap our own readers and allow ourselves to be muzzled were so outrageous that they easily could be rejected. And as for ourselves, we were willing to have the matter go to court, where it obviously belonged. But the Bell System had hostages we had to consider. Their attorneys indicated that the whole network handling Ramparts was also vulnerable to civil and criminal charges. This meant that the over 500 wholesalers and thousands of retailers distributing the magazine could also be prosecuted. It was clear from our conversations that the largest corporation in the world lacked neither the will nor the resources to do it. To protect this distribution network, the lifeblood of this and other publications, we agreed to the recall of our issue.

We received no immunity from prosecution. All we got from our negotiations with telephone company attorneys was an insight into the unbridled power and arrogance of this mammoth corporation and also an understanding of the process by which we had been betrayed. For AT&T by its own admission got advance notice of the contents of the June issue, not by any process of legal discovery, but directly from our printer, W. A. Krueger & Co., a national company with headquarters in Milwaukee. Krueger willingly took our check for \$12,000 and printed the issue, but protected itself by sending off an advance copy, not to a district attorney's office or to some other "duly constituted authority," but directly to AT&T.

* * *

AS IT HAPPENS, we consider the "Phone Phreak" story an innocuous one. We are a magazine of radical politics—or as the *New York Times* once called us, "A gadfly to the estab-

lishment." This willingness on the part of a large national printing house to reveal the contents of a magazine to outside inspection, prior to publication, in itself indicates how fragile the interests of a free press are when this freedom is subjected to the censorship of established power. A commitment to a free press that has been jeopardized as never before by the Earl Caldwell case now before the Supreme Court and by the attempt to enjoin the publication of the Pentagon Papers is a slender reed when exposed to a corporation like AT&T with a reputation for devastating vindictiveness. Even *Business Week*, hardly a radical publication, has noted gently that "Bell's self-protective reflexes have created an atmosphere of fear that may well muzzle deserved criticism."

In the past ten years, Ramparts has incurred the wrath of power in many forms. Many times there have been murmurs of investigations, but never have our magazines been restrained from publication. This is as it should be. In theory, the press—however severely it may be held accountable after the fact for what it publishes—is supposed to be protected at almost any cost from the imposition of prior restraint. This held true even in the case of the Pentagon Papers, where almost the entire apparatus of government clamored for their censorship. But the courts refused to allow prior restraint to be imposed.

We would not compare this relatively trivial matter to revelations of national significance. What is important, however, is that AT&T did not bother to go through legal channels to work its will. They did not go into court and seek an injunction against Ramparts where we could respond legally and test the doubtful legitimacy of their demands. Instead they forced their way in through the back door to suppression, unwilling to risk the First Amendment test which barred their way in front.

It is true that, even with all the formal protections of a free press, the media serve entrenched interests and established order in countless subtle ways. But while this is profoundly disturbing, it only emphasizes the need for a truly free and vital press. And it dramatically underscores the danger

in the precedent AT&T has now set. This corporation, which hovers proprietarily over public utilities commissions and musters immense political clout to fight any attempt at regulation, admits to no scruples at all about moving against a magazine whose contents involve a number of important stories (including a study of the financial backing of the Democratic Party, a report on the movements within the black left, and an analysis of the irresponsibility in the management of pension funds) to get at what it considers a dangerous 4-page article. This goes to the heart of the protected freedom of the press by anyone's definition, and the effort on the part of the Bell System to systematically track down the copies of this issue and oversee their destruction shows a frightening contempt for even the most minimal forms of due process and even the sham decencies of genteel repression.

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IN A WAY IT SHOULD COME as no surprise that AT&T does not look on constitutional protections as serious constraints. For the company's entire corporate experience is that the structure of law and government serve as instruments of its power, to be recklessly manipulated for advantage. AT&T is, after all, first among giants, the largest American corporation of any kind, with an incredible \$45 billion in assets and a net income larger than the total for the nation's 50 largest commercial banks or the 50 largest retail firms combined. Its closest point of contact with the rule of law is in the context of utility regulation, where only the facade of serious independent authority is still maintained.

California telephone regulation was once considered a model for the nation. But at this point it would be a costly model for the other states to follow. Last July 22 the Public Utilities Commission approved a \$143 million rate increase—twice the previous record, and in a year when everybody else was being told to hold the wage and price line. Part of the increase was challenged in court; the state Supreme

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SUPPRESSION (From Page 11)

Court took the case and unanimously nullified the contested increase, overruling the PUC and calling its decision "irregular" and the company's request "ill-advised." Bell companies don't like to hear that kind of talk, but Pacific Telephone was prepared to let it pass, by ignoring the court's ruling altogether. They not only defied the order for a refund—they are presently collecting revenues at the legally nullified rates, the cumulative total of which now exceeds \$40 million.

The extent of AT&T's influence in government comes out perhaps most clearly in the controversy over the ship with Western Electric Corporation, its wholly owned manufacturing, its wholly owned manufacturing subsidiary. AT&T over the years has developed numerous techniques to maintain government "regulated" overcharges to its customers. An overcharge that now runs as high as \$1 billion a year is made possible, in the words of the pre-Reagan California PUC, by the way the Bell System, through Western Electric, "makes a

profit by taking in its own washing."

The telephone business is considered a "natural monopoly." But those who dreamed up this phrase obviously did not include a monopoly on the manufacture of telephone equipment and supplies. Nevertheless, the Bell System insists on buying its phones, cables, switching equipment, etc., from Western (in its own right the nation's twelfth largest industrial corporation). There are, of course, certain "funny money" opportunities that arise when you are buying from yourself, and Bell takes full advantage of them. Since the plant and equipment are purchased largely from Western Electric, their "value" (and therefore the amount of Bell's profits and customer's rates) depends on prices paid to Western by Bell System companies. It is clear that it is in Bell's interest to see Western's prices inflated as high as possible. It is the shell and pea game. Back in the late 1930s a study by the Federal Communications Commission estimated that Western Electric could cut prices on sales to the Bell System by as much as 37 per-

cent and still earn 6 percent per year on investments. But nothing came of it—then or ever.

The matter of Western Electric, which has percolated for decades, arose again last year, when the FCC admitted in a moment of candor that it simply lacked the resources and expertise to penetrate the corporate and legal maze surrounding the subsidiary's admittedly profound effect on telephone rates.

* * *

THE SAME KIND OF presumption of invincible privilege so obviously present in AT&T's status as an outlaw corporation beyond the reach of normal regulation allowed it to suppress the June issue of Ramparts with utter impunity. It is also this mentality which led to the passage of the convenient law under which the campaign of intimidation was carried out. Whether it was used to achieve prior restraint, or—as may yet occur—to gain exemplary punishment for Ramparts' editors, a statute which defines the publication of a document such as our "Phone Phreak" article as illegal in itself constitutes a dangerous precedent.

Historically the press has been free to print whatever it chooses unless the material falls into one of a carefully limited number of categories like libel or obscenity. Except for these instances, the press is constitutionally protected. What AT&T is now trying to do is add a new item to that select list—and this is why it has successfully managed, over the past ten years, to convince fully a half of the state legislatures to make laws such as Section 502.7 of the California Penal Code. Nor does it have much difficulty in gaining these ends. We contacted the office of State Senator Alfred Song, sponsor of the 1971 amendment to the legislation which the telephone company Special Agents slipped under the doors of our wholesalers. His legislative aide, who admitted to drafting the provision, said quite candidly that he had done so as a favor to three telephone company lobbyists who had visited him to complain about renegade individualists who were regulating the phone company on their own.

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The AT&T law is particularly dangerous because it deals with admittedly truthful material—it is the accuracy, not libelous or untrue data, that bothers them. Moreover, it suppresses information not obtained illicitly from them, but information *about* them obtained independently through legal means by the "phone phreaks" in their study of the company. This puts AT&T in a more protected position even than the CIA, with its authority for "classification." Official classification restricts only confidential information obtained directly or indirectly from within the government agency. But if someone outside, independently and on the basis of public data, figures out something the government is holding secret, it can be published without question. Even if someone figured out how to break an official code, he could publish how to do it; it would be up to the government to invent a better one. But the phone company wants to restrict accurate information, not on the grounds it was illegally obtained, but because the facts are claimed to be somehow illegal in themselves.

The Penal Code section refers specifically to "plans or instructions," but of course plans or instructions simply amount to whatever information is required for someone to build a device. And it is worth noting that the information required depends on the general background the person already has. Thus, for anyone able to follow a simple schematic drawing, the material in Ramparts could have been reduced to a single diagram and a few lines of type. But more than that, the phrase "plans or instructions" gives a false impression in this case of letting the otherwise inaccessible result of creative genius out of the bag. What that document made obvi-

ous was how simple the device involved is, amounting to two straightforward alterations of the signals on two simple circuits. The fact is that AT&T has adopted a charging system so simple that, for anyone with a rudimentary knowledge of electric circuits, and a reasonably detailed explanation of how the system works, it is glaringly obvious what alterations would be required to circumvent it.

We should also bear in mind that it is in general perfectly legal to publish information which explains how illegal activities are carried out: how a sawed-off shotgun is made, how heroin is prepared and shot, how burglars open spring locks with a celluloid strip. There is even a recently published book showing how muggers operate.

The phone company would like us to look at the matter in this light: Here is information that is inconvenient or even harmful to one of America's great corporations and, look at it, what legitimate point could possibly be made by publishing this stuff? Why should it be constitutionally protected? That is the real danger, that factual information is put on the defensive by asking why it *should* be protected. The key to freedom of the press is that we start with the presumption that *everything* is protected; the question that must be answered in any given case is why should it *not* be. And unless an answer is provided that fits into the severely restricted, established categories which have been deemed absolutely compelling, the presumption of protection stands.

If we were so omniscient that we could look at any piece of information presented to us and foresee every contribution it would ever make to public dialogue, we could dispense with that

dialogue altogether. Lacking such foresight, we do not prejudge the issue—instead we protect the press knowing that the uses of truth are manifold. Even if it was ever plausible to think that the material at hand in Ramparts could make no significant contribution to public dialogue, the response of AT&T most certainly proved the opposite.

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IN SOME WAY OR ANOTHER, we should perhaps be pleased to see Ramparts' impact so visibly confirmed. But we are unable to feel any exhilaration in this fight. We are committed to too many other battles, on fronts we consider far more important than this one. Also, the injury we have suffered has been extremely grave. The loss of revenue from our June issue has serious consequences for our survival which, as those of you who have received our regular appeals for early renewal of your subscriptions in the past must realize, is a fragile matter.

In addition, there will be lengthy legal costs arising from this matter. For now that we have protected people who sell our magazine by recalling our June issue, we intend to fight against the process that made this necessary. We are suing W. A. Krueger, the printing company that surreptitiously gave over proprietary information to AT&T, and we are suing the Bell System itself for damages. We are further establishing a war chest to regulate AT&T journalistically by revealing the ways in which it cheats and defrauds the captive customers who are forced to rely on its systems. We will begin next month.

—THE EDITORS

RAMPARTS MAGAZINE, 2054 University Avenue, Berkeley, California 94704.

I am against the telephone monopoly's suppression of RAMPARTS' June issue. I am enclosing my contribution of \$..... for your AT&T War Chest.

Use the postage-free envelope included in this issue.