

Jailed & subpoenaed journalists — a historical timeline

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The 2005 jailing of *New York Times* reporter Judith Miller brought into focus the larger issue of whether the First Amendment protects journalists who refuse to reveal confidential sources. Since the U.S. Supreme Court handed down its 1972 decision in *Branzburg v. Hayes*, the number of journalists found in contempt of court has grown.

The following selection of cases provides some historical context to this topic, from the very first documented case of a reporters' refusal to reveal a confidential source in 1735 to Miller's incarceration in 2005 and the 2006 BALCO investigation.

1735

John Peter Zenger, the German-born immigrant publisher of the *New York Weekly Journal*, was acquitted of seditious libel for his newspaper's anonymous criticisms of New York's Colonial Gov. William Cosby. Some scholars say this trial was the first documented case in American history of a journalist's defiance of a government order to reveal sources.

SOURCES: Roger D. Gunn, "A Look at Journalism's Struggle for Professional Status," at <http://www.cc.utah.edu/~rdg1> at 13. (Accessed May 19, 2006); Robert W. Jones, *The Law of Journalism*, Washington D.C.: Washington Law Book Co., 1940, 20-24; Charles D. Tobin, "From John Peter Zenger to Paul Branzburg: The Early Development of Journalist's Privilege," in *Media Law Resource Center White Paper on Reporter's Privilege*, 29.

1787

During the Constitutional Convention, Benjamin Russell, the publisher of the Federalist newspaper *Massachusetts Centinel*, announced that his newspaper would refuse to run critical columns without an author's name, fearing that anonymous "emissaries" of "foreign enemies" would attempt to scuttle the Constitution by "fill[ing] the press with objections" against the proposal.

SOURCES: *Boston Independent Chronicle*, Oct. 4, 1787, 13 *Documentary History of the Ratification of the Constitution* 315 (J. Kaminski & G. Saladino eds. 1981); Tobin, 31.

1848

John Nugent, a U.S. Senate correspondent for the *New York Herald*, was confined inside the Capitol building by a Senate committee investigating the source of a leak that led to the publication of the recently approved, but still secret, Treaty of Guadalupe-Hidalgo, which ended the Mexican War. The Senate called on Nugent to disclose the source of the leak, but he refused, saying only that the information had not come from a senator or Senate officer. Nugent was released a month into his confinement after the Senate failed to coerce the journalist into revealing his source. The Senate publicly cited "the face-saving grounds of protecting his health" as the reason for Nugent's release.

SOURCE: Tobin, 33.

1875

In *People ex rel. Phelps v. Fancher*, the New York Supreme Court upheld the authority of a trial judge to detain indefinitely a journalist called before a grand jury in a criminal libel action. This case originated from an anonymous article published in the *New York Tribune*. The newspaper's editor refused to disclose the identity of the article's author during grand jury testimony on the grounds that "the rules of a public journal forbade it." The court described the article as libelous and ruled against the newspaper, stating: "He who writes a libelous article for publication in a newspaper, is certainly guilty of a crime," and "[t]here is no exchange or substitution of punishment in the administration of justice."

SOURCE: Tobin, 37-38.

1886

Baltimore *Sun* reporter John T. Morris spent time in jail after refusing to reveal to a grand jury sources for stories about police and elected officials who received bribes from illegal gambling operations. A decade after this event, in 1896, Maryland became the first state to pass a shield law protecting journalists from having to reveal their sources' identities.

SOURCE: Conflicting information has been written about the amount of time Morris spent in jail. Some sources state say he was jailed for two days, others that he spent four or five days in jail. For a more detailed account, see: Nathan Siegel, "Our History of Media Protection," *Washington Post*, Oct. 3, 2005; "A Newspaper Man In Trouble: Asked for His Source of Information About Grand Jury Secrets," *Chicago Daily Tribune*, Dec. 13, 1886; "Knew the Grand Jury's Secrets: A Reporter of a Baltimore Paper Imprisoned for Contempt of Court," *Chicago Daily Tribune*, Dec. 23, 1886; Gerald W. Johnson, Frank R. Kent, H. L. Mencken, and Hamilton Owens, *The Sunpapers of Baltimore, 1837-1937*, New York: Alfred A. Knopf, 215-216 (1937); Tobin, 34.

1887

A journalist for *The Defiance* newspaper in Atlanta wrote an anonymous article about a real estate agent who refused to rent property to a black tenant. In the article, the journalist described the real estate agent, George W. Adair, as an "old skunk" who should be left to "stink himself to death." The newspaper's owner, A.W. Burnett, was indicted for libel and sentenced to 10 days in jail and fined \$50 after he initially refused to reveal the journalist's name. Burnett eventually relented and testified, but not before the Georgia Supreme Court ruled that as the owner of the newspaper Burnett could "be punished for contempt of the court, as any other witnesses refusing to testify" and had "surely merited the punishment he had received."

SOURCES: *Pledger v. State*, 77 Ga. 242, 3 S.E. 320 (1887); Tobin, 38.

1896

Maryland's General Assembly enacted the nation's first shield law, protecting journalists under certain circumstances from having to reveal their sources.

SOURCE: Tobin, 34.

1897

The California Senate subpoenaed *San Francisco Examiner* news editor Andrew M. Lawrence and reporter L.L. Levings following the publication of charges that the state Senate's members had exchanged votes for bribes. The journalists, objecting partly on the grounds that "the information sought to be elicited was irrelevant and hearsay," refused to disclose the sources to Senate investigators. A U.S. district court in California, however, viewed the questioning of the journalists as "a natural and logical method for the Senate to follow in its endeavor to arrive at the truth," and ruled that the journalists were not justified in refusing to give the names on the grounds that the communications were privileged.

SOURCE: In *Ex Parte A.M. Lawrence and L. L. Levings*, 116 Cal. 298, 48 P. 124 (1897); Tobin, 34.

1911

Augusta (Ga.) Herald reporter T.J. Hamilton served five days in jail and was fined \$50 for refusing to disclose to a police review board the name of an officer who had leaked information about a murder. Hamilton, questioning the authority of the board to bring contempt charges, appealed to a state court. The court held that although the board had the power to punish a witness for not appearing, it had no authority to punish a refusal to testify. The Georgia Supreme Court, however, reversed the lower court and found in favor of the police review board.

SOURCES: "Jail Term Price of 'Tip' — Augusta Reporter Protects Policeman Who Gave Him Murder Story," *Washington Post*, March 15, 1911; Tobin, 35.

1913

New Jersey reporter Julius Grunow was found guilty of contempt after he refused to reveal his source to a grand jury investigating charges that a surveyor double-billed a village for grading work. Grunow's story, which was published in the Dec. 12, 1911, edition of the *Jersey Journal*, reported that during an open meeting a village trustee leveled the double-billing charge. Asked to reveal his source, Grunow refused, citing reporter's privilege. The New Jersey Supreme Court, however, ruled that Grunow's article was libelous and that a decision to excuse the journalist from testifying "would be far[-]reaching in its effect and detrimental to the due administration of law," as it would "shield the real transgressor and permit him to go unwhipped of justice."

SOURCES: *In re Grunow*, 84 N.J.L. 235, 85 A. 1011 (1913); Tobin, 37.

1917

Journalist Robert E. Holliway of the *St. Louis Republic* was jailed for contempt of court after refusing to reveal the sources for his story, "7 True Bills are Voted in Coal Inquiry," in which he reported that a grand jury returned seven previously unannounced indictments in an investigation of the coal industry.

SOURCES: *Ex Parte Holliway*, 272 Mo. 108, 199 S.W. 412, 414 (1917); Tobin, 35.

1936

Martin Mooney, a reporter for the *New York American*, was called as a witness before a grand jury probing alleged violations of gambling and lottery laws after he wrote an article saying the grand jury's investigations into these charges were ineffective. After refusing to answer

questions and furnish the names and addresses of his sources on the grounds that they were confidential and privileged, Mooney was cited for contempt and jailed. The New York Court of Appeals upheld Mooney's contempt citation and further ruled that the decision to enact a shield law for reporters must be left up to the Legislature, not the courts.

SOURCES: *People ex rel. Mooney v. The Sheriff of New York County*, 269 N.Y. 291, 199 N.E. 415 (1936); Tobin 39-40.

1950

Reubin Clein, an editor for *Miami Life* magazine, refused to disclose the source of a leak about a grand jury probe of a city councilman accused of bribery. A trial court held the editor in contempt and sentenced him to 30 days in jail. Citing grand jury secrecy laws and the broad investigatory powers vested in grand juries under the state constitution, the Florida Supreme Court upheld the conviction and sentence, finding Clein had no privilege against revealing his source.

SOURCES: *Clein v. State*, 52 So. 2d 117 (Fla. 1950); Tobin, 36.

1958

In *Garland v. Torre*, actress Judy Garland became the first litigant to face a formal First Amendment challenge to her demand for a journalist's sources. Garland sued CBS for defamation, alleging that she was defamed by quotes from an unnamed network executive arising out of a *New York Herald Tribune* column written by Marie Torre. Torre testified at her deposition, but refused to disclose the identity of her source. The trial judge held the journalist in criminal contempt, sentenced her to 10 days in jail, but allowed her to remain free pending appeal. On appeal, Torre defended herself on First Amendment grounds. Ultimately, the U.S. Supreme Court refused to grant Torre a hearing and she served her 10-day jail sentence after the 2nd U.S. Circuit Court of Appeals held that even if the First Amendment were to provide some protection, the reporter must testify when the information sought goes to the heart of the plaintiff's claim.

SOURCES: Tobin, 41-44; "Writer Loses Contempt Case Appeal," *The Washington Post and Times Herald*, Dec. 9, 1958.

1968

Annette Buchanan, a 20-year-old managing editor of *The Daily Emerald* at the University of Oregon, was held in contempt and fined by the Oregon Supreme Court after she printed a story about the use of marijuana by fellow students on her campus. Her story prompted the local district attorney to ask her to tell a grand jury the identities of the students she saw smoking marijuana. She refused and asserted the First Amendment as the source of her privilege. The state high court held that her argument — that merely being a member of the press endowed her with a privilege — was not valid.

SOURCE: *State of Oregon v. Buchanan*, 250 Ore. 244; 436 P.2d 729 (1968).

1970

In August 1970, editor and publisher Arthur Kunkin and reporter Robert G. Applebaum of the

Los Angeles Free Press were convicted on the felony charge of receiving stolen property, placed on probation and fined \$1,000 and \$500 respectively after a California jury found them guilty of illegally obtaining a confidential roster of state narcotics agents. The roster containing the home addresses and telephone numbers of the agents was stolen by an attorney general's mail clerk and furnished to the paper. It was later published by the *Free Press* under the headline, "Know Your Local Nark." On appeal the appellate court affirmed the conviction and held that the roster was stolen property and its receipt by Kunkin and Applebaum was not protected by the First Amendment.

SOURCES: "Man Who Sold State Files to Paper Fined," *Los Angeles Times*, Aug. 14, 1970; Gene Blake, "Press Freedom Held No Defense for Stolen Files," *Los Angeles Times*, Mar. 29, 1972.

- In October 1970, a Snohomish County (Wash.) Superior Court judge issued contempt citations against two *Seattle Times* reporters who were covering a murder trial in his courtroom. Judge Thomas G. McCrea cited Sam Sperry and Dee Norton for reporting matters heard in the absence of the jury. Sperry and Norton challenged the citations, arguing that McCrea had violated their rights under the First Amendment and disregarded their basic right to freely report open court proceedings. In April 1971, the Washington Supreme Court voided the citations, ruling that courts cannot, under most circumstances, "suppress, edit, or censor from the public" events in open court proceedings.

SOURCES: "Around the Nation: Contempt Finding," *The Washington Post, Times Herald*, Nov. 3, 1970; "Around the Nation: Reporters Upheld," *The Washington Post, Times Herald*, Apr. 9, 1971; Jerry Crimmins, "News Briefs: Public's Right-to-Know Upheld," *Chicago Tribune*, Apr. 9, 1971.

- In September 1970, Mark Knops, editor of the underground *Madison (Wis.) Kaleidoscope*, was sentenced to six months in jail for refusing to answer questions from a grand jury investigating a fire at Whitewater State University and a bombing at the University of Wisconsin that killed a young researcher. After the bombing, Knops published an article titled "The Bombers Tell Why and What Next — Exclusive to Kaleidoscope." In the article a group calling itself the "New Year's Gang" claimed responsibility for the bombing and warned of more bombings if certain demands were not met. Knops refused to reveal his sources to the grand jury, asserting his Fifth Amendment right against self-incrimination. He then was granted immunity from prosecution but still refused to answer questions on grounds that he could keep his sources confidential as a journalist. The Wisconsin Supreme Court disagreed and upheld Knops' sentence in February 1971. Knops served four and a half months of his six month sentence before he was released by a federal district judge on Christmas Eve 1970.

SOURCES: Fred P. Graham, "F.B.I. Hunts 4 Young Men Charged in Madison Blast," *The New York Times*, Sep. 3, 1970; "Jailing of an Editor Upheld in Wisconsin," *The New York Times*, Feb. 3, 1971; "Court Upholds Jailing of an Underground Editor," *The Washington Post, Times Herald*, Feb. 3, 1971; Isabelle Hall, "Mitchell Has Followed News Subpoena Guideline," *The Washington Post, Times Herald*, Aug. 5, 1971; "Young People Have Given Up Protests, AP Editors Are Told," *Chicago Tribune*, Oct. 23, 1971; Fredrick E. Sherman, "Letters to the Editor: Protecting News Sources," *The New York Times*, Nov. 17, 1972.

1971

On Nov. 8, 1971, reporters Larry Dickinson of *The Baton Rouge (La.) Morning Advocate* and Gibbs Adams of *The State-Times* were convicted of contempt of court and fined \$300 each for

disobeying a judge's order not to print stories about a trial. The case against the reporters came out of the trial of Frank Stewart, a Louisiana civil rights activist who was charged with conspiring to murder local officials in Baton Rouge. Before Stewart's trial, Judge E. Gordon West issued an order that "no report of testimony shall be made in any newspaper or radio or TV or any other media" even though the testimony was given in open court. Shortly thereafter, Dickinson and Adams filed stories on the trial with their papers that were later published in defiance of the judge's order. The contempt case was appealed to the 5th U.S. Circuit Court of Appeals, which ruled that Judge West's ban on news stories was unconstitutional. The case was sent back to the judge for a new disposition. He withdrew the ban but refused to rescind the contempt citation. Again the case was appealed to the 5th Circuit. A three-judge panel ruled that though the ban was unconstitutional, the contempt findings must stand. The panel said, in effect, that disobedience of any court order must be penalized no matter how unconstitutional the order might be. The U.S. Supreme Court agreed and, by an 8-1 vote on Oct. 23, 1973, denied writ of certiorari in the case.

SOURCES: *Dickinson v. United States*, 414 U.S. 979; "Problem for a free press," *Chicago Tribune*, Nov. 12, 1973; "Two newsmen lose court contempt case," *Chicago Tribune*, Apr. 11, 1973; "2 Reporters Lose Appeal On Citation," *The Washington Post, Times-Herald*, Apr. 10, 1973; "Contempt case against scribes to court today," *The Chicago Daily Defender*, Feb. 15, 1973; "2 Reporters Found Wrongly Convicted," *The New York Times*, Aug. 24, 1972; "Judge's News Ban Is Overruled," *The Washington Post, Times-Herald*, Aug. 23, 1972.

1972

In the landmark decision, *Branzburg v. Hayes*, the U.S. Supreme Court ruled that "the First Amendment does not relieve a newspaper reporter of the obligation that all citizens have to respond to a grand jury subpoena and answer questions relevant to a criminal investigation, and therefore the Amendment does not afford him a constitutional testimonial privilege for an agreement he makes to conceal facts relevant to a grand jury's investigation of a crime or to conceal the criminal conduct of his source or evidence thereof."

SOURCE: Case summary for *Branzburg v. Hayes*, First Amendment Center Online, accessed Jan. 27, 2006.

- *Newark* (N.J.) *Evening News* reporter Peter Bridge was charged with contempt and jailed for 21 days after refusing to answer questions from an Essex County grand jury related to a story he wrote about a bribery case involving the Newark Housing Authority. Though Bridge answered more than 50 questions posed by the grand jury, he refused to answer questions that he said went beyond the scope of his story, including inquiries about his sources. Bridge was the first reporter to be jailed after *Branzburg v. Hayes*.

SOURCES: Richard J. H. Johnston, "A Reporter Loses in Contempt Case," *New York Times*, Aug. 27, 1972; "Judge Frees N.J. Writer Held 21 Days," Associated Press, Oct. 24, 1972.

- *Los Angeles Herald-Examiner* journalist William Farr was jailed for 46 days for refusing to reveal sources for a story he wrote about the Charles Manson murder trial. Despite a gag order imposed by the judge on attorneys, witnesses and court personnel, Farr obtained and published a prospective witness's account of plans by the Manson family to murder celebrities such as Frank Sinatra and Elizabeth Taylor. When Farr refused to tell Los Angeles Superior Court Judge

Charles H. Older where he obtained the information for his article, Older cited Farr for contempt of court and ordered him jailed until he revealed his sources. He never did. Farr spent five days in jail until U.S. Supreme Court Justice William O. Douglas ordered his release pending consideration of his case by the 9th U.S. Circuit Court of Appeals. Although Older's contempt citation was eventually allowed to stand, a state appeals court ruled in 1974 that state law limited the punitive sentence for civil contempt. Older declined to pursue the matter further. Farr's ordeal eventually led to a strengthening of California's shield law.

SOURCES: William T. Farr, "Bill Farr on His Imprisonment: 'I Followed the Code of Any Good Reporter,'" *Los Angeles Times*, Jan. 30, 1973; Jack Jones, "Reporter Farr Dies; Went to Jail to Protect Sources," *Los Angeles Times*, March 6, 1987.

- One day after the U.S. Supreme Court's decision in *Branzburg v. Hayes*, the 9th U.S. Circuit Court of Appeals reversed the contempt convictions of two employees of a newspaper published by the Black Panther Party, finding certain questions asked by a grand jury were improper. Sherrie Bursey and Brenda Joyce Presley had been found in contempt of court on Sept. 17, 1970, by U.S. District Judge Alfonso J. Zirpoli after they refused to answer questions from a grand jury that was investigating an alleged assassination threat on President Nixon by Black Panther Chief of Staff David Hilliard on Nov. 15, 1969. Bursey and Presley, who cited their First and Fifth Amendment rights in refusing to answer the grand jury's questions, remained free pending their appeal. On June 30, 1972, in an opinion written by Justice Shirley M. Hufstedler, the appeals court warned, "When First Amendment interests are at stake, the Government must use a scalpel, not an ax" in determining when to prosecute certain cases. In the case of Bursey and Presley, the court found that while there was adequate foundation for the government to ask questions about Black Panther membership and contact between the Black Panthers and foreign governments, questions about the identity of people working at the newspaper were not proper.

SOURCES: "Appeals Court Clouds Press Source Ruling," *The Washington Post, Times Herald*, July 4, 1972; *Bursey v. United States*, 466 F.2d 1059 (1972).

- In March 1972, Arkansas Circuit Judge John Goodson issued a contempt citation against Harry Wood, executive editor of the *Texarkana Gazette and News*, after Wood reported the jury verdict in a rape trial in defiance of a court order. The judge in the case feared that the subsequent trials of three other defendants in the same case would be jeopardized by the media publicity and ordered Wood not to publish the story. By October 1972, however, the Arkansas Supreme Court had unanimously overturned Wood's contempt citation and fine.

SOURCES: "Editor Jailed for News Story," *Chicago Tribune*, Mar. 8, 1972; "Editor Cleared," *The Washington Post, Times Herald*, Oct. 10, 1972; David K. Shieler, "30 Cases Cited in Which Police or Courts Allegedly Threatened Free Press," *The New York Times*, Feb. 18, 1973.

- On March 3, 1972, Edwin A. Goodman, general manager of radio station WBAI in New York City, was sentenced to 30 days in jail for contempt of court for refusing to turn over to the Manhattan district attorney's office the tapes of the station's broadcast of an October 1970 riot at the Manhattan House of Detention for Men. Goodman's attorneys argued that the tapes were "privileged" because they held the same significance for broadcasters as original material and information gathered by a newspaper. However, in issuing his order against Goodman, New York Supreme Court Justice Gerald P. Culkin stated that the radio station forfeited its rights to

consider the communications privileged under New York state law once it broadcast them to the general public.

SOURCES: Lacey Fosburgh, "WBAI Head Jailed In Contempt Case," *The New York Times*, Mar. 4, 1972; Peter Kihss, "WBAI Loses Pleas To Free Manager," *The New York Times*, Mar. 5, 1972; Paul L. Montgomery, "WBAI Chief Freed On a Federal Writ," *The New York Times*, Mar. 6, 1972; "Reporters' Group Supporting WBAI," *The New York Times*, Apr. 2, 1972; Lesley Oelsner, "Hogan Answers Appeal By WBAI," *The New York Times*, Apr. 30, 1972; Lesley Oelsner, "District Attorney Asks Consent To Drop WBAI Case as Moot," *The New York Times*, May 10, 1972; "Goodman AND WBAI Freed Of Contempt," *The New York Times*, June 14, 1972.

- In September 1972, a Tennessee state legislative committee investigating reports of child abuse at a state-run hospital for the mentally ill ordered Joseph Weiler, a reporter for *The Commercial Appeal* in Memphis, to appear before the committee in November. The committee issued a contempt citation against Weiler after he refused to reveal his sources on news stories about abuse at the Arlington Hospital and School for the Mentally Retarded. By December, however, the charges against Weiler were dropped when the attorney general's office told the committee that the General Assembly's term had expired with the November elections. The contempt citation against Weiler was not renewed.

SOURCES: "Newsman Is Cited In Hospital Inquiry," *The New York Times*, Sept. 13, 1972; "Contempt Charges Dropped Against Memphis Newsman," *The New York Times*, Dec. 9, 1972.

- In December 1972, *Los Angeles Times* Washington bureau chief John F. Lawrence and reporters Ronald J. Ostrow and Jack Nelson were ordered to turn over tapes and other materials from more than five hours of interviews with Alfred C. Baldwin III, a key witness in the Watergate break-in case. The subpoenas, authorized by Chief U.S. District Judge John J. Sirica, were issued in response to a request by attorneys representing E. Howard Hunt Jr., one of seven men indicted in connection with the break-in. Initially, Hunt's defense team attempted to subpoena Baldwin's tapes of the interviews, but Baldwin filed an affidavit stating that he had destroyed his tapes on advice of his lawyers. The defense then decided to move against the newspaper in an effort to obtain the tapes and impeach Baldwin's testimony as a prosecution witness. Lawrence was jailed briefly for refusing to turn over the tapes but was released after Baldwin agreed to relieve the newspaper of its obligation to secrecy and personally approved the surrender of the recordings.

SOURCES: Jim Squires, "Press-Court Clash Shows the Need for 'Shield' Laws," *Chicago Tribune*, Dec. 24, 1972; Walter Rugaber, "Los Angeles Times is Ordered To Give Court Tape of Interview," *The New York Times*, Dec. 15, 1972; Lawrence Meyer, "Paper Told to Yield Watergate Tape," *The Washington Post*, Dec. 15, 1972; David K. Shipler, "30 Cases Cited in Which Police or Courts Allegedly Threatened Free Press," *The New York Times*, Feb. 18, 1973.

1973

In May 1973, the U.S. Supreme Court let stand a lower court ruling that allowed former *Saturday Evening Post* writer Alfred Balk to protect the identity of a confidential source he used to disclose racial discrimination in the Chicago real-estate market. The case originated from a July 1962 article Balk wrote for the *Post* titled, "Confessions of a Blockbuster," which reported the first-person account of a real-estate broker using the alias "Norris Vitcheck" to describe the practice of "blockbusting" in which real-estate speculators sold homes to African-Americans at

excessive prices. A group of African-American homeowners pursuing a civil rights suit against Chicago's real-estate speculators sought the true identity of Vitcheck, but in a deposition Balk refused to name his source. The 2nd U.S. Circuit Court of Appeals sided with Balk in the case and declared "a paramount public interest in the maintenance of a vigorous, aggressive and independent press," citing a lower court's decision to rely on the First Amendment and state laws in New York and Illinois that protect a journalist's right to retain confidential sources.

SOURCES: Arnold H. Lubasch, "Court in Civil Case Backs Right of Reporter to Withhold Source," *The New York Times*, Dec. 8, 1972; Linda Mathews, "Shielding News Source in Civil Trial Permitted," *Los Angeles Times*, May 8, 1973.

- Leslie H. Whitten, an investigative reporter for Jack Anderson's "Washington-Merry-Go-Round" column in *The Washington Post*, along with Native American activist Hank Adams were arrested by FBI agents on Jan. 31, 1973, as they carried three boxes of stolen documents to Whitten's car. The documents were among many artifacts, documents, paintings and equipment taken during a six-day siege of the Bureau of Indian Affairs' Washington, D.C., headquarters in November 1972 by 800 activists protesting government treatment of Native Americans. Another activist named Anita Collins was arrested on the same day, charged with picking up the stolen documents at a bus station the night before. Both Whitten and Adams argued that they were in the process of returning the documents to the government when the FBI made the arrests. Whitten, Adams and Collins were jailed for five hours at the federal courthouse, but were later released on their own recognizance after a brief court appearance. All three were asked to appear before a grand jury investigating the theft, but were not subpoenaed. In February 1973, the grand jury refused to indict Whitten and the activists and dropped all charges against them.

SOURCES: "Reporter Freed in Indian-Data Case," *The New York Times*, Feb. 16, 1973; Lawrence Meyer, "U.S. Drops Charges in BIA Thefts," *The Washington Post, Times Herald*, Feb. 16, 1973; Donald Baker, "2 Asked To Talk By Jury: Indian Activist, Writer Called In BIA Probe," *The Washington Post, Times Herald*, Feb. 12, 1973; John P. MacKenzie and Donald P. Baker, "FBI Arrests Reporter in Stolen Data," *The Washington Post, Times Herald*, Feb. 1, 1973.

- Judge Howard Blewett of the San Andreas Judicial District Court in California issued a contempt-of-court citation in January 1973 to Oscar Mellin, publisher of the weekly *Calaveras County Enterprise* and a San Francisco lawyer, after Mellin wrote an editorial critical of Blewett. The editorial in question focused on a mixed-breed dog named Maggie who started digging in a garden that provided vegetables for a restaurant owned by Blewett. Blewett cited Maggie's owner for violating a county ordinance barring dogs from running loose in public. Mellin's editorial charged that Blewett was trying to act as both the complaining party and the judge in the case and also called into question Blewett's qualifications to be a judge. Blewett was a non-attorney appointed to the bench who had since been re-elected by popular vote. By March 1973, Superior Court Judge Ralph McGee issued a writ of prohibition halting Blewett from pursuing the contempt citation against Mellin. McGee said the editorial, while not constituting contempt, was "silly, ridiculous, ill-founded, poorly-conceived and in bad taste."

SOURCES: "A Wagging Tale," *Los Angeles Times*, Feb. 1, 1973; Jerry Gillam, "Publisher Not in Contempt, Judge Rules," *Los Angeles Times*, Mar. 3, 1973; "Calif. Publisher Not in Contempt," *The Washington Post, Times Herald*, Mar. 3, 1973.

- In April 1973, the Tennessee Court of Appeals dismissed a contempt-of-court case against Harry Thornton, host of a Chattanooga television talk show who refused to name a news source. The source, a telephone caller who identified himself as a grand jury member, described an investigation by the grand jury investigating a local judge as a “whitewash.” The caller’s remarks were broadcast on Thornton’s morning show on WDEF-TV in Nov. 1972. Thornton’s attorneys asked the court to dismiss the case against him on the grounds that a new grand jury had taken the case.

SOURCE: “Appeals Court Dismisses Suit on TV News Source,” *The New York Times*, Apr. 28, 1973.

- In April 1973, the Supreme Court refused to review an October 1972 ruling by the Maryland Court of Appeals that David Lightman, a reporter for the *Baltimore Evening Sun*, must identify for a grand jury the individuals he described in an article as marijuana dealers. In August 1971, Lightman said that he had been assigned to investigate reports that teenagers were openly buying drugs in Ocean City, Md. Posing as a shopper, he went into a pipe shop, where he said a sales clerk offered him some marijuana to try in a pipe while a police officer stood by and took no action. Lightman reported the incident in an article about drugs in Ocean City, but without naming the shop or the clerk, who he said later became a source for other articles. State courts ruled that neither the Maryland press shield law nor the First Amendment protected Lightman because he was not protecting confidential news sources. The courts held that Lightman could not claim a confidential relationship since he did not identify himself as a newspaper reporter. Lightman was found guilty of contempt and sentenced to 30 days in jail. However, in June 1973 during a closed session before a Worcester County grand jury, Lightman reached a compromise with county authorities to avoid jail time by revealing the name of the pipe shop where he reported the drug activity, while not identifying the clerk who offered him marijuana.

SOURCES: “Baltimore Newsman Goes Before Jurors,” *The New York Times*, June 13, 1973; “The Nation,” *Los Angeles Times*, June 14, 1973; John P. MacKenzie, “Court Refuses Review of Md. Newsman’s Case,” *The Washington Post*, Apr. 24, 1973; “High Court Asked To Aid Newsman,” *The New York Times*, Feb 4, 1973; Maurice Van Gerpen, *Privileged Communication and the Press: The Citizen’s Right To Know Versus The Law’s Right To Confidential News Source Evidence*, Westport, CT: Greenwood Press, 1979, p. 35.

1978

New York Times reporter Myron Farber wrote a series of articles in 1975 that led to the criminal indictment of New Jersey surgeon Dr. Mario Jascavevich — referred to as “Dr. X” in Farber’s early articles — on charges that he murdered five of his patients with lethal doses of curare, a powerful muscle-relaxing drug. Attorneys for Jascavevich subpoenaed all of Farber’s notes and files on the case to see if they could be relevant to Jascavevich’s defense. Farber refused to turn over his notes and was sentenced to six months in jail and fined \$1,000. *The New York Times* was also ordered to pay \$100,000 in civil contempt fines plus \$5,000 per day while Farber was in jail. Farber served 40 days of his six-month sentence before New Jersey Gov. Brendan Byrne pardoned him and ordered the return of \$286,000 in criminal fines against the *Times*.

SOURCES: Robert Hanley, “Warrant Issued for Times Reporter in Jascavevich Case,” *New York Times*, July 15, 1978; “Statements by Farber and The New York Times,” *New York Times*, July 25, 1978; Lesley Oelsner, “Justice White Bars A Continued Stay For Times Reporter,” *New York Times*, Aug. 2, 1978; Bill Richards, “N.Y. Times Yields Papers in ‘Dr. X’ Case,” *Washington Post*, Aug. 19, 1978; Michael Goldfarb and Harriet Blake, “Personalities,” *Washington Post*, Jan. 20, 1982.

1979

As news director at radio station KLUE in Longview, Texas, Wayne Harrison became the first broadcast journalist in Texas to be jailed for refusing to reveal a news source. In May 1979, Harrison was subpoenaed to testify in a Gregg County courtroom at a jury-sequestration hearing for murder defendant Charles Sweeten, who was accused in the shotgun slaying of two students in the Longview area. Harrison was asked about a story he had broadcast saying Sweeten's wife had intended to smuggle a gun to her husband in the Gregg County jail, but gave the gun to deputies and confessed. Harrison, who discussed the case in defiance of a gag order imposed by District Judge David Moore, refused to tell the defense attorney who his sources were when ordered to do so. Moore then ordered Harrison jailed until he revealed his sources. Harrison remained in jail for three hours but was released after Moore decided the court no longer needed to know the sources' names. KLUE's president and general manager, H.A. Bridge Jr., said the station considered the incident "a shocking attack on the First Amendment."

SOURCE: Domestic News (no title), The Associated Press, May 8, 1979.

1981

Ellen Marks, a reporter for *The Idaho Statesman*, was cited for contempt of court for refusing to reveal to a judge the location where she interviewed a woman who disappeared with her 8-year-old daughter and defied court orders to return the girl to her father. In return for an interview, Marks had promised the mother that she would not reveal their location. When Magistrate Judge Karen Vehlow ordered Marks to disclose the address where the interview took place, she refused. At first, Vehlow ordered Marks jailed, but then released her the same day and began a series of \$500 fines. Vehlow ordered an end to the fines after a private investigator found the child in San Jose, Calif., and the father had succeeded in taking her into his custody. But by then the newspaper had already paid \$37,500 in fines on Marks' behalf. Eventually, the Idaho Supreme Court upheld Marks' jailing and fine.

SOURCES: "Reporter's Fines Halted in Confidentiality Case," Associated Press, Feb. 1, 1981; "Courts as Intimidators," *Los Angeles Times*, Feb. 5, 1981; Jonathan Friendly, "Shield Laws' Protect Press Sources — In Most Cases," *New York Times*, Jan. 24, 1982; Jonathan Friendly, "Prosecutors Increase Efforts To Make Press Name Sources," *New York Times*, Nov. 26, 1983.

1982

Barry Smith, a reporter for the *Durango (Colo.) Herald*, and Dave Tragethon, a reporter for KIUP-KRSJ radio, agreed in a plea bargain to serve two days in jail and pay a fine of \$500 each for refusing to reveal their sources in reporting on a murder case. The stories published by the *Herald* and aired on KIUP-KRSJ included information that LaPlata County District Judge Al Haas had intended to protect from public release through a gag order.

SOURCE: "Two Colorado Reporters Jailed For Contempt," Associated Press, June 30, 1982.

1984

Richard Hargraves, an editorial writer for *The Belleville (Ill.) News-Democrat*, was found in contempt and sentenced to jail over a weekend in a case stemming from a libel suit in which Hargraves was the defendant. In 1981, Hargraves wrote an editorial about Jerry F. Costello, the chairman of the Board of Supervisors for St. Clair County, Ill., in which Hargraves said Costello

lied about a campaign promise to oppose new taxes. Costello sued on grounds of editorial misrepresentation, but the trial court dismissed the case saying the editorial was protected expression of opinion. A state appeals court, however, reinstated the case, holding that a jury should decide the issues of fact. During a deposition, Hargraves refused to name anyone in county government to whom he had spoken before writing the editorial. County Judge Roger Scrivner ruled Hargraves in contempt of court and sentenced him to jail until he revealed his sources. The U.S. Supreme Court then issued a stay of Scrivner's order to allow itself time to hear the case, but later lifted the stay without comment. Hargraves remained jailed for three days, until his sources came forward and acknowledged that had talked to him.

SOURCES: Jonathan Friendly, "Writer in Libel Suit Faces jail on Article's Sources," *New York Times*, July 2, 1984; Thomas B. Rosenstiel, "Journalist Enters Jail Rather Than Name Sources," *Los Angeles Times*, July 4, 1984; "Journalist Jailed for Hiding Source," *New York Times*, July 4, 1984; Elizabeth Holland, "Ex-reporter went to jail here in 1984 rather than name sources," *St. Louis Post-Dispatch*, July 7, 2005.

1985

A judge in the murder trial of Cathy Evelyn Smith found freelance writer Chris Van Ness and Anthony Brenna, a reporter for *The National Enquirer*, in contempt of court after they refused to testify about an interview they conducted with Smith, a former rock singer who was accused of killing comedian John Belushi by giving him an overdose of heroin and cocaine. Los Angeles Municipal Court Judge Brian Crahan sentenced Van Ness to 30 days in jail and Brenna to 20 days in jail. Each was fined \$1,000. Both men were released after a state appeals court vacated the contempt order. Van Ness would eventually face contempt charges again during the same trial for refusing to answer questions about his interview with Smith and for refusing to surrender a tape of their conversation. Municipal Judge James Nelson issued a contempt ruling and ordered Van Ness to serve a total of 10 days in jail. After three hours in custody, Van Ness was released after agreeing to testify and to produce the tape.

SOURCES: "Belushi Case Judge Holds 2 Reporters in Contempt," *New York Times*, June 12, 1985; Belushi reporters in contempt of court," *Chicago Tribune*, June 12, 1985; Michael C. Tipping, "Belushi Case Writer Jailed; Won't Give Up Tape," *Los Angeles Times*, Oct. 10, 1985; "Belushi case writer to release tape," *Chicago Tribune*, Oct. 11, 1985.

1986

Detroit television reporter Bradley Stone was held in contempt by a grand jury investigating the slaying of a state police officer, allegedly at the hands of two gang members who may have been present during Stone's filming of a report on the activities of Detroit youth gangs in July 1985, one month before the slaying. Stone was held in contempt and jailed for one day before he was released pending his appeal. Leaning heavily on *Branzburg v. Hayes*, the 6th U.S. Circuit Court of Appeals concluded that the contempt order in this case did not violate the First Amendment or the equal-protection clause.

SOURCES: *Storer Communs. Inc. v. Giovan (In re Grand Jury Proceedings)*, 810 F.2d 580 (6th Cir. 1987). See also, Karl H. Schmid, "Journalist's Privilege in Criminal Proceedings: An Analysis of United States Courts of Appeals' Decisions From 1973 to 1999," *American Criminal Law Review*, 39:4 (Fall 2002), 1468.

1987

Los Angeles Times reporter Roxana Kopetman and photographer Roberto Santiago Bertero were cited for contempt, sentenced to jail and ordered to pay fines after they refused to answer questions in court. Kopetman and Bertero were called as witnesses to the arrest of a man accused of misdemeanor charges of carrying brass knuckles. Kopetman refused to answer questions outside the scope of the account she wrote about the arrest. Kopetman spent six hours in a courthouse lockup and was freed on \$1,000 bail. Bertero's sentence was stayed pending an appeal. A Los Angeles Superior Court judge ruled that the California Constitution protected journalists from being cited for contempt and overturned the charges against Kopetman and Bertero.

SOURCE: Chris Woodyard, "Contempt citations lifted on reporter, photographer," *Los Angeles Times*, Dec. 17, 1987.

1990

San Antonio television reporter Brian Karem was jailed and ordered to serve six months behind bars for refusing to reveal the names of three confidential sources who helped arrange a telephone interview between Karem and a suspect held in a local jail on charges of killing a police officer. Karem was released 13 days into his sentence when all three sources came forward to identify themselves.

SOURCE: Doug Lee and Mitchell Hartman, "Protecting sources gets harder as media, courts change rules," *Quill*, 78:9 (Nov. 1990), 19.

- Libby Averyt, a courthouse reporter for the *Corpus Christi (Texas) Caller-Times*, was charged with contempt of court for refusing to discuss unpublished portions of her jailhouse interview with a defendant who admitted he had killed a local jewelry store clerk. Averyt insisted that the First Amendment and provisions in the Texas Constitution allowed a reporter to keep unpublished information confidential. Averyt was released after spending two days in jail when prosecutors agreed to drop the contempt charges against her.

SOURCES: "Reporter spends weekend in jail," United Press International, Dec. 8, 1990; Howard Kurtz, "Texas Judge Jails Reporter for Silence in Murder Case," *Washington Post*, Dec. 8, 1990; "Jailed Reporter Released, Still Refusing to Answer Questions," Associated Press, Dec. 10, 1990.

1991

Four South Carolina reporters — Sid Gaulden and Schuyler Kropf of *The Post and Courier* of Charleston, Cindi Scoppe of *The State*, and Andrew Shain of *The Sun News* of Myrtle Beach — were jailed for several hours after refusing to testify in the federal corruption trial of state Sen. J.M. "Bud" Long. Long was accused of taking a \$2,000 bribe in return for his support of a pari-mutuel betting bill that never passed. The four reporters wrote stories about Long and were subpoenaed for their testimony in the case. They lost their appeal of their sentence, but by then the bribery trial was over; none of the reporters was compelled to testify.

SOURCE: Colette Baxley, "Reporters Jailed, Released In Statehouse Trial," Associated Press, Nov. 20, 1991.

- Felix Sanchez of *The Houston Post* and James Campbell of the *Houston Chronicle* were found in contempt of court for refusing to point out in a courtroom the people they had interviewed for stories about a double murder. Both Sanchez and Campbell argued that they had agreed to quote witnesses anonymously for their stories and had not recorded their names. They also said they would be unable to recognize those interviewed months before and claimed the action violated the First Amendment right to freedom of speech. A state district judge ordered both men jailed for 30 days, but they were freed on their own recognizance after a few hours, pending their appeal. On appeal, a federal judge overturned the contempt ruling.

SOURCE: Susan Fahlgren, “Judge Overturns Contempt Ruling Against Two Reporters,” Associated Press, March 4, 1991.

1993

While working for the *Stuart News* in Florida in 1990, Tim Roche was found in contempt of court and sentenced to 30 days in jail for refusing to say who allowed him to see a sealed child-custody order. Roche quoted the sealed document in a *Stuart News* story about a judge’s custody order in a controversial child-abuse case. By 1993, Roche had exhausted his appeals and Gov. Lawton Chiles declined to grant him an unconditional pardon. Roche also declined an offer from Chiles to perform 300 hours of community service instead of serving jail time, saying the journalistic principle he was upholding should not be compromised. Roche served 18 days behind bars but received time off under a program to reduce overcrowding and for performing extra work duties.

SOURCES: “Judge orders a reporter to testify or head for jail,” *Orlando (Fla.) Sentinel*, Oct. 24, 1990; “News reporter released after 18 days in Stuart jail,” *Orlando Sentinel*, April 2, 1993; “Florida reporter completes sentence,” *Editor & Publisher*, April 24, 1993.

- James Richard “Rik” Scarce claimed he was entitled to a “scholar’s privilege” under the First Amendment and federal common law — similar to that of a reporter — not to divulge information he obtained under the promises of confidentiality. Scarce was the author of a book, *Eco-Warriors: Understanding the Radical Environmental Movement*. He served 159 days in jail for refusing to answer questions before a federal grand jury investigating the August 1991 raid of Washington State University by a group calling itself the Animal Liberation Front. The raid caused about \$100,000 in damages at the U.S. Department of Agriculture offices at the university. Scarce acknowledged that he was a friend of Rodney Coronado, an activist and target of the grand jury’s investigation. Although Scarce did not say whether he talked to Coronado or others about the raid, he maintained that conversations would have been part of his research made under promises of confidentiality. U.S. District Judge W. Fremming Nielsen eventually released Scarce because he believed the author would never testify.

SOURCES: Nicole Peradotto, “Scarce freed, judge releases WSU grad student jailed for refusing to divulge names of those suspected in research raid,” *Lewiston (Idaho) Morning Tribune*, Oct. 21, 1993; John K. Wiley, “Researcher Enters Fifth Month in Jail for Contempt of Grand Jury,” Associated Press, Sept. 21, 1993.

1994

Lisa Abraham, a reporter for *The Tribune Chronicle* of Warren, Ohio, was charged with contempt of court and jailed for 22 days for refusing to testify before a grand jury about an

interview she conducted with a county official who was facing indictment for circumventing bidding procedures and other violations. Abraham interviewed James P. Fiorenzo, a county engineer, who was accused of abusing his power by having his office renovated at a cost of \$25,000. She interviewed Fiorenzo and wrote one article outlining discrepancies between what he said in the interview and what he said publicly.

SOURCES: William Glaberson, "Reporter's Interviews Bring Jail and Test for Rights," *New York Times*, Feb. 9, 1994; "Ohio Reporter Ends Jail Stay," *New York Times*, Feb. 11, 1994.

1996

Palm Beach County Circuit Judge Rodger Colton charged *Miami Herald* reporter David Kidwell with contempt of court and sentenced him to 70 days in jail for refusing to testify in the murder trial of John Zile, a man charged with killing his 7-year-old stepdaughter. Kidwell was subpoenaed to testify at Zile's trial after the prosecution learned that Zile had confessed to Kidwell during a jailhouse interview. During the interview, Zile told Kidwell about the murder and provided details of the girl's death that were later published in a *Herald* article. After questioning the need for Kidwell's testimony, since Zile had also confessed to police, U.S. District Judge Wilkie Ferguson Jr. ordered Kidwell released after 14 days behind bars.

SOURCES: Martin Merzer, "Herald reporter goes to jail for silence about Zile story," *Miami Herald*, Oct. 8, 1996; David Lyons, "Reporter jailed for his silence is freed by federal judge," *Miami Herald*, Oct. 22, 1996.

- Bruce Anderson, editor of the alternative weekly northern California newspaper, *The Anderson Valley Advertiser*, was held in contempt when he told a judge that he would not turn over a letter apparently written by a man charged in the slaying of a sheriff's deputy in a shootout on an Indian reservation. Anderson published the letter about the shooting in *The Advertiser*, but he refused to turn it over to prosecutors and was subsequently jailed. Because the letter had already been published, it was not covered by the California statute protecting reporters' notebooks and confidential sources. After Anderson spent the first weekend in jail, the newspaper agreed to turn over the letter, but prosecutors refused to acknowledge that the letter was authentic because it had been written on a typewriter. According to prosecutors, the murder suspect, Eugene "Bear" Lincoln, was in jail at the time with no access to a typewriter. Anderson remained in jail for 13 days until a judge ruled that Anderson had given the court his only version of the letter.

SOURCES: "Editor Jailed Over Letter is Freed," *New York Times*, June 9, 1996; Jim Doyle, "Jailed Mendocino Editor Freed After Cooperating," *San Francisco Chronicle*, June 7, 1996; Carey Goldberg, "Eccentric Editor Is Jailed Over Letter in Paper," *New York Times*, June 3, 1996; Jim Doyle, "Mendocino County Editor Sent Back to Jail, Authorities doubt authenticity of subpoenaed letter," *San Francisco Chronicle*, May 30, 1996; Charles Burrell, "Mendocino County Editor Jailed for Contempt, He withheld letter sought as evidence in murder trial," *San Francisco Chronicle*, May 28, 1996.

1998

Schoolteacher and retired journalist John Rezendes-Herrick was sentenced to five days in jail for refusing to reveal a confidential source in stories that he wrote in 1995 as a reporter for the *Inland Valley (Calif.) Daily Bulletin*. Rezendes-Herrick wrote a series of articles about a landfill plan backed by Waste Management Inc., the nation's largest waste-removal firm, and the Cadiz

Land Co., which opposed the project, claiming the waste would contaminate groundwater and ruin farmland. When Waste Management was indicted for stock fraud, wiretapping and illegal use of trade secrets to drive down Cadiz stock, prosecutors subpoenaed Rezendes-Herrick to testify. At least one unidentified source told prosecutors that Rezendes-Herrick was paid to write negative stories about Cadiz, according to attorneys for the reporter. Rezendes-Herrick refused to reveal his source for the stories, citing California's shield law, and was subsequently jailed.

SOURCE: "Reporter-turned-teacher faces jail," Associated Press State & Local Wire, Nov. 12, 1998.

2000

Sacramento Valley (Calif.) *Mirror* publisher, editor and lead reporter Tim Crews was jailed five days for contempt after refusing to divulge his sources for a story that implicated a former highway patrolman in the theft of a handgun.

SOURCES: Reporters Committee for Freedom of the Press, "[Journalist jailed for protecting confidential source.](#)" accessed Jan. 23, 2006; Jennifer Coleman, "Judge orders journalist to jail for refusing to name sources," Associated Press State & Local Wire, Feb. 24, 2000; John Howard, "Journalist starts jail term for contempt," *Contra Costa* (Calif.) *Times*, Feb. 27, 2000.

2001

Vanessa Leggett, a freelance writer and book author who was researching the death of Doris Angleton, who was found shot to death on April 16, 1997, was jailed for 168 days for refusing to disclose her research and the identities of her sources to a federal grand jury investigating the murder. Doris Angleton's husband, Robert Angleton, and his brother, Roger, were charged with capital murder in the case. Prosecutors believed that Robert Angleton, a millionaire and former bookie, hired his brother to kill his wife to prevent her from getting millions in a divorce settlement. Roger Angleton spoke with Leggett before he committed suicide in jail. He left behind notes confessing to the slaying, saying he planned the murder and framed his brother. Although Leggett gave investigators tapes of her interviews with Roger Angleton, she refused to hand over her notes. On July 20, 2001, a federal judge charged Leggett with contempt and sentenced her to jail for up to 18 months. The 5th U.S. Circuit Court of Appeals upheld the July 20 contempt order, finding journalists do not have a right to refuse to testify before a grand jury. Leggett was freed on Jan. 4, 2002.

SOURCES: Reporters Committee for Freedom of the Press, "[Leggett Freed!](#)", accessed Jan. 24, 2006; "Held in Jail for Contempt, Novice Writer Loses Appeal," *New York Times*, Aug. 19, 2001.

2003

Reporters Abdon Pallasch and Robert Herguth of the *Chicago Sun-Times* and Flynn McRoberts of the *Chicago Tribune* complied with an order issued by U. S. District Judge Ronald A. Guzman, agreeing to hand over tape recordings of interviews with a key witness in the terrorism trial of Michael McKevitt. McKevitt faced charges of directing terrorist activities stemming from an August 1998 car bombing in Northern Ireland that killed 29 people and injured more than 300 others. The three reporters faced the possibility of jail and fines of \$1,000 a day for refusing to turn over their tapes. However, after consulting with their attorneys, Pallasch, Herguth and McRoberts decided to comply with Guzman's order. Pallasch said, "It was one of the hardest decisions I ever made. Ultimately, we had two very good lawyers who both advised us that if we went forward with our plan of going to jail and defending our right to not give up the tapes, we

might prompt a bad ruling by the 7th Circuit on press freedoms. That would do more harm than good.”

SOURCES: Mike Robinson, “U.S. judge weighs Irish defendant’s request for tapes,” *The Associated Press*, June 25, 2003; Mike Robinson, “3 reporters agree to turn over tapes of interview,” *The Associated Press*, July 4, 2003.

2004

Reporter Jim Taricani of NBC’s Providence, R.I., affiliate station WJAR-TV was sentenced to six months of house arrest for defying a court order to reveal who illegally gave him a secret FBI videotape showing a Providence official taking a bribe. U.S. District Judge Ernest C. Torres told Taricani that he would have sent him to prison, but did not because of Taricani’s health. Taricani was a heart-transplant recipient and was in poor health. In April 2005, Torres agreed to release Taricani from his home confinement four months into his six-month sentence because he believed Taricani had “fully complied with both the letter and spirit of the conditions of his home confinement.”

SOURCES: Tracy Breton, “Taricani on Trial — Reporter gets probation — Taricani sentenced to home confinement,” *Providence (R.I.) Journal*, Dec. 10, 2004; Tracy Breton, “Judge shortens Taricani’s time in confinement,” *Providence Journal*, April 7, 2005.

- In September 2004, during an investigation of leaks about an impending government raid against two Islamic charities suspected of funding terrorist operations, U.S. Attorney Patrick Fitzgerald issued a subpoena to *New York Times* reporters Philip Shenon and Judith Miller in an effort to obtain the reporters’ telephone records. Fitzgerald claimed that before the government blocked the charities assets and raided their offices in 2001 a *Times* reporter called the charities for comment, effectively alerting them to the raid. The *Times* sued the government asking the court to stop Fitzgerald from obtaining the records. On Feb. 24, 2005, a federal judge ruled in favor of the *Times*, saying that the paper had a First Amendment right to protect the confidentiality of its sources by refusing to give up its phone records to the government. However, on Aug. 1, 2006, a divided three-judge panel of the 2nd Circuit overturned the lower court’s decision and ruled that the government could inspect the reporters’ phone records. Because Fitzgerald sought the records from a telephone company — and not from the *Times* — the ruling did not demand any compliance on the part of the newspaper.

SOURCES: *New York Times v. Gonzalez* in Bill Kenworthy, “Ongoing confidential-sources cases,” First Amendment Center Online, Aug. 4, 2005; “2nd Circuit OKs look at *Times*’ phone records,” *Associated Press*, Aug. 1, 2006; “*New York Times* can withhold phone records from government,” *Associated Press*, Feb. 24, 2005; Joseph Goldstein, “Court Hands New York Times a Setback in Miller Case,” *The New York Sun*, Aug. 2, 2006; Susan Schmidt, “[Reporters’ Files Subpoenaed; New Leak Probe Concerns 2001 Raid on Islamic Charity.](#)” *Washington Post*, Sept. 10, 2004.

- In December 2004, attorneys for former bio-weapons researcher Steven Hatfill issued subpoenas to several news outlets as part of Hatfill’s lawsuit against the U.S. government. Among the journalists subpoenaed was *The New York Times*’ Nicholas D. Kristof, who wrote a series of columns that explored who might be responsible for the fall 2001 anthrax attacks. In a separate lawsuit, Hatfill sued *The New York Times* for libel, claiming that Kristof identified him as a “likely culprit” in the attacks. The newspaper argued that Kristof did not intend to implicate

Hatfill and was only trying to jump-start the FBI investigation of possible suspects. In October 2006, federal Magistrate Liam O’Grady ordered the *Times* and Kristof to reveal three confidential sources the columnist had used in his stories. Kristof refused and the newspaper appealed the order but lost. As a sanction for not revealing the sources, O’Grady ruled that the *Times* could not use the information from those sources in its defense against the libel suit. On Jan. 12, 2007, however, U.S. District Judge Claude M. Hilton dismissed the libel case, concluding that Hatfill was a public figure and could not show that *The New York Times* had knowingly published false information. Hatfill's suit against the U.S. government continues.

SOURCE: Stephen Labaton, “Judge Explains His Dismissal Of Scientist’s Suit Against Times,” *The New York Times*, Feb. 2, 2007.

2005

Four journalists — H. Josef Hebert of the Associated Press, James Risen of *The New York Times*, Robert Drogin of the *Los Angeles Times*, and Pierre Thomas, formerly of CNN and now of ABC News — were found in contempt of court for refusing to reveal their sources to a federal grand jury for stories about former nuclear scientist Wen Ho Lee. U.S. District Judge Thomas Penfield Jackson also imposed a \$500-a-day fine on the reporters until they provided the names. Lee’s name surfaced in news reports alleging he mishandled nuclear-weapons information at the Los Alamos National Laboratory in New Mexico. He sued the Departments of Justice and Energy and the FBI for their alleged violations of his rights under the Privacy Act of 1974. When the reporters were called to testify in the case, they refused, citing First Amendment privilege. In a separate case, another reporter, Walter Pincus of *The Washington Post*, was also found in contempt after he refused to reveal his government sources for stories he wrote about the criminal investigation. Hebert, Risen, Drogin and Thomas filed petitions of writ to the U.S. Supreme Court. In June 2006, Wen Ho Lee settled his privacy lawsuit, receiving \$895,000 from the government for legal fees and associated taxes, and \$750,000 from the five media organizations involved in the case, effectively ending contempt-of-court proceedings against the five reporters. The Supreme Court refused to hear the case, declining to consider an appeal by the news organizations fighting to protect confidential sources.

SOURCES: “D.C. Circuit upholds contempt finding against 4 reporters,” Associated Press, June 28, 2005; Bill Kenworthy, [“Ongoing confidential sources cases.”](#) First Amendment Center Online, accessed Jan. 27, 2006; Pete Yost, “Judge Finds Post Reporter in Contempt,” Associated Press, Nov. 17, 2005; [“5 news organizations to pay Wen Ho Lee.”](#) Associated Press, accessed June 5, 2006; [“Press’s Wen Ho Lee appeal denied review.”](#) Associated Press, accessed June 5, 2006.

- *New York Times* reporter Judith Miller spent 85 days in jail for refusing to testify about conversations she had with confidential sources in connection with the leaked identity of CIA operative Valerie Plame. Plame’s identity was leaked to reporters by officials within President Bush’s administration, after the *Times* published on July 6, 2003, an op-ed piece by Plame’s husband, U.S. ambassador Joseph Wilson, in which he claimed pre-war intelligence on Iraq’s nuclear weapons program was exaggerated. The contempt order against Miller was lifted when she agreed to testify before a grand jury. Miller claimed that I. Lewis “Scooter” Libby, Vice President Dick Cheney’s chief of staff and alleged source of the leak, assured her that she was no longer bound by any pledge of confidentiality to protect his identity.

SOURCES: Susan Schmidt and Jim VandeHei, "N.Y. Times Reporter Released From Jail; Miller to Testify In CIA Leak Probe," *Washington Post*, Sept. 30, 2005; Pete Yost, "Judge lifts contempt order against Judith Miller," Associated Press, Oct. 13, 2005; David Johnston, "Contempt Finding Is Lifted In Case of Times Reporter," *New York Times*, Oct. 13, 2005.

2006

After reporting on a federal probe of steroid use by athletes, *San Francisco Chronicle* reporters Lance Williams and Mark Fainaru-Wada were subpoenaed to testify before a grand jury investigating the leaked testimony of Major League Baseball players Barry Bonds, Jason Giambi and others. The *Chronicle* published the leaked testimony beginning in late 2004 in a series of stories about the Bay Area Laboratory Co-Operative (BALCO). Five people linked to BALCO were convicted of distributing steroids to athletes, including the company's founder Victor Conte and Vice President James Valente. Williams and Fainaru-Wada faced the possibility of prison time unless they revealed their sources for the leaked testimony. On Sept. 25, 2006, U.S. District Judge Jeffrey White issued a written ruling ordering Williams and Fainaru-Wada to jail for up to 18 months for defying the grand jury subpoenas by refusing to reveal their sources. In October, the *Chronicle* agreed to be held in contempt of court and pay any court fines for refusing to assist the grand jury investigating who leaked its reporters the secret testimony. In exchange, the government agreed to stay any fines and delay the reporters' incarceration until a federal appeals court panel could decide the case. In February 2007, attorney Troy Ellerman, who represented Conte and Valente in the BALCO trial, revealed that he was the confidential source who allowed the *Chronicle* reporters to view transcripts of the grand jury testimony. Ellerman agreed to plead guilty to four felony counts of obstruction of justice and disobeying court orders, effectively ending the possibility of jail time for Williams and Fainaru-Wada.

SOURCES: ["Writers could face more prison time than steroid dealers."](#) Associated Press, May 10, 2006, accessed May 16, 2006; Bob Egelko, "Written ruling reiterates plan to jail reporters; Law requires they reveal confidential source, judge says," *San Francisco Chronicle*, Sept. 26, 2006; Bob Egelko, "Maximum term, 18 months, sought to 'send a message,'" *San Francisco Chronicle*, Sept. 20, 2006. ["Chronicle agrees to be held in contempt in Bonds leak case."](#) Associated Press, Oct. 20, 2006. Accessed Oct. 25, 2006. ["Source steps up, lets BALCO reporters off legal hook."](#) Associated Press, Feb. 15, 2007. Accessed Feb. 22, 2007.

- In August 2006, freelance videographer Joshua Wolf was jailed after refusing to cooperate with a grand jury investigation of an alleged arson against a San Francisco police car during an anarchist protest in July 2005. Wolf videotaped the protest, part of which aired on local television and on Wolf's Web site, but a Joint Terrorism Task Force of FBI agents and police sought the entire tape in an effort to find evidence against protesters who injured a police officer and set fire to the squad car. Wolf refused to turn over his videotape to authorities, saying he would not act as the government's eyes and ears. In court, Wolf's attorneys said the tape showed no evidence of a crime and invited the court to view outtakes. However, U.S. District Judge William Alsup refused Wolf's request and held him in contempt of court. Wolf, 24, has been in prison since August, with only a brief break in September related to his appeal. Feb. 6, 2007, marked his 169th day at the Federal Correctional Institution in Dublin, Calif., surpassing journalist Vanessa Leggett as the longest incarcerated journalist in modern American history. After spending 226 days in prison, Wolf eventually agreed to turn over the uncut video to prosecutors and was released on April 3, 2007.

SOURCES: Jesse McKinley, "Jail Record Near for Videographer Who Resisted Grand Jury," *New York Times*, Feb. 6, 2007; Bob Egelko, "Blogger jailed for defying grand jury sets record; He's U.S. journalist imprisoned longest in contempt of court," *San Francisco Chronicle*, Feb. 6, 2007. [After 226 days, freelance journalist Josh Wolf released from jail.](#)

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