

Why Reporters Go to Jail

Lined up and ready to go to jail are Judith Miller (The New York Times), Matt Cooper (Time Magazine) and Jim Taricani (Providence television station WJAR).

Their crime: refusing to disclose their sources. All published, broadcast or knew of leaks of politically embarrassing information.

The message sent by the courts: don't publish leaks or you will go to jail.

The person who should go to jail, if at all, is the politician or government official who leaked, not the reporter. The courts, unable to find the leaker, jail the reporter.

The public washes its hands of the matter, perhaps thinking justice has been done.

Newsman Jim Taricani, a heart-transplant victim, refused to disclose the source of a tape he broadcast on WJAR. The tape was made by government investigators.

It showed a bribe given to Providence Mayor "Buddy" Cianci's assistant, Frank Corrente. The bribe purportedly was intended for Mr. Corrente or his boss.

Providence Mayor

Mayor Cianci is a notorious Providence figure who has given the slip to the authorities for years. Driven out of the mayor's office in the 1980s after assaulting his wife's lover, he made a comeback becoming mayor again in 1991.

When only his colleague, Mr. Corrente, was indicted it looked as though Mayor Cianci had given the authorities the slip again. Then Mr. Taricani broadcast his tape. Thereafter, Mr. Cianci was indicted and ultimately convicted.

The judge in the case was furious. He had ordered all lawyers in the case not to speak or disclose anything to the press.

The special prosecutor appointed to investigate questioned approximately 15 people associated with the case. None would own up. He questioned Mr. Taricani. He would not talk.

And so Mr. Taricani is subject to a prison sentence of up to six months — heart transplant and all.

Yesterday, a defense lawyer for Mr. Cianci's codefendant said he leaked the tape. This should get Mr. Taricani off the hook, but at the present time no one knows for sure.

Judith Miller and Matt Cooper, like Jim Taricani, are also caught in the middle of a fight not of their own making. The issue: did President George W. Bush make a false statement about the nuclear capabilities of Iraq in his 2003 State of the Union speech? He said the Iraqis had attempted to buy a nuclear derivative, "yellowcake," in Niger.

The statement became a cause celebre. The CIA had taken it out of a speech made earlier by President Bush in Cincinnati. Somehow it had gotten back in.

The question of whether the Iraqis had weapons of mass destruction became a central issue in the 2004 presidential campaign. Democrats attacked the President for making up reasons like "yellowcake" for going to war.

Ambassador Joseph Wilson, a Democrat, wrote an op-ed piece in The New York Times saying the statement was false. The CIA had sent him to Niger to investigate the facts.



Robert Novak, a conservative columnist, attacked Mr. Wilson. Mr. Novak wrote that Mr. Wilson's wife, Valerie Plame, a CIA employee, was responsible for sending him there, thus impugning the veracity of the ambassador's piece.

Thereafter, Matt Cooper of Time wrote two lengthy articles, highly critical of the administration's attack on Mr. Wilson and its position on "yellowcake." He repeated the same assertion about Ms. Plame as made by Mr. Novak.

At the same time this was going on, an unnamed source contacted Judith Miller of The Times, allegedly making the same statement as made to Mr. Novak and Mr.

Cooper. Ms. Miller never published the story.

It is a crime to disclose the name of a CIA agent. John Ashcroft, the Republican attorney general at that time, appointed a special prosecutor to investigate the leak.

The special prosecutor subpoenaed Matt Cooper to discover the source of his story. Lewis "Scooter" Libby, who is Vice President Dick Cheney's chief of staff, was a prime suspect as the source of the leak.

The prosecutor had Mr. Libby testify before the grand jury. Mr. Libby apparently said he was not the source the government was seeking. Mr. Libby released Mr. Cooper from a pledge of confidentiality. Mr. Cooper testified about conversations with Mr. Libby, apparently confirming what Mr. Libby told the grand jury.

A Second Subpoena

Later concluding there may be multiple sources for the Plame statement, the special prosecutor subpoenaed Mr. Cooper a second time. Mr. Cooper would not disclose an additional source or sources. He was held in contempt and is subject to a sentence of up to 18 months in jail.

Judith Miller similarly would not disclose the source of her information, never published. The government would not tell her the reasons why it was necessary to talk to her when she had published nothing.

It filed a secret affidavit with the court setting out its reasons which it will not disclose to Ms. Miller. She can be sentenced to up to 18 months in prison.

Robert Novak, who first published the story about Ms. Plame, is not jail-bound and no one seems to know why. It is not clear whether he has been subpoenaed, talked to the prosecutor, disclosed his source or even took the Fifth Amendment for participating in an illegal disclosure.

What we are left with is this: two reporters from the "liberal press" are headed for jail while a conservative columnist is scot-free. The special prosecutor who sent them to jail was appointed by a conservative Republican attorney general. There is no way for the prosecutor, who has a reputation for objectivity, to avoid a characterization of these cases as anything but political. The press does not belong in these cases. It is caught in the middle.

This is another way of saying the press should have an absolute right to protect its sources, particularly in political cases. The appellate courts to whom these cases are being appealed should confirm such a right.

What Judith Miller, Matt Cooper and Jim Taricani are fighting for is the right to do their job. They cannot do it without confidential sources. Thus far the lower courts have been less than accommodating. The hope is that the appellate courts will wake up and protect those who need it — reporters — not politicians, lawyers and government officials.