



“Contempt of Court” Go Directly to Jail: Journalism, Free Press v. Fair Trial

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Introduction

Many non-journalists, journalism students, and new journalists may not realize that some journalists are sent to jail each year for simply doing their jobs. According to *Reporters without Borders (RwB)*, in 2014 about 221 reporters were imprisoned around the world. As of 2015, the number is 160, and the year is not half way over yet.

Outside of the United States, many cases of reporter imprisonment are related to journalistic investigation. As reporters seek truth during their investigations, some parties involved in the story (government, big business, crime organizations, etc.) seek to quiet or stop the reporter(s). As a result, reporters are frequently arrested and imprisoned. According to Reporters without Borders there are currently 40 reporters imprisoned in Turkey, 35 In Iran, and 32 in China. There are also reporters imprisoned in at least 28 other countries, including the United States.

However, most cases of reporter imprisonment in the United States, are directly related to the notion of Fair Trial v. Free Press. In other words the legal system (Judges in particular) often find that a Fair Trial warrants fair evidence and testimony—including information held by reporters while lawfully doing their job. Therefore, even if a reporter has promised confidentiality to a source needed for a story the court is not necessarily bound by that confidentiality. In other words, a Judge can compel a reporter to reveal information (including sources) under threat of Contempt of Court. If a Judge so orders, a reporter can immediately be placed in jail based on Contempt of Court charges.

The United States has a long and steady record of sending reporters to jail for failure to reveal sources dating from the landmark case of John Peter Zenger in 1735 to date. Cases occurred through the 1700s, 1800s, and 1900s. In fact, the 1900s presented us with another landmark case. Namely, *Branzburg V. Hayes* in 1972. In this case the United States 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... In other words, the First Amendment does not afford a constitutional testimonial privilege to conceal relevant facts in a criminal investigation.

In 1991, four reporters from South Carolina were jailed for failure to testify in a federal corruption trial. In the 21st Century, reporters were still being sent to jail, including four reporters from The Associated Press, The New York Times, The Los Angeles Times, and the American Broadcasting Company. These reporters refused to reveal their sources to a federal grand jury. By 2005, one New York Times reporter spent 85 days in jail for refusing to testify to a federal grand jury. According to *RwB*, there is at least one journalist currently (2015) in jail in the United States.

The job of a journalist requires education, dedication, and the desire to seek truth and facilitate society. Ironically, this sometimes leads to jail.