

Chapter 3 Activity / Assessment

Judith Miller Investigation

Have the students watch the *A Conversation About Journalism and Source Confidentiality* video (<http://www.charlierose.com/view/interview/1158>), and read the Judith Miller and the CIA leak handout. Use the following questions to guide a discussion concerning reporter's rights to protect the confidentiality of their sources.

1. Was Judith Miller right to refuse to testify to the grand jury until her confidential source released her from her promise not to reveal her source? Why or why not?
2. What justification might be given for journalists who risk incarceration for the sake of preserving the confidentiality of news sources? What general principles are involved, and how can they best be understood?
3. Does Robert Novak bear any moral responsibility for what happened to Miller? What about Matthew Cooper or Bob Woodward? It is easy to construe this case as one in which some reporters allowed a colleague to face penalties for the stories that they wrote or on which they reported. Does this seem to be what happened? What impact can such complications have from the standpoint of professional journalistic ethics? Who is really responsible for Miller going to jail? What should have been done, and what should have happened instead?
4. Did Special Prosecutor Thomas Hogan act properly by requiring Miller to reveal her confidential sources and then sentencing her to jail for contempt of court when she refused? What might and what should he have done instead? A representative of the judiciary in the United States has a moral and legal obligation to uphold the Constitution. Could his actions in this case be properly construed as failing to meet this requirement by trying to force a journalist to reveal her confidential sources? Hogan, in reaching his decision argued that (not quoted above): "We have to follow the law. If Miller were given a pass today, then the next person could say as a matter of principle, 'I will not obey the law because of the abortion issue' or the election of a president or whatever. They could claim the moral high ground, and then we could descend into anarchy." Is this a reasonable, morally well-justified argument, or did the judge overstep his legal authority in this matter? Does the argument that "we could descend into anarchy" – clearly a slippery slope objection – ring true, or does it sound like an exaggeration in the tug of war between prosecution and defendant by which journalists are sometimes coerced into violating their moral obligation to provide truth telling in the public interest?

5. How far would and should you be willing to go in order to protect a confidential source in reporting on politically volatile events? Should any reporter be prepared to spend time in jail in order to uphold the privilege of using confidential sources? Or should journalists capitulate to government demands that they reveal information whenever it happens to be in the government's interests for them to do so? What would such surrendering of journalistic prerogative entail in the long run for the value of a free and independent press as the fourth estate in a free society?

Judith Miller and the CIA Leak

Here is the dramatic real-life case study involving prosecutorial efforts to force former *New York Times* reporter Judith Miller to reveal her confidential sources concerning the outing of a CIA operative. The situation involves many intertwined moral issues. The basic facts are these.

Valerie Plame was identified as a CIA operative in a news column written by Robert Novak, a CNN contributor and former “Crossfire” program co-host, which appeared in *The Washington Post* in July 2003. Plame is the wife of an outspoken critic of the George W. Bush administration’s policy in Iraq. Novak cited two unidentified senior Bush administration officials as his sources. Special prosecutor Patrick Fitzgerald was later assigned to oversee the federal investigation into who leaked the identity of undercover CIA officer Plame. Coincidentally or more sinisterly, Novak’s column was published shortly after Plame’s husband, former U.S. ambassador Joseph C. Wilson, disputed the White House’s claim that Saddam Hussein’s government in Iraq had sought to obtain uranium in Africa in an effort to develop a nuclear weapons program.

Matthew Cooper, a reporter for *Time* magazine, wrote an article for *Time* naming Plame as a CIA agent, for which Judith Miller at the *New York Times* collected research although she did not write about the incident herself. Miller joined the *New York Times* in 1977 and was part of a news investigative team that won a Pulitzer Prize in 2002 for its coverage of global terrorism. Plame’s husband Wilson in turn wrote a July 6, 2003 article in the *New York Times*, claiming that his wife’s name had been leaked as retribution for his criticism of the White House. Miller was eventually subpoenaed and ordered to testify about how she obtained her information, which she refused to do, maintaining journalistic privilege in the use of confidential sources.

On October 26, 2005, U.S. Federal District Judge Thomas Hogan ordered Miller jailed in contempt of court for refusing to testify to a federal grand jury investigating the leak of a CIA operative’s name. In particular, Wilson refused to tell a grand jury about conversations about Plame she had with I. Lewis Libby, who was then chief of staff to American vice president Dick Cheney. Libby has since been charged in the incident with five indictments: one count of obstruction of justice, two counts of perjury, and two counts of making false statements.

He immediately resigned his position with the administration on October 28, 2005. Miller could have spent as much as four months in jail, until the grand jury’s term expired. She was released on September 29th, 2005, after eighty-five days, only when her confidential sources absolved her of her promise of confidentiality; she then regarded herself as free to testify in the matter. Matthew Cooper at *Time* magazine was similarly charged, but avoided jail time by agreeing to testify, on the grounds that his source had immediately released him from his prior promise of confidentiality.

Arthur Sulzberger, Jr., publisher and chairman of the *New York Times* Company, originally announced that the company “will do all that we can to ensure Judy’s safety and continue to fight for the principles that led her to make a most difficult and honorable choice.” He urged Congress to “move forward on federal shield legislation, so that other journalists will not have to face imprisonment for doing their jobs.” Floyd Abrams, a lawyer for Miller and the newspaper, declared that the reporter “should be honored” for serving jail time to protect a confidential source.

The paper, indeed, was initially supportive of Miller, and engaged in a long and costly legal battle on her behalf after her imprisonment. Eventually, however, it began to distance itself from her cause and criticized certain aspects of her reporting in the past. Miller, aged fifty-seven at the time, resigned her position at the *New York Times* in November 2005. In her letter of resignation, Miller did not cite disappointment over the *Times* waning support, but explained: “I have chosen to resign because over the last few months, I have become the news, something a *New York Times* reporter never wants to be.”

As a further but no doubt not the final twist in this complicated and, at the time of this writing, still ongoing case, Robert Novak, who began the furor with his report concerning Plame, has declined to say whether he testified before the grand jury. He has nevertheless avoided contempt charges. In the meantime, *Washington Post* reporter Bob Woodward, who, along with his colleague Carl Bernstein, published the Watergate expose that led to Richard Nixon’s resignation on August 8, 1974, admitted on November 21, 2005 that he had kept a conversation with a Bush administration official about the identity of a CIA operative a secret for over two years and expressed regret about not having confided in his editor, Leonard Downie, Jr. Woodward did not reveal his information or its source until Libby was indicted. His source also released him from his promise of confidentiality. Woodward maintained that he had kept quiet because he “was trying to avoid being subpoenaed.” He reported to CNN on November 22, 2005: “To get what’s in the bottom of the barrel, you have to establish relationships of confidentiality with people at all levels of government. You have to establish relationships of trust.”