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Why Anonymous Sources Are Used: Inside the Different Situations Calling for

Reporter-Source Confidentiality

By

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Why Anonymous Sources are Used: Inside the Different Situations Calling for
Reporter-Source Confidentiality

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Anonymous sources for years have been a hard thing for editors to figure out. In journalism, they're the kind of factor that editors can't live with, and yet they can't live without. That's because for years, anonymous sources have been critical to the completion of many major stories. Some of the situations they are used in are obvious, and yet some are not so obvious. In the thesis below, which includes material from two of the most veteran journalists within Nebraska borders, I talk about anonymous sources and why they are used in certain situations. Here, I acknowledge the people who helped get me here – my own family, the members of my committee who helped me all along the way, and also the two journalists, Henry Cordes and Joe Duggan who granted me the interviews that were essential to this thesis.

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Chapter I. INTRODUCTION

The topic of anonymous sources has always been subjective in nature, and in many cases, anonymous sources have been somewhat mired in controversy. There has been a lot of research done on anonymous sources, and still there are some things that remain unclear with regard to this topic. This is because researchers have different perspectives on different aspects of anonymous sources. These perspectives range from how and when they should be used to the levels of attribution, to what exactly is a confidential source. In interviews that I personally had with two different journalists from the two major papers in Nebraska (Joe Duggan of the *Lincoln Journal- Star* and Henry Cordes of the *Omaha World- Herald*), both of them agreed that the decision to use anonymous sources is made very much on a case-by-case basis.

What makes this topic ripe for research is it has a lot of different layers and a lot of different ways that one can go about researching the topic. For example, a researcher could examine the four different levels of attribution for sources: on the record, off the record and for background only (and I will discuss those in just a little bit). One could also examine different cases involving anonymous sources – and while I'm only going to discuss three, there are plenty out there and anonymous sources, controversial as they are, tend to be critical in major stories. In many situations, anonymous sources are used the way Cordes and Duggan use them and they are handled that way for different reasons.

The definition of an anonymous source is multi-layered because anonymous sources have to have several different attributes. Henry Cordes of the *Omaha World-*

Herald told me in an interview in early 2010 that the source has to be trusted, especially when it comes to newspaper editors. He said, “I would say my experience is, editors usually want to know who the sources are in stories.” Cordes also said he tends to not let himself get handcuffed by sources who want their identities withheld – he’ll still gather the information and have it printed. With that said, the first part of this definition involves trust. The source should be a trusted source, for a number of reasons. In the world we live in today, trust is hard to come by in the ever-difficult relationship between the media and the people. Cordes talked about situations where people didn’t want to talk to him about major stories and he had to sit down with them and give them his word – and he had to get the source to trust him. In the cases I will talk about below, sources lives were affected by certain circumstances. Had the sources been identified, their whole livelihoods, lives and the livelihoods of their families could be in jeopardy.

The next layer of the definition includes the key words from which a journalist may gather information and print it in the story. One may ask why this is an important layer in this definition – and it’s really simple. The reason is that there are four different levels of source attribution – on background, off the record and on the record and on deep background. In a lot of cases, a reporter may be able to withhold the source’s name but still be able to run the story. In some cases, the reporter may not be able to print the story at all. The two men I interviewed, Henry Cordes and Joe Duggan had differing opinions on that subject. Cordes said that reporters cannot back down if a source requested not to have a piece of information published, and cannot back down if a source – after the interview – requests not to

have a story published. Duggan did seem more reluctant and sympathetic towards sources in these situations.

The final, and maybe the most important layer of this definition involves the reason for which identification may be held. The reason this is an important layer is the reasons can be many, and can be very, very different. For one thing, journalists have to make difficult choices on what is right and what is wrong because they not only have a moral obligation to the source and a moral obligation to keep their trust with the source, but they also have a responsibility to the readers and viewers.

For example, one of the cases I will look at in the paragraphs below is the Marie Torre case. In the late 1950s, Torre was a reporter for the *New York Herald-Tribune*, and Judy Garland was in the throes of her famous acting career. Torre writes in her book that at the time, she had a deadline to meet for the television column that she wrote. On a tip from her husband, Torre decided to phone a friend who was an executive at CBS to ask about what Garland's status was with CBS regarding a television program she was going to do in the near future. The executive made some comments about Garland's position and about Garland herself – comments that appeared in Torre's next column. The biggest comment the CBS executive made was to say that maybe Garland didn't feel that great about herself, that maybe Garland believed she was fat. It didn't take long for the Garland camp to come after CBS, looking for the executive's name.

Torre decided not to reveal the name of her source, believing that it would be detrimental to the career of the executive. This situation usually comes up when a source says, "This is off the record, but..." Then, sometimes, journalists have a little

bit more freedom to publish the information as long as they don't name the actual source.

In some cases, keeping a source anonymous is absolutely necessary. One big example is W. Mark Felt, better known as Deep Throat in the Watergate scandal. If Felt's name had come out in the environment that the Nixon regime created, there would have been dire consequences for him and keeping his job. Something that's important to remember here is that he would have been in trouble not just because of who he was, or the position he held. It was because he was revealing some of the illegal things going on in the White House.

My research questions and hypotheses involve the use of anonymous sources in different situations, whether it was a good idea to use these sources or not, and whether anonymous sources may be used legitimately to protect jobs. Remember that this is an examination of several prominent cases in which anonymous sources were used and an analysis of the positives and negatives of not naming those sources.

Research Question #1: Why does it happen? Why do sources remain anonymous in certain situations?

The very first thing to be looked at is why does the withholding of sources names happen in certain situations – what makes certain situations different from other situations. Henry Cordes and Joe Duggan said in interviews that anonymous sources are handled on a case-by-case basis at both of the newspapers they work for. Both speculated on why that is and gave certain reasons for this. Duggan suggested in that interview that the public dislike of anonymous sources is a big reason the *Journal-Star* is so reluctant to use these sources, while Cordes suggested that it often

comes down to which reporter is using them. He also speculated that some stories just aren't big enough to warrant using these sources.

Research Question #2: Is the use of anonymous sources a good thing or a bad thing?

It sounds like a simple question, but really it's very difficult to answer – and in some cases, there may not be a right or wrong answer. Duggan said that journalism is coming to a point where anonymous sources might be over-used and that's part of the reason why the *Journal-Star* is so reluctant to use these sources. Cordes, on the other hand, said that while anonymous sources won't be used on mild news topics, they are an integral part of journalism and that without them, journalists wouldn't be able to get big-time stories. Marie Torre writes in her book that even though she went to jail as a result of *Torre v. Garland*, she had no regrets about what she did.

Research Question #3: Does the use of anonymous sources legitimately protect someone's job or is it just a convenient out for someone to keep from getting embarrassed?

Duggan said during the interview that he once went to Cuba with students and faculty from the University of Nebraska-Lincoln journalism college. He said that Cuba's government is highly sensitive to criticism. Some of the people he spoke with were not against the government, per se, just highly critical of it. But because the government was so sensitive to criticism, Duggan decided to withhold the names of the people he spoke with because he felt it would be putting their careers in peril. For that time and that place, Duggan believed it was the right thing to do.

That being said, Duggan said he realizes that the opinion about journalists has changed. He believes that at one point, journalists were regarded as professionals who tried their best to report the news without any sort of bias. But now, he said a lot of people believe journalists have agendas. In particular, he mentioned a voluntary on-line survey done by the *Associated Press*. While most people who took part said that anonymous sources should continue to be used, 20 percent of those who participated said they should not be used at all. Further, Duggan said that 44 percent of those who participated said that anonymous sources made them less inclined to believe what was being reported.

Hypothesis #1: The use of anonymous sources varies because every situation is different.

I hypothesize that the usage of anonymous sources is in large part due to shield laws in certain states because not every state has a shield like Nebraska's that makes it difficult for the government to demand that a reporter reveal his sources. Nadia Tamez-Robledo notes that while Wisconsin, one of the states which recently enacted a shield law, has absolute protection for its reporters much as Nebraska does, Kansas, which also recently enacted a shield law, does not (2010).

Cordes said in his interview that he is very glad Nebraska has as strong a shield law as it does – and praised the state as having one of the strongest shield laws in the country. His general impression of a shield law is that it keeps him from being compelled to reveal a source in a court of law. As mentioned earlier, Cordes takes the stance that he is not going to let a source handcuff him – that if a source gives him information, he is free to pursue the information as he pleases. He said the shield law

definitely helps him in the sense that it doesn't make him less reluctant to go after information. Cordes went on to say that he sees this law as helping protect the free-flow of information.

Hypothesis #2: The use of anonymous sources is generally a good thing.

No question, there are pitfalls with regard to the use of anonymous sources. However, for the most part, the use of these sources is generally necessary for the completion of major stories. Henry Cordes said a lot of the national reporting by papers such as the *New York Times* and the *Washington Post* uses anonymous sources. Cordes also said the reason we know a lot of important information is because of these sources, and that these sources help us understand what our government is really up to. While Duggan said that the journalism business has been called into question for their use of these sources, Cordes said that journalists are generally pretty judicious when it comes to using anonymous sources. Cordes did say, though, that the industry has been changing and that, in their rush to be first to post news to the Web, today's media often include erroneous information

Hypothesis #3: Anonymous sources are generally used to protect the source.

In most cases, editors and reporters will keep the name of a source anonymous (should they need to) for the source's protection. This is true in the case of Joe Duggan in his project with the UNL journalism program in Cuba, it's true in the *Torre v. Garland* case, in which Torre herself decided to keep the name of the CBS executive involved in the case anonymous for his own protection, and it's true in the case of W. Mark Felt in the Watergate scandal, in which the two *Washington Post*

reporters, Bob Woodward and Carl Bernstein, along with their editor Ben Bradlee, decided to keep Felt's name anonymous until Felt broke the silence himself.

This paper is an examination of several prominent cases in which anonymous sources were used and an analysis of the positives and negatives of not naming those sources. It consists of analysis of three different cases: the *Torre v. Garland* case; the *United States v. Caldwell* case which also includes a look at different shield laws from different states as well as the shield law here in Nebraska – which Henry Cordes and Joe Duggan both describe as one of the stronger shield laws in the United States; the Watergate scandal, which also includes a brief look at the legend of the man who is called Deep Throat. Also included are excerpts from my interviews with Henry Cordes of the *Omaha World-Herald* and Joe Duggan of the *Lincoln Journal-Star*.

Chapter II. LEVELS OF ATTRIBUTION

Levels of attribution are extremely important in understanding just what a confidential source is. There are four levels in particular: on the record; off the record; background information; deep background. In an on-the-record interview, the information is completely open and nothing is hidden from the public – much like the interviews I did for this project with Henry Cordes and Joe Duggan. Henry Cordes said during the interview I had with him that an on-the-record interview is the standard for journalism. What's contingent about it being an on-the-record interview is the interviewee has to be completely open and is asking to hide nothing – name, job, any information about his or her life, any experiences he or she might have with regard to the topic they discuss. The very first thing that has to happen for an

on-the-record interview to take place is that the interviewee has to be able to trust the interviewer.

Another key factor that has to be in play for an on-the-record interview to take place is that the person being interviewed can't be hiding any secrets from the interviewer. For this paper, I interviewed two professionals who had absolutely nothing to hide. Fortunately, Henry Cordes and Joe Duggan have a lot of experience working at the two major papers in the state and they were willing to share their experiences with me. They were even willing to share their thoughts on topics which might be a little bit on the line. For example, they were willing to give me answers on whether they would go to jail if they had to defend a confidential source and were subpoenaed by the courts to do so – and more than that, they were willing to put themselves out there and have their name attached to their comments. Most people would not like to go to jail, and this was a question I was admittedly somewhat worried about going into the interview. I wondered if they would let me even write their thoughts on possibly going to jail, as I thought that asking a question about possibly going to jail over an anonymous source would be a sensitive subject for the interview. But they allowed it.

The second level of attribution is the off-the-record interview. It sounds real simple, much like the on-the-record interview definition, but in reality it's not such a simple definition because people have their own subjective opinions about it. Joe Duggan's thoughts on what an off-the-record interview is are pretty clear cut. Duggan says that for an- off- the- record interview, the reporter cannot print the interview at all. He said sources go off the record when people would be able to

identify them, if the material were to come out in public. He said sources will go on background if they feel information if they feel information is more widely known and it wouldn't be traced back to them if it were published. His point was that if information was widely enough known, readers wouldn't be able to figure out who, exactly, had provided it to the reporter.

Joe Duggan said he has not had that much experience with off-the-record sources, or anonymous sources period, so that information was not attainable in this interview. He did say that he believes Watergate is not an example of an off-the-record level of attribution – he believes it's more of an on-background level of attribution, which is more or less the level in between the on-the-record and off-the-record interviews. He said Woodward and Bernstein needed to verify the information they were getting from Deep Throat and could not just quote or paraphrase him and cite him as an anonymous source. The information was confidential, but Deep Throat wanted to give the young reporters information that they could use – thus the meetings that they held inside that secret parking garage in Maryland periodically during the scandal.

Henry Cordes has a different opinion about what an off-the-record-source is. What's notable is that much of what he says about off-the-record attribution is the same, and yet is somewhat different. The following is an excerpt from the interview I had with him back in January which includes his comments on what an off-the-record interview is.

“An off-the-record interview to me...and I realize that different journalists would have different interpretations of that...off-the-record interview to me is that they are giving me the information with the understanding I am not going to attribute it to them personally, I’m not going to say where I got it, and even if I followed up on it, I’m not going to mention who the source of the information is.”

The biggest difference here is that Cordes is saying he can still publish the story. He just can’t attribute the information to the particular person that he is interviewing.

Another big difference from the information, as well as the definition Duggan gave, is that off-the-record sources have nuances to them. One of the biggest nuances that an off-the-record source has, he says, is that “off-the-record to me comes down to an understanding between you and the source, and off the record sometimes does mean different things.” In that understanding, he says that when information goes off -the-record, he wants the source to feel totally comfortable with the information that is about to come out – because it’s not just the journalist’s reputation that’s at stake, it’s the source’s as well.

The biggest nuance of all regarding an off-the-record interview, Cordes says, is that the information in the interview is different from the interview itself.

Duggan’s opinion, as mentioned before, is that if a source asks to go off-the-record, no information from the interview can appear in the story. Cordes’ interpretation is a little bit different. He says that “to me the total understanding of an off-the-record interview has to be that it truly is off the record.” Note here that he said that it’s the entire interview as a whole that is off-the-record, not the information in the interview

that is off-the-record. He said the information in the interview is still fair game and can still be pursued in any way he deems it necessary. It's a nuance with regards to off the record interviews that seems confusing at first, but it's still an important difference between the two. Duggan is saying that none of the information can come out at all.

Regarding individual information in the story, Cordes says that "if you tell me something off-the-record, I am free to pursue that in any direction which I choose and if we did not specifically mention that going in, well, too bad." What is important about this is that journalists have to be careful with the use of these sources, but a journalist can't let an off-the-record interview request handcuff him or her.

Cordes said he has not been immune to this request. He went on to tell a brief story of something that happened when he was just getting into the business – he was dealing with a local police chief at the time. Cordes said, "When I was a young reporter, I had a police chief who tried to tell me not to look into something after he told me something off-the-record, and I can tell you I did not do that." Instead, he went ahead and investigated the material. As far as I know, Cordes did not quote the police chief in the paper, even anonymously. But, he said he talked with his editor at the time and they both agreed they were not going to let themselves get handcuffed like that.

The middle ground in levels of attribution, directly in between the levels of on the record and off the record sources, is the on-background interview. The interview is not totally on the record, but it's not off the record either. Essentially, it's background information. That is what Duggan described to me. He said that an on-

background interview is a situation where the source has agreed to interview with him, but the person will not be named as a source in the actual write-up. Cordes told me that, “background only is I’m not going to quote from them, I’m not even going to use them as an anonymous source, but I trust them enough that this is background, truthful background that can help me understand what the issue is in this case.” I think the two were actually saying the same thing. Duggan said he won’t name the source, not even say, “According to an anonymous source.” And Cordes said he will not cite the source in any way.

He did add that he feels background information can be helpful in some cases. What he means by that is that for some issues, you have to be able to understand the information first before you start writing, or even interviewing about the issue. For that purpose, there are certain people who are the best interviews and sometimes you can’t get the information you need to understand the issue unless the information is on background. Cordes says he has done many interviews where he has included anonymous sources, but with regards to the background only type of interview, his most prominent recollection was in 2006 in Omaha – interestingly enough, at a sister campus of the University of Nebraska-Lincoln, the University of Nebraska at Omaha. He did say it definitely helped that he had a source who was close to the situation who could help him understand the things going on in the chancellor’s office there.

Cordes said his source was someone very close to the situation who was not happy about what was going on. He had such a big problem, apparently, with what the chancellor at UNO was doing that he decided he would give Cordes the information so the reporter could pursue the story further. The interviews that readers

don't see, the ones that don't show up in the paper, are sometimes more important than the ones that do show up because the interviews that you don't see set the tone for how the reporting of the story is going to go. In this case that was especially true because after that, Cordes said he could start picking at different aspects of the story.

The fourth level of attribution is called deep-background. The biggest example of this kind of source is Watergate. In the now-famous book titled *All the President's Men*, Bob Woodward and Carl Bernstein write that Woodward had a major source within the government. This source, W. Mark Felt, had information on the Committee to Re-Elect the President, as well as the White House (1974). In the book, Bernstein and Woodward write that Woodward promised he would never, ever reveal the source to anyone and further, he could never quote the man. He could pursue the information, but he could never quote Felt directly. Furthermore, Woodward and Bernstein write that the tensions were so high that Felt didn't even want to speak by telephone (1974). Felt suggested that Woodward open his drapes as a signal for the two to meet; however, Woodward liked to let sunlight through and so the signal involved a red cloth flag. (Woodward and Bernstein, 1974). Woodward and Bernstein write that if the flag on the stick had been moved to the rear of the balcony, the two would meet at about 2 a.m. in an underground parking garage. (1974).

Chapter III. MARIE TORRE

The first case I'm looking at is the case of Torre vs. Garland in 1957. The last name probably will sound familiar, but the first name may not. Most people, I would

venture to guess, know of Judy Garland's credentials. Garland, who died in 1969, starred in a number of shows and movies. Most people today will remember her most notable role as the young Kansas girl named Dorothy Gale in the movie classic *The Wizard of Oz*. She won numerous Grammy Awards, Golden Globe awards and Academy Awards and is considered one of the most influential actresses ever.

By contrast, Marie Torre was a relative unknown before her case with Garland pushed her onto the scene. At the time of the case with Garland, she was a writer at the *New York Herald Tribune* as well as a columnist and not too well known. In her book titled *Don't Quote Me* she said that she did not come from a newspaper family and did not become interested in journalism before high school (1965). In fact, she writes that it was only through a trap that she even became interested in the business. Brooklyn's Lafayette High School, which she attended, offered only one journalism course. It was an elective course that rarely drew more than 15 people at a time. But Lafayette implemented a requirement that those who had a grade point average of 85 or higher automatically were enrolled in that course (1965). She then writes that her first journalism teacher, Dr. Anton Serota, was one of the toughest instructors she ever would have. She said he warned anyone who didn't want to be in his class to get out on the first day and to have their class schedule changed while they were at it (1965).

Torre writes that it would have been easy for her to leave right at that very moment, but she decided to stay and hope that she wouldn't regret that decision. As it turned out, Dr. Serota not only turned out to be one of her favorite instructors, but he also piqued her interest in journalism (1965). For example, Torre writes that very

often, Serota encouraged her to go interview with big names in the business – such as Meyer Berger of the *New York Times*, with Jimmy Powers of the *New York News*, and with Barrett McGurn, who worked at a paper she would later work for, the *New York Herald Tribune* (1965). Eventually, Torre went to school at New York University, and then worked at several New York City area papers such as the *New York World-Telegram* after she got out of college (1965). But it was at the *New York Herald Tribune* that she would get her first big dose of being in the spotlight.

The incident began in 1957 as she was preparing to do her usual TV-radio column at the *Herald Tribune*. She mentions in her book that she was two and a half hours away from a deadline and yet had no lead. Thanks in part to a tip from her husband, she was alerted to a situation with Judy Garland and a special show she was supposed to do for CBS (1965). Torre said she phoned a friend who was a CBS network executive and the network exec said the situation with the network and the Judy Garland special was a mess (1965). According to Torre's book, the network executive said, "Well, we've had a half-dozen meetings with Judy, and we tossed around a half dozen ideas, but she won't make up her mind about anything. We just think she doesn't want to work. As late as yesterday afternoon we were ready to drop the whole thing." (pg. 34, 1965).

As harsh as this was, this wasn't the quote that was the sticking point in the court case. The main thing that bothered the Garland camp all began when Torre's close friend, the network executive, suggested that something may have been bothering Garland. Then came the quote that appeared in Torre's column and sent her name into history: The un-named network executive said, "I don't know, but I

wouldn't be surprised if it's because she thinks she's terribly fat." (pg. 34, 1965)

Now, to Torre's credit, she said in her book that she did try to get a comment from the Garland camp before writing her daily column. There are always two sides to a story, and if Torre had not tried to get a word from Garland's side, she may have been in even more trouble than she would have been otherwise. (1965)

Torre writes in her book that she says she knew she had to be careful when she got hold of the Garland camp. Torre writes in her book that she phoned Sid Luft, who was Garland's husband as well as her manager (1965). She asked Luft the same question she'd asked the executive: What was the status of the Judy Garland special that was planned? Luft said CBS was not ready, that CBS was still working on a television format for the show, and that Garland would be on television in March. He never said there were any problems between CBS and the singer, unlike what the CBS executive said. (Torre, 1965).

Now having two sides to the story, Torre wrote her column and the column did include the infamous comments made by Torre's source, the anonymous CBS executive. Not surprisingly, though, it didn't take very long for the Garland camp to lash out at CBS. In particular, Torre writes, Judy Garland filed a suit against CBS, charging the network with libel and breach of contract (1965). What's interesting is that when the Garland people got hot, they didn't get hot at Torre, and they didn't even necessarily get hot at what Torre was saying (Torre, 1965). Perhaps it was the fact that she called the Garland camp before publishing her column. This was further evidenced by something that was stated, or rather, not stated on the document on which Garland was going to file a lawsuit against CBS. Indeed, Torre's book

mentions that the original report in the paper where Garland was going to file a suit against CBS for over \$1 million and charge libel and breach of contract did not state Marie Torre's name or the name of her employer, the *New York Herald Tribune* (1965). It could have been respect for how Torre handled the story herself, or maybe the Garland camp was angrier at CBS than anything else. Either way, it was in no way as bad as it could have been for Torre.

The Garland camp took dead aim at CBS. According to Torre's book, one of the first things Luft challenged was the half-dozen ideas problem that the CBS network executive mentioned. He said that CBS only came up with two plans for the February show (1965). Further, he went on to say that CBS never showed Judy a script of anything, only outlines for the same old shows, that CBS had shown no originality whatsoever (Torre, 1965). He also insinuated that CBS sold the show to the two sponsors before consulting Judy (Torre, 1965). Luft also noted the terms of her contract, which, Torre writes, "provided her with the right to approve director, producer and script. The agreement called for her to perform in a show ten weeks after acceptance of a script." (pg 36, 1965).

Torre plainly believed that the matter was officially closed, and that Garland would not file a lawsuit against her. However, the aftermath would be anything but pleasant for Torre and those close to her. Torre writes that after the first court meeting where she found out she could go to jail, she "was drawn deeper and deeper into the bottomless pit of depression." (pg. 44, 1965) In particular, she writes that she was worried about the unknown position of her employer, the *Herald Tribune*. Torre

writes that she was prepared for the worst – that it might be a situation where Torre might have to divulge her source or quit the paper (1965).

What is different here from a lot of other situations with anonymous sources is that it was Marie Torre, the reporter, who decided to keep the source confidential, not the source itself. As Cordes said, usually it's the source who asks to be kept confidential, not the journalist. But both Cordes and Duggan said in both their interviews that there are some moral principles involved in how they use anonymous sources – sometimes they will take that into consideration in certain situations. Think about the situation mentioned earlier where Duggan and members of the UNL CO-JMC went to Cuba and Duggan did his interviews with some people who were critical of the government. Duggan didn't have an obligation to keep his sources secret, and his career, to my knowledge, wasn't on the line. But he did keep their names a secret because he felt divulging names and sources would put people in danger. That is very similar to the Torre case because Torre felt it was her duty to protect her source (1965).

Torre's ordeal started well before the trial, when she refused to give Sheldon Oliensis, who handled the *New York Herald Tribune's* legal matters, information about the exec at CBS who was in question. Torre said that when Oliensis couldn't get her to answer these questions, he told her that she should expect to be asked questions by representatives of both CBS and Judy Garland (1965). But Torre held her ground, saying that she said the first thing a reporter learns is that you never reveal your source of information. She also wrote that she would find out later that her ignorance of the law was completely alarming (1965).

She said she would later find out that while many people accepted the role of confidential sources as essential to freedom of the press, the United States government did not. Indeed, she found out that “the position of the government is, in effect, that the Constitution guarantees freedom to print the news, not gather the news.” (pg. 39, 1965). Further, Joel Jacobsen states that “the difficulty with this argument was that neither Torre nor the newspaper was a party to the suit, and so neither had standing to challenge the merits of the complaint directly, which forced them to frame their argument in terms of probabilities and forecasts.” (page number not available, 2002). CBS was the one being sued by Judy Garland for over \$1 million for libel and breach of contract.

Joel Jacobsen clarifies exactly what Torre’s employer, the New York Herald-Tribune, wanted out of the situation: “The issue on which the Herald Tribune’s management wanted a decision was whether reporters possessed an absolute or conditional constitutional privilege against divulging the identity of confidential sources,” (page number not available, 2002) as pointed out numerous times in *Don’t Quote Me*. Torre lived in New York, which at the time had no shield law. Indeed, Torre also notes in her book that “at the time of her notoriety, news source protection existed in only twelve states, New York was not one of them.” (pg. 39, 1965). She also says that if news source protection had been recognized in New York, that the state law may well have taken precedence over federal law even though *Torre v. Garland* would end up being a federal court case. (1965). That was a huge part of the case – if New York had had a strong shield law at that point, Torre may not have been

subpoenaed at all. But the fact that New York did not have source protection laws meant Torre was stuck with this case, and stuck with the courts for quite some time.

Before she even got into the courts, a lot of her fears were relieved. She went into court knowing that she had the full standing of the *Herald Tribune* with her. Torre writes that the editor and publisher, Ogden Reid, said he didn't want her to feel that the *Herald Tribune* wanted her to talk – that it was her decision and hers alone. However, he also said that if she decided to remain silent on the issue that the *Herald Tribune* would be totally behind her and back her up all the way to the Supreme Court if it was necessary. (1965)

But Torre also mentions in her book that Reid told her that she might go to jail, or might end up being famous just for standing up for what she believed in – and again, it's important to keep in mind, the decision to keep the executive's name silent was not the decision of the *Herald Tribune*, nor was it the request of the executive. It was Torre's decision and Torre's decision alone, so the fact that she had her employer believing that she was standing up for a good cause was important in Torre's decision (1965). And in a way, she did indeed become famous, albeit that fame was really limited to the readers of the *Herald Tribune* and within New York City at the time. In her book, Torre writes, "Readers of the October 17 (1957) edition of the *New York Herald Tribune* may have considered me a full-blown celebrity instead of a working member of the press." (pg. 52, 1965). Furthermore, Torre writes, "A picture of me, flanked by attorneys Oliensis and Correa, was prominently displayed on page one, along with pictures of Judge Ryan and Judy Garland. The paper devoted reams to the story, including a statement by Ogden Reid." (pg. 52, 1965).

Unfortunately, though Torre fought defiantly, she was in danger of going to jail. That's because Potter Stewart came down on the side of Garland. According to Robert G. Berger, Judge Stewart, who oversaw this trial for the United States Court of Appeals for the Second Circuit, held that Torre was required to defend her source because it went straight to the heart of what Garland was claiming (1987). Further, under Stewart's test, the courts had to ask three things: (1) what is the relevance of the information sought; (2) does the defendant have alternate means for obtaining the necessary information; and (3) does the defendant have a compelling interest in obtaining the information (Robert G. Berger, 1987). In layman's terms, according to Lucy A. Dalgish and Casey Murray, "The test requires that the party seeking information show that the information is relevant, that the party has exhausted alternate sources of the information, and that the information requested goes 'to the heart of the matter.'" (page number not found, 2006).

In talking about this case, John T. White writes that "what must be determined is whether the interest to be served by compelling the testimony of the witness in the present case justifies some impairment of this First Amendment freedom." (page number not available, 2001). Further, White writes that "Freedom of the press, hard-won over the centuries by men of courage, is basic to a free society. But basic too are courts of justice, armed with the power to discover truth." (page number not available, 2001). In a different time, and a different place, Torre may have been able to survive in court; as you will see in just a few moments, Caldwell was able to survive in court fourteen years later where Torre was not.

In late 1957, Torre appeared before Judge Sylvester J. Ryan in an open court for what she writes was an open hearing. Torre writes that after she told Ryan that she had not changed her position, Ryan charged her with criminal contempt and sentenced her to ten days in jail (1965). Torre writes that Ryan said that the process of the court must be obeyed no matter what she thought. Torre also writes that Ryan felt sympathetic towards her position, but that Ryan said her position was improperly taken and you have no judicial support (1965). After a year-long deliberation, the courts unanimously upheld Judge Ryan's ruling.

Torre writes that she would then appear before Judge Ryan two more times, on the last week of 1958 and the first week of 1959 (1965). Both times, Ryan gave her the opportunity to change her mind and reveal the name of her source at CBS, but both times she refused. (Torre, 1965). After the January 5 trial, she went to jail for 10 days. Torre never did reveal the name of her CBS source, though she said that after her first appearance in court, her CBS informant phoned her and told her he was proud of her. It was the last time he was to call Torre on the matter (1965). On a side note, Torre writes that she felt her source was extremely disappointing as far as his morals were concerned. Torre writes that she once considered him a strong man, but that he emerged during her court venture as weak (1965). Torre goes on to say that he was required to fill out a survey hoping to find the source. He answered in the negative, Torre wrote, and signed his name to it. (1965).

Much as Marie Torre became a huge icon in the 1950s, Earl Caldwell gained fame among journalists in the 1960s. Along with being one of the first minority journalists to become a reporter for a major newspaper, Caldwell became a hero because he was able to cover some major events at what is considered the pre-eminent paper in this country, the *New York Times*.

You also have to consider the events he covered as a major player in why he became a hero. For example, Angela P. Dodson and Daphne Muse write that he was the only reporter on the scene in Memphis, Tennessee, when Martin Luther King, Jr. was assassinated there in April of 1968 (2005). Despite the fact that he was the only reporter on the scene, his report was met with a lot of criticism at first. In fact, Herb Boyd writes that though his account of the events at the assassination was confirmed by other witnesses, none of the claims were taken very seriously by the FBI (2005). Though Caldwell faced controversy there, that was nothing compared to what he would face some time later.

Caldwell's greatest claim to fame, however, came when he was covering the Black Panther Party for the New York Times, specifically in the late 1960s. He was caught in the crossfire of a battle between the Panthers and the FBI and CIA – and was eventually subpoenaed and taken to court (more on that later). To understand what the FBI had against the Black Panthers, you have to understand first what the Black Panthers stood for and what was worrisome to members of intelligence agencies like the FBI and the CIA.

At first glance, the Panthers were a relatively harmless group who didn't really pose a threat. As a matter of fact, Frank J. Donner writes in the book *The Age*

of Surveillance that “by the most generous police estimates, the entire organization nationwide boasted no more than 2000 members and only 500 activists.” (pg. 221, 1980). Furthermore, Donner writes that these people really had no power whatsoever. Donner writes that a large number of the members and activists were “self-preening generals without a base in the black community, spouting doomsday rhetoric and proclaiming demands they were powerless to enforce.” (pg. 221, 1980).

But what concerned the intelligence agencies was the vigilante nature of the Panthers’ actions. Donner writes that “when it became apparent that this abrasive, fear-engendering style brought headlines, the rhetoric escalated.” (pg. 221, 1980) It wasn’t that the authorities were worried about rebellious actions – rebellious actions had been tried many times before. It was their perception, or at the very least the perception that the intelligence agencies wanted the people to see, that the style of the Panthers’ actions was threatening to the country as a whole. Donner writes there was a “flourishing of (legally acquired) arms as a symbol of defiant strength and the abrasive challenge to police oppression in the ghetto, including a demand that the black community be armed for self-defense.” (pg. 221, 1980).

Not only that, but the intelligence agencies had a problem with some of the principles that the Panther party emphasized – particularly the leaders of the Panther party. In particular, Donner writes, “the Panther leaders flourished Mao’s (Tse-tung) Little Red Book and reproduced quotations from it in their speeches and publications.” (pg. 221, 1980). Whether the Panther leaders believed that Communism was great was irrelevant, no matter their true beliefs on what sort of ideology was the best or not. The bottom line was that the intelligence agencies now

believed the Panther party was a threat. Donner writes that the ideologies that were in the Little Red Book which the Panthers used “made the group, in the Bureau’s view, a revolutionary conspiracy, ‘schooled,’ as the director hyperbolically put it ‘in the Marxist-Leninist ideology and in the teachings of Chinese Communist leader Mao Tse-tung.’” (pg. 221, 1980). The Panthers may or may not have believed in Communism, but what mattered is that the Bureau believed that they did. Indeed, Donner says that “the Panthers were thus classified as both ideological felons and violence prone ‘extremists.’” (pg. 221, 1980). What’s interesting is that the Panthers were able to get away with their ideologies for a while after their group got started, which might be considered unusual for a radical group such as theirs. Donner writes that “the BPP had not even been listed as a target when the program was initially launched.” (pg. 221, 1980). As such, following an announcement from J. Edgar Hoover, the Bureau decided to move in on the Panthers and decided to make them not just a focus but a huge target.

One of the things the intelligence agencies decided to do – and this was extremely smart thinking – was try to disrupt the Panthers and their ideology. They didn’t figure the best way to win was to overthrow the group – that just wasn’t practical for them. The group had already attracted national attention by this time, and it had grown too big and too popular for any kind of overthrow. No, the intelligence agencies had to try something different to counter-attack what the Panthers were trying to do. Fortunately for the intelligence agencies (and unfortunately for Caldwell), the Panthers had a beef with a rival group. Donner writes that the group was called United Slaves, and it was headed by Ron Karenga. It

was a huge power struggle that climaxed with the shooting at UCLA, where two United Slaves members killed two Panthers members (1980).

Donner writes that the intelligence agencies were eager for the feud to continue and wanted to get themselves involved, and they did so. The intelligence offices in San Diego, Donner writes, “were criminally complicit in the violence that escalated between the two groups.” (pg. 223, 1980). They did all they could to stir up trouble and their actions included a letter which was to be sent to Oakland (which may have been because of the local Black Panther Party office there) under the forged signature of the local BPP, which was meant to hasten a confrontation between the two rival groups (Donner, 1980). And most notably, Donner writes, the specialty of the intelligence office in San Diego was circulating cartoons which further created a rift in between the two groups. For example, following two different attacks on the United Slaves, which included bombing of their office in San Diego, the local San Diego intelligence office was contemplating a new cartoon which would help to build that rift even further between the two sides (Donner, 1980). In trying to stop what intelligence (and particularly, the local office in San Diego) believed was a threat, local intelligence found something it could exploit and took advantage of it. This would also pay off when Caldwell, the man who covered the Black Panthers for the *New York Times*, came into the picture, and it’s the reason he ended up in court later. Because of the divide and conquer tactics which were used by intelligence groups within their own state (particularly the office in San Diego) which were intended to break the Panthers apart, Caldwell had to keep his sources anonymous.

The comment that apparently called Caldwell into court was made by one of his sources within the Panther party, a man by the name of David Hilliard. In particular, the comment that got Hilliard – and eventually Caldwell – into hot water was that, according to James C. Goodale, “Caldwell described Hilliard as having said that he wished to kill President Nixon.” (pg. 711, 1974). The intelligence agencies already saw the Panthers as a threat, and Nixon in particular was taking everything seriously. When Caldwell was brought in, the state courts were also “ordering him to ‘testify and to bring with him notes and tape recordings of interviews given him for publication by officers and spokesmen of the Black Panther Party concerning the aims, purposes and activities of that organization’” (Branzburg v. Hayes, page number not available, 1972). One thing which should be noted about this particular case is that the case was not about whether Caldwell needed to submit to a subpoena – but it was about just showing up. Caldwell believed he had a right to not show up to the trial unless there was a specific need for him to do so. In the case Caldwell vs. United States, it says that the

“appellant (Caldwell) contends that the privilege granted by the District Court will not suffice to protect the [First Amendment](#) interests at stake; that unless a specific need for his testimony can be shown by the United States he should be excused from attendance before the Grand Jury altogether.” (no page number available, 1970)

The reason he was being called before the Grand Jury, according to Caldwell vs. United States, was that the Grand Jury was currently investigating the Black Panther

party as well as “the possibility that they are engaged in criminal investigations under the federal law.” (page number not available, 1970). Not surprisingly, Caldwell refused to testify before the Grand Jury. And the U.S. court of appeals for the Ninth Circuit would eventually rule that that “the First Amendment provided a qualified testimonial privilege to newsmen.” (Saperstein, page number not available, 2006). Furthermore, in the court’s view, requiring a reporter like Caldwell to testify would deter his informants from communicating with him in the future and would cause him to censor his writings in an effort to avoid being subpoenaed.” (Saperstein, no page number available, 2006). This was a huge ruling in favor of Caldwell.

Now, unlike Torre, Caldwell actually had an important ruling in his favor whereas Torre didn’t get the support she needed from the courts to be able to stay out of jail. First, and probably foremost, amongst the acolytes that Caldwell had in court was Justice Potter Stewart, who had also been involved in the Marie Torre case. According to Stephen Bates, “Justice Stewart wrote that “only in very rare circumstances would a confidential relationship between a reporter and his source be so sensitive that mere appearance before the grand jury by the newsman would substantially impair his news-gathering function.” (page number not available, 2010). He had made that clear the first time he did this in the Torre case as well when Torre had to go to jail. However, even Judge Stewart said he had to agree that this “represented one of those rare circumstances, in his view. But this aspect of the Caldwell judgment I would confine to its own facts.” (Bates, page number not available, 2010)

On the surface of the matter, when *United States v. Caldwell* was lumped with the *Branzburg v. Hayes* case and both *Branzburg v. Hayes* and *United States v. Caldwell* lost by a 5-4 vote, it seemed that *Caldwell* had suffered a major defeat. However, things are not always as they seem because though the scoreboard read 5-4 to reverse the ruling, it was really more like a 4-1-4 decision. Judge Stewart, obviously, was the major vote in the camp of *Caldwell*, but the real interesting vote (and the 1 in the 4-1-4 deal) was Justice Lewis Powell. He was the one who cast the deciding vote to reverse the ruling, but he said he could make the argument for *Caldwell* also. In fact, according to Nathan Fennessy, “Justice Powell suggested that a journalist's ability to quash a subpoena was not limited to bad faith investigations.” (page number not available, 2006).

In addition, a journalist’s abilities

“also included situations where the journalist was ‘called upon to give information bearing only a remote and tenuous relationship to the subject of the investigation, or if he has some other reason to believe that his testimony implicates confidential source relationships without a legitimate need of law enforcement.’” (Fennessy, page number not available, 2006).

Even though *Caldwell* may have lost the case, he gained allies in the courts – big names such as Potter Stewart and Lewis Powell who actually agreed with him. Furthermore, the decision also gave legitimate power to other journalists. Indeed, “as a result, courts have interpreted Justice Powell's concurrence and Justice Stewart's

dissent as creating a qualified privilege for journalists. Only the Sixth Circuit has accepted the Branzburg holding that no reporter's privilege exists.” (Fennessy, page number not available, 2006). Unfortunately, though, while it was a huge victory for journalists and while Caldwell did gain allies in the courts, it didn't do him any good with the outcome.

Shield laws are very important in both of these cases. A shield law is a law “which will protect journalists in many cases from being compelled to reveal confidential sources or information.” (Rushmann pg. 26, 2009). More states have been signing these shield bills into law in recent years, which Cordes believes is a wonderful thing for reporters. Ahnalese Rushmann writes that one of the states that recently adopted a shield law is Texas, although that state's form of protection does not appear to be as strong as shield laws in quite a few other states around the country (2009). Rushmann notes that Texas does have a shield law, but the privileges for protecting sources does contain exceptions (2009). In other words, in states with stronger shield laws, generally the privileges for reporters are absolute.

Two states that even more recently enacted shield laws are Kansas and Wisconsin (Nadia Tamez-Robledo, 2010). And in early April 2011, West Virginia governor Earl Ray Tomblin signed the bill which would make West Virginia the 40th state to have a shield law (April 6, 2011).

Wisconsin is the home to one of the stronger shield laws in the country, passed in May 2010. Wisconsin's law “provides journalists with an absolute privilege to withhold the identity of confidential sources and a qualified privilege to protect from disclosure unpublished newsgathering information.” (Nadia Tamez-

Robledo, pg. 8, 2010). There are no exceptions in this law as there are in Texas, or even in Kansas, which also passed a shield law recently.

Nebraska has one of the stronger shield laws in the country. For example, the shield law, also known as the Nebraska Free Flow of Information Act, states that the policy of the State of Nebraska is to insure that those within Nebraska borders who work in the journalism business are free to report news without any fear of a possible court appearance (August 20, 2007).

Henry Cordes said he is extremely thankful for that because anonymous sources are absolutely critical for major stories – such as the one in an August 2010 story about the University of Nebraska-Lincoln’s move to the Big Ten Conference. The story was published in August and at a time when everyone seemed to have sources which turned out to be errant about the Big 10 and conference realignment. Even before the move to the Big 10 happened, Cordes said there was speculation in other parts of the country Cordes noted that Kansas City radio host Kevin Kietzman said on his show in May 2010 that Nebraska and five other schools, including Missouri, had an open invitation to the Big Ten. Cordes goes on to say that the story was proven wrong, considering nobody had an invitation to the Big 10, and that he was glad the Omaha World-Herald had not been burned in that way.

Cordes also mentioned Chip Brown, who is a writer for a University of Texas-based website. Cordes mentioned that Brown also had erroneous reports during the conference realignment storyline last summer, reporting at one time that Texas and five other schools were set to join the Pac-10 and Nebraska could be on the outside looking in with regard to conference expansion. Cordes suggested that Brown was

doing nothing but being the right hand man for UT's public relations department. On the other hand, Cordes had sources he could trust and which he was able to keep anonymous because of the shield protection law that Nebraska has, which grants absolute privilege to sources to remain anonymous.

One of the states which has a shield law but offers more minimal protection for journalists is Kansas. Kansas' law is even weaker than Wisconsin's, according to Nadia Tamez-Robledo. This is because their shield law states that the privilege granted to reporters can be overcome by the opposing party (2010). Tamez-Robledo goes on to say that "parties seeking privileged information will have to prove that the material is relevant to the case, cannot be obtained in any other way and is of compelling interest in order for the information to be presentable in court." (pg. 7, 2010). In Kansas, if the person seeking information can prove these three things, the court can demand that the information be revealed.

Though states themselves have enacted shield laws in differing forms, a nationwide reporter's shield law has never been passed despite multiple attempts to do so. Each time the push has come up short and according to Jeffery Benzing, it may be many years before the time is right for another push at a nationwide reporter's shield law. The latest push, Benzing writes, was the most promising of the shield law movements (2011). Benzing writes that the bill, which would have protected journalists in some cases, but would not have provided absolute, had the support of President Obama, as well as the Attorney General, Eric Holder (2011). It went through the House without much difficulty, Benzing writes, but never reached the Senate floor. (2011). Those who have pushed for the bill cited a large number of

factors in its demise, but Benzing writes that a major factor was the question of who would be considered a journalist, especially if national security came into play (2011).

Because of what happened in the Torre case and because New York did not have a shield law at the time of that case, Torre ended up going to jail for 10 days but she stood up for what she felt was right. I asked Cordes during my interview whether he would be willing to go to jail to protect a source, and he said he would be willing to do so if that's what it took. He considers himself fortunate because he works in a state with such a strong shield law, but he still would be willing to stand up for his sources, he said, because he believes that anonymous sources are critical to every single story that uses them. Cordes also said he would be willing to stay in jail for as long as he needed to.

Chapter V. WATERGATE

The Washington Post's investigation of the Nixon presidency, which became known as Watergate, may be the most important case involved in this piece. In this case, not only national security but job security was of the highest order – and it's also a reason why the background to this case is so very important to understand. Louis W. Liebovich, in his book titled *Richard Nixon, Watergate and the Press*, says it best about Richard Nixon's political philosophy: "Always remember the men and women of the news media approach this as an adversarial relationship." (pg 2, 2003). Further, he writes that Nixon said, "The time will come when they run lies about you, when the columnists and editorial writers will make you seem like scoundrels or fools

and the cartoonists will depict you as ogres.” (pg. 2, 2003). In Nixon’s early years, prior to when he entered the White House, Liebovich writes that Nixon firmly believed that he could do no wrong, even then. He believed it was not his own shortcomings which kept him out of the White House as president, but rather it was a liberal media (2003).

The relationship between the media and the officials in the White House was always a tenuous one, but during the Nixon administration, it was especially so. Liebovich writes that Nixon and H.R. Haldeman, Nixon’s chief of staff, had three different strategies for addressing the press (2003). The first was that they wanted to influence the electorate directly through television (2003). To me, this symbolizes the gulf that existed between Nixon and the American press; indeed, Liebovich writes that it was the Nixon White House strategy to schedule televised addresses rather than press conferences to ensure that all Nixon’s words were carried directly to the public rather than have journalists summarize for the public the substance of a press conference (2003). Presidents addressing the public is not exactly uncommon as most presidents have addressed the public in either State of the Union speech or in special circumstances, such as Franklin D. Roosevelt’s “fireside chats” during his long tenure in the White House. However, Nixon’s speeches to the public were a huge part of his grander plan, which, according to Liebovich, was “to manipulate and attack, not to inform or to establish a mutually respectful give and take.” (pg. 3, 2003). Another interesting statistic to me is the number of press conferences that Nixon had – far fewer in number than anyone who preceded him. Liebovich writes that “in his entire presidential career, Nixon addressed only thirty-nine press conferences, far fewer than

any of his immediate predecessors or successors, and many of those press conferences amounted to ugly confrontations marked by name calling.” (pg. 5, 2003).

In addition, Nixon moved the press’s quarters in the White House. The usual White House reporters’ haunts, Liebovich writes, were in the Lobby, West Basement, and Roosevelt Rooms, but Nixon moved the journalists down into another part of the basement (2003). Liebovich also writes that while it did give the reporters more room to operate, the bigger issue at hand was that it removed them from most of the activities that were going on in the White House (2003).

Liebovich writes that Nixon’s second strategy involved wire-tapping certain reporters that the Nixon regime didn’t like. The biggest target of these, Liebovich writes, was columnist Joseph Kraft, who apparently had ticked off Nixon with a column he wrote about some of Nixon’s policies. So Nixon hired a team to plant a listening device in Kraft’s home in the Georgetown district of Washington, D.C (2003). Liebovich writes that the wire-taps were directly involved in Nixon’s second strategy (2003), but an argument can be made that they were related to the third press strategy employed by Nixon, which was to keep reporters on the defensive at all times. The wiretaps kept reporters in line because Nixon could figure out a lot of things through these wiretaps and basically sabotage anything the media tried to do that could go against his regime.

As written before, his third strategy when dealing with the American press was keeping them on the defensive and on their toes – a strategy that was suggested, rather, by Jeb Magruder, who was an aide to Haldeman. Liebovich writes that,

“Magruder advised Haldeman in October 1969 that the White House should use a ‘rifle’ of concentrated efforts against the media through personal attacks and pressure from the Federal Communications Commission, the anti-trust division of the attorney general’s office, and the Internal Revenue Service. The objective was to monitor and torment major media companies, particularly the New York Times, the Washington Post, and the three major networks.” (Liebovich 2003, 7)

Vice President Spiro Agnew even got in on the act, although Liebovich wrote that he was used as a tool and was seen as easily expendable by the Nixon regime. In 1969 Agnew began a campaign against the major television networks (2003). The Nixon regime had what would be called an enemies list, which consisted of people or persons who had criticized Nixon – journalists and others. Liebovich writes that famous names like Bill Cosby, Jane Fonda, and Joe Namath made the list (2003).

Not only did the Nixon regime have an enemies list, but they also compiled a list of a different sort during Nixon’s time in office – a list which was composed of various media members (and particularly White House correspondents) and their attitudes. Liebovich gives a complete list of these names in his book. Klein’s personal comments are also included in the data below.

“Alexander Holmes, McNaught Newspapers, ‘very good,’ Robert S. Allen, Publisher’s Hall Syndicate, ‘conservative, fair to us,’ Joseph Alsop, ‘Los Angeles Times, ‘good on Vietnam, but fair on domestic,’ Stewart Alsop, Newsweek, ‘pro ABM,’ Charles Bartlett, Publisher’s Hall Syndicate, ‘Democratic tier,’ Jim Batten,

Knight Newspapers, 'moderate,' Bruce Blossat, Newspaper Enterprises, 'very fair,' Thomas Braden, Field Syndicate, 'favorable,' David Broder, Washington Post, 'very fair, a reporter's reporter,' William Buckley, Washington Star, 'conservative,' John Chamberlain, 'excellent,' Marquis Childs, United Features, 'not too good,' Saville Davis, Christian Science Monitor, 'good to fair, straight reporting,' James Deakin, St. Louis Post Dispatch, 'surprisingly good,' Lyle Denniston, Washington Star, 'fair,' William Edwards, Chicago Tribune, 'excellent,' Evans and Novak, Publisher's Hall Syndicate, 'bad,' Ernest Ferguson, Baltimore Sun, 'fair,' and Max Frankel, New York Times, 'unpredictable but usually fair.'" (Liebovich pgs. 10-11, 2003).

Liebovich writes that it was Haldeman who came up with the idea for the tabulation (2003). In fact, Liebovich writes that Haldeman made a suggestion to Klein at one point during the early days of the Nixon regime: that Klein assemble a list of the top 10 or 20 journalists that the president should maintain contact with (2003).

Liebovich also writes that Haldeman often demanded that action be taken against anyone he thought could be detrimental to the Nixon regime (2003).

Liebovich writes that part of the reason presidents like Franklin D. Roosevelt were repeatedly re-elected was that they didn't try to make their relationship with the media personal like the Nixon regime did – for the Nixon regime, their war against the media was, in fact, personal (2003). He writes that Roosevelt had complained bitterly that the nation's newspapers favored Republican ideology and goals, but FDR and all other presidents before Nixon had usually kept their denunciations in house or

had generalized their charges enough to assail the media as a whole without making the disagreement personal, something the Nixon regime didn't worry about (2003).

One of the focuses in this paper is why anonymous sources are used in certain situations. In this type of situation, does a source really want to reveal himself for fear of losing everything he has? Does a source really want to risk his job in certain situations to try to make things right? In many cases using anonymous sources is purely situational and completely up to both the reporter and the source. For example, both Cordes and Duggan said the policies their papers have for anonymous sources are purely situational.

Now we know the stage that was set prior to the Watergate break-in. As was said before, what is important to understand about this is that the events of the entire Nixon regime tie directly to the break-in at the Democratic National Headquarters because it was so typical of what Nixon's regime was all about. It was this sense of paranoia that was creeping all throughout the White House, and Nixon needed total control to feel safe. Liebovich writes that during the Nixon regime, "Nixon and (chief of staff H.R.) Haldeman met in the Oval Office each morning and discussed strategy, including how to best frustrate reporters and promote Nixon's image." (Liebovich 3-4). They were openly looking for strategies to frustrate reporters and for Nixon to gain the total control he wanted.

Keith Olson, in his book titled *Watergate: The Presidential Scandal that Shook America*, writes that

“Nixon’s drive for re-election exhibited the same characteristics that shaped his approach to other aspects of the administration: concern about public image; desire for knowledge about the plans and activities of opponents and heavy reliance on public opinion polls, both to gauge public reactions and to guide future decisions.” (pg. 23, 2003)

In his article titled “Investigating the Watergate Scandal,” Donald A. Ritchie describes the break in by saying, “On June 17, 1972, police arrested five men who had broken into the Democratic National Committee Headquarters at the Watergate office building in Washington carrying wiretapping equipment.” (pg 50, 1998) Ritchie goes on: “although evidence linked the men to the Committee to Re-Elect the President, President Richard Nixon denied any involvement in the ‘third rate burglary.’” (pg. 50, 1998).

One important thing to note about Watergate is that there were not just one, but two break-ins. Everyone remembers the second Watergate break-in but nobody talks about the first break-in, a break-in which ended up failing. Olson writes that in the first mission, “one of the telephone taps produced little of political value but a great deal about the staff’s social life. The copied documents contributed to useful information. Most important, the O’Brien telephone tap did not work.” (pg. 39, 2003). He goes on to say that the tap was “probably too close to a steel column that absorbed the signal and weakened the transmission to the Howard Johnson motel room, where Baldwin monitored the signs.” (Olson pg. 39, 2003). Not that the Nixon

regime wasn't smart about the whole thing – as a matter of fact, they knew what happened and vowed vengeance in a second burglary.

In the second burglary, the Nixon administration made a costly mistake – in that they made no adjustments to their break-in plan. Olson writes that “the second Watergate break-in used the same organization as the first – command post, observation post and entry team.” (Olson pg. 39, 2003). But even more than that, the matter continued to persist. Interestingly enough, what happened at Watergate did not affect Nixon's re-election.

Though Nixon did win re-election two young journalists, Bob Woodward and Carl Bernstein, with the help of W. Mark Felt, would make history in bringing down an entire administration. For journalists who believe in anonymous sources as Henry Cordes does, what Woodward and Bernstein accomplished is a shining moment for anonymous sources. However, not everyone was happy about it.

Even decades afterwards, there are pro-Nixon people still angry about W. Mark Felt revealing the information which brought down the Nixon administration. Nicolaus Mills talks about an interview that happened on the day Felt's identity as Deep Throat was revealed. He writes that Charles Colson, the special counsel to Richard Nixon, who served seven months in prison for participating in the Watergate cover-up, told the press Felt should not have been “sneaking around dark alleys and talking to reporters.” (page 99, summer 2007). In essence, the man who was considered a hero for bringing down the Nixon regime would have been battered, fried and roasted by Nixon and all his henchmen who were doing the best job they could to cover up the break-in.

In an article titled “A Reporter’s Story: the evolution of Watergate’s Deep Throat,” Woodward himself writes that he tried showing up at Felt’s house but Felt said if they were going to talk they would have to do it where no one could see them. Woodward goes on to say that talking “carried substantial risks for him (Felt) and the FBI. Had he been exposed early on, Felt would have been no hero. Technically, it was illegal to talk about grand jury information or FBI files; or it could have been made to look illegal.” (no page available, summer 2005)

Some reporters would not agree with that – Cordes being one of them. Cordes said that one of the guidelines he adheres is that a reporter cannot let a source handcuff him or her. He believes that if a reporter tells you something that you are free to pick at it any way that you want to. I am not sure how Cordes feels about Watergate, so I’m not sure if he feels differently about Felt than other sources even though Felt was in a higher position in a high profile story. Joe Duggan of the *Lincoln-Journal-Star* had a little bit of a different take on it. When he visited Cuba, he interviewed people who were highly critical of the government, which was exceptionally sensitive about criticism.

Eventually, Duggan said, he made the decision that he was not going to use the full name of sources because he felt reputations would be on the line. Duggan didn’t say anything about safety but that could possibly have been on the line as well. This goes back to one of the focuses of this paper, that the decision to use anonymous sources is made very much on a case-by-case basis.

It is important that the person running the Post in the early 1970s, Katharine Graham, kept her own faith in both editor Ben Bradlee and the reporters. That was

important because, as William Greider writes, Woodward and Bernstein “made *Washington Post* editor Ben Bradlee nervous. What if these kids are wrong or getting conned by their ‘sources?’ Other editors were less charitable in their skepticism. Yet Bradlee sucked it up and kept them on the story.” (pg. 4, 2005).

The idea that an editor would be nervous about using anonymous sources for stories is far from unusual. At the *Lincoln Journal-Star* and the *World Herald*, editors are very much involved in, if not nervous about, stories with anonymous sources. Joe Duggan has been with the *Journal-Star* for 18 years. In the late 1990s, he remembers that there was a specific policy (which he did not describe) where he had to speak with his editors about a story and to be making sure the story was OK so that there wouldn’t be any surprises, Duggan said. Duggan also said that part of the reason the *Lincoln Journal-Star* is so reluctant to use anonymous sources is because of readership surveys, which show that readers tend to question stories with these anonymous sources, Duggan said.

At the *World-Herald*, editors are also involved, but Cordes said that when it comes to reporters like him who have a good reputation, editors generally don’t question him about his use of anonymous sources, though there are still some guidelines and editors are still involved. Cordes said that the story first of all has to be important enough to justify withholding names. Cordes said a paper like the *World-Herald* isn’t going to use some anonymous source on a minor event – it has to be something newsworthy for the *World-Herald* to use a source like that. Generally, Cordes said it sometimes does come down to the reporter and his use of anonymous sources and Cordes said that he generally doesn’t get questioned because the *World-*

Herald knows he'll be judicious about using these sources. The *World-Herald* still does have some guidelines, and Cordes said that editors want to know who the source is. Cordes said perhaps editors may know something that he, the reporter, does not and that protects him.

Watergate also showed the importance of the anonymous source in stories like this. Indeed, Randy Dotinga writes, "Without anonymous sources, 'important stories that the public should know, and may change the course of history, would go untold, or told incompletely or incorrectly.'" (pg. 2, 2005) Cordes agrees with this. He said that anonymous sources are absolutely critical to journalism, and added that a reporter without good sources is basically a stenographer, just writing down what everyone else says. Cordes also said that the heart of the story is what journalists are supposed to get to, and that unfortunately the heart of the story is not always what people would like to hear.

One prominent case that used an anonymous source that Cordes remembers was the 2011 shooting at Millard South High School. Cordes said that the *World-Herald* had trouble getting information at first. They had two sources of information in particular. They had the school district (which wasn't helping them very much with their lack of information, he said) and they had the police. He said the shooter was the son of a police officer and that the police were providing them with some information but not the kind that was essential to the story. Fortunately, Cordes said, the *World-Herald* had an anonymous source close to the school who told the paper that the student who started the shooting had been suspended for 19 days. The person was also able to give a blow-by-blow description of what happened, including

providing the detail that the perpetrator was using his father's service gun. *The World-Herald* eventually got confirmation that the story was 100 percent true, from the shooting to the 19 day suspension. The story above is an example of what both Dotinga and Cordes talk about, that in many cases, anonymous sources are critical to journalism.

Chapter VI: CONCLUSION

This paper has examined three different cases: *Torre v. Garland*, *Caldwell vs. United States*, and the Watergate scandal. The paper looks at three major focuses: Why are anonymous sources used in certain situations; is the use of an anonymous source a good thing or a bad thing; and does the use of anonymous sources protect a person's job or is it just a convenient out to keep that person from getting embarrassed?

Hypothesis #1: The use of anonymous sources varies in certain situations because every situation is different.

This thesis, generally, finds this hypothesis to be true, although it is for even more reasons than the one mentioned in the hypothesis. Every situation as a whole is different. For example, shield laws do play a major role in the difference in these cases. As mentioned above, the Nebraska Free Flow of Information Act gives reporters the right to pursue information without any fear of a court appearance. But that is not true in all states, nor has it always been the case. Some states' shield laws give the plaintiff a chance to produce information which is relevant to the story, making a court case very possible.

Also, anonymous sources are reserved for the major stories. Cordes said anonymous sources are not used in minor stories. In the *Torre v. Garland* case, during one of Torre's appearances in court, she writes that Judge Sylvester Ryan called her the Joan of Arc of her industry (1965). You wouldn't see Cordes being called a legend of the profession if he used anonymous sources on a middling city story, and he himself has said he saves anonymous sources for the bigger stories.

Levels of attribution play a huge role in the varying situations with anonymous sources. That's because you have four different levels of attribution: on the record, off the record, on background and on deep background. Some stories, such as the Watergate case involving W. Mark Felt, are considered on deep background because the reporters could not even name the source much less print anything he said. Then there's the off the record interview, which journalists have varying opinions about. You have journalists like Duggan, who won't even write the story if a source asks for anonymity, and then you have Cordes who says he would print the story but wouldn't attribute the information to the source, wouldn't say where he got it and even if he followed up, wouldn't mention who the source of the information is. There's the on background, which is the middle ground. Both Cordes and Duggan agreed that in an on background interview, they wouldn't even name the source, not even say, "according to an anonymous source," though both would still write the story using other sources to build their case. And there's an on the record situation which is much like you would see in a normal interview.

Even when it comes to the courts, the situations can be different. Take the *Garland v. Torre* case and the *Caldwell v. United States* case. At first glance, both

seem similar. Both cases involved New York-based reporters who had anonymous sources that were essential to their cases – Torre with her un-named source from CBS and Caldwell with David Hilliard. Both eventually went to court for their cases, and neither benefited from their day in court. Torre went to jail, and technically Caldwell lost his case as well.

However, the situations are very different. First of all, Torre’s trial was about submitting to a subpoena, which she repeatedly did not. On the other hand, Caldwell asserted that he shouldn’t even have to show up in court to testify in the Black Panthers case. Also, Torre wasn’t helped very much by the courts; as noted above, she wrote that after deliberating one year, the United States Court of Appeals for the Second Circuit agreed with the criminal contempt charge leveled on her by Judge Sylvester Ryan. On the other hand, Caldwell’s claim that he shouldn’t even have to show up was upheld by the United States Court of Appeals for the Ninth Circuit, and even though Caldwell lost the case 5-4, the ruling was more like a 4-1-4 vote because Potter Stewart actually agreed with Caldwell which was huge for the profession even though Caldwell lost the case.

Hypothesis #2: The use of anonymous sources is generally a good thing.

For the most part, this thesis finds this hypothesis to be true. The argument could be made that not everyone comes out well when they use anonymous sources. Marie Torre writes in her book that the immediate aftermath of *Torre v. Garland* was not healthy for her. She writes that “during the long, interminable walk to the office of the U.S. marshal, where we had to stop to pick up papers from Washington, reporters and photographers buzzed around us. I walked faster and faster, and my

emotions kept pace.” (Torre pg. 70, 1965). Torre also writes that when she got to the marshal’s office, she “pushed ahead of everyone and ran into the office, where I threw myself on a couch and wept uncontrollably.” (pgs. 70-71, 1965).

The reaction is understandable, as it had been a trying two years for Torre since the column was released. However, sometimes after a little bit of time to cool off, the reporter sees things in a different light and sometimes feels much better about him or herself. Take Torre, for example. She writes that in the long run, “she was able to see some humor in the situation.” (pg. 71, 1965).

It is also true that the use of anonymous sources tends to cause editors a lot of stress. Joe Duggan said that the editors at the *Journal-Star* are very reluctant to use anonymous sources and also said some papers don’t allow the use of anonymous sources at all. At times during the Watergate case, *Washington Post* editor Ben Bradlee, who really oversaw the whole Watergate scandal as it unfolded before him through Woodward and Bernstein, didn’t always have patience. At one point during the ordeal, Woodward and Bernstein write that Howard Simons, managing editor of the *Washington Post* “liked to tell of watching Bradlee grind his cigarettes out in a demitasse cup during a formal dinner party. Bradlee was one of the few who could pull that kind of thing off and leave the hostess saying how charming he was.” (pg. 102, 1974). At another point, Woodward and Bernstein write, they felt they were “on the verge of finding out the names of all five persons who controlled the secret fund and perhaps more about the individual transactions.” (pg. 102, 1974). They then started to explain to Bradlee their plan to write a definitive account of who controlled the money and how it related to Watergate (Woodward and Bernstein, 1974). They

wrote that when they began to speak to Bradlee, they noticed that he was doodling on his desk, and they say that it was a sign that he was a trifle impatient (Woodward and Bernstein, 1974).

However, many stories are done with the use of anonymous sources throughout. Cordes' Big 10 story, published in August 2010, he said, was done with anonymous sources throughout. Cordes says he could not have done that story without anonymous sources. And sometimes, what it takes to pull off a major story with anonymous sources is an editor who cares about the story. Take Watergate for example. Ben Bradlee, who as mentioned before was an editor at the *Washington Post*, cared about the story and wanted to see it progress. Woodward and Bernstein write that in the ultra-competitive place that was the *Washington Post* newsroom, "the invariable question, asked only half-mockingly of reporters by editors at the *Post* (and then up the hierarchical line of editors) was 'What have you done for me today?' Yesterday was for the history books, not newspapers." (pg. 52, 1974). The nature of the Watergate story was a day-to-day thing. If Bob Woodward had an inquiry to make, he and W. Mark Felt would meet late at night, as mentioned earlier, and no one but Woodward knew what kind of information was going to come out of Felt's mouth. It took a lot of patience to stick with the story, and an editor like Bradlee who took great interest in the story was exactly what was needed for the story to continue. Hypothesis #3: The use of anonymous sources is generally done to protect the source.

For the most part, the thesis finds this statement to be true as well. Maybe there are some situations where anonymous sources are used to keep the source from getting embarrassed, not legitimately protecting him. Joe Duggan said that he is

concerned about this and hopes that anonymous sources continue to be used sparingly. However, in the cases looked at here, generally names are withheld to protect the source. Marie Torre writes in her book that she didn't feel she could reveal the name of the source, or ask him for his name, any more than she could ask a friend for a loan. She felt it would be tantamount to his career suicide (1965). What's interesting is she felt this way even after she figured out what kind of man he really was. Torre writes in her book that "his (the source's) cowardice notwithstanding, I felt an obligation to this man for providing me with information which I, not he, solicited." (pg. 63, 1965). Torre writes that she even asked herself "can betrayal of a confidence be condoned if the source of information has no character?" (pg. 63, 1965). She thought that even if he did one of the worst things imaginable to her, that her beliefs should win the day over any sort of prejudice she might hold against this man. She writes that, "at this point in my legal adventure, the source was, to me, but a symbol. As far as I was concerned, he could have beaten his wife every night and I still would have protected his name in this case." (pg. 63-64, 1965). Right before she went to jail and before the source was to have a meeting with the Herald-Tribune editor, Torre writes that "I assured him that he had no cause for concern, that my position had not and would not change." (pg. 64, 1965). No matter what she thought of the source, she went to the ends of the Earth for his safety, whether he deserved (in her mind) or not.

Certainly, during the Watergate case, the identity of W. Mark Felt was done as a way of protecting him. Felt and Woodward did not always get along and it didn't help when the two frightened each other during the Watergate scandal. Felt,

especially, was frightened for his own safety. Bernstein and Woodward write in *All the President's Men* that Felt was supremely concerned for Bernstein and Woodward's safety as well. One time, at one of the meetings that Felt and Woodward had, Felt told Woodward that both he and Bernstein needed to be careful because the FBI badly wanted to know where the Post was getting its information. So he cautioned the both of them to be careful when using their phones (1974).

Woodward and Bernstein also write that when Woodward called Felt one time, "this would have to be their last telephone conversation, he said flatly. Both the FBI and the White House were determined to learn how the Post was getting its information and put a stop to it." (pg. 76, 1974). Bernstein and Woodward continue by saying that "what struck Woodward even more was how frightened Deep Throat seemed. The fear had been building, but Woodward had not recognized it until now." (pg 76, 1974). And even more than it being personal at times between Woodward and Felt, there was a lot on the line because as mentioned above, though Woodward and Felt did not always get along, he was genuinely concerned about Woodward and Bernstein's safety. Woodward and Bernstein write that "only a part of it was personal. It had more to do with the situation, the facts, the implications of what he knew about. Woodward had never known him to be so guarded, so serious. At their last meeting, he seemed to be weighed down." (pg. 76, 1974). While Duggan's concerns about anonymous sources are well founded, it's a good thing usually that important sources are kept anonymous.

One thing which I have considered throughout is the possibilities for even more research on this topic. The shield law is mentioned above, and one thing

anyone could easily do is write an entire paper about the history of the shield law. Is the shield law a good thing or does it give reporters too much power? Does a shield law like we have here in Nebraska benefit reporters or should there be limits on them and more power given to other parties? And should there be a national shield law like there has been a push for in recent years?

Or one could devote an entire paper to any one of these three cases and analyze how they changed the way anonymous sources are used. Marie Torre was one of the first of her kind to go to court for keeping a source anonymous – as was said above, Judge Sylvester Ryan called her the Joan of Arc of her business. How did Deep Throat and Watergate change how reporting was done at the major papers in this country? Those are just some questions to be pondered by some other person who might be interested in doing some other research on this topic.

Chapter VII: REFERENCES

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