

AGENTS OF
DISCOVERY

A REPORT ON

THE INCIDENCE OF SUBPOENAS

SERVED ON THE NEWS MEDIA IN

2001

The Reporters Committee for Freedom of the Press

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A project of The Reporters Committee for Freedom of the Press

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Foreword

We at the Reporters Committee for Freedom of the Press knew if we waited long enough for a horror story to make the case for a strong reporter's privilege, we'd get a doozy. Just in time for the final installment of *Agents of Discovery*, a federal judge in Texas threw a young freelance book author in jail for a record-breaking 168 days. Vanessa Leggett refused to identify confidential sources for a book she is writing about a notorious Houston murder and paid the price by serving time in 2001 in a federal prison for contempt of court. Details of her remarkable case are featured in this report.

The Reporters Committee for Freedom of the Press launched its first survey documenting the incidence of subpoenas served on the news media in 1990. We collected data from print and broadcast news operations throughout the United States, hoping to demonstrate that journalists are, indeed, "differently situated" from other targets of discovery, and that the negative impact of subpoenas on newsgathering and dissemination was substantial. The 2003 report (compiling data from subpoenas in 2001) is our sixth.

We produced our first five reports in 1991, 1993, 1995, 1999 and 2001. These *Agents of Discovery* reports frequently were introduced into evidence or appended to legal briefs and motions seeking to quash subpoenas. They persuaded legislators in several states to enact or enhance journalists' shield laws. And they outlined practical solutions for newsroom executives overwhelmed by expensive, time-consuming subpoenas based on the experiences of their colleagues.

Despite efforts to create or improve shield laws in several states in the late 1990s, the reporter's privilege is still on shaky ground in many states. Several disturbing trends have surfaced. For example, media outlets are broadcasting and printing footage, outtakes and notes (usually on the Internet) so that when the material is subpoenaed they can claim they are handing over material that has already been published. In some states, courts have issued "separation orders," which prevent journalists who have covered court stories from covering the actual trial because they may be called as witnesses. And, perhaps most disturbing of all, some television newsrooms are discarding outtakes within 24 hours so there is nothing available when the process server shows up at the reception desk.

Many judges believe a subpoena served on a news organization is no different from that served on any other business. In opinion after opinion, judges fail to acknowledge any special role for the media in a

democratic society, or any public interest in ensuring that the media remain impartial and disinterested both in perception and reality. On the other hand, survey respondents report that they were successful more than 75 percent of the time in 2001 when they sought to get a subpoena quashed. Newsroom managers who were successful in getting the subpoenas quashed strongly recommend taking legal action whenever a subpoena is served.

There has been some progress. Survey responses show, for example, the average number of subpoenas received by all respondents was 2.6 in 2001. This represents a decline from the 1991 survey, which found that respondents received an average of 3.0 subpoenas. The average number of subpoenas per respondent in 1997 was 4.6.

Broadcasters continued to receive more subpoenas than newspapers in 2001. The average number of subpoenas served on television news stations was 7.7. The average number served on newspapers was 0.7. Lawyers for television journalists say that many litigators incorrectly believe that videotaped evidence, or evidence presented by a famous local television reporter, is more persuasive to a jury than more "ordinary" evidence.

We hope that this reports will help to educate and inform judges of the very real consequences and costs of permitting subpoenas to be served indiscriminately on the news media.

The Reporters Committee is grateful to the John S. and James L. Knight Foundation for underwriting this national survey in 1997, 1999 and 2001.

This report was produced through the hard work of several members of the Reporters Committee staff. We acknowledge especially Wendy Tannenbaum, 2002-2003 legal fellow, who drafted the report and compiled most of the data. Legal Defense Director Gregg Leslie supervised the data collection and reporting and produced the report. Victor Gaberman, Maria Gowen and Lois Lloyd, with special help from the entire Reporters Committee staff, provided administrative support.

We also express our appreciation to the journalists and lawyers whose assistance made *Agents of Discovery* possible.

Lucy A. Dalglish, Esq.
Executive Director
The Reporters Committee
for Freedom of the Press
May 2003

AGENTS OF DISCOVERY

A report on the incidence of subpoenas served on the news media in 2001

In 2001, freelance book author Vanessa Leggett broke a record she never aspired to challenge. Serving what would turn out to be a 168-day prison term, she became the longest-jailed journalist in U.S. history held for refusing to disclose a confidential source.

Leggett chose to go to prison rather than comply with a subpoena from a federal grand jury. She had claimed that a reporter's privilege protected her from having to disclose her confidential sources for a book she was writing about a murder case in Texas. After a U.S.

District Court judge and an appeals court ordered her to disclose her interviews or go to jail, Leggett stood her ground and turned herself in to prison officials.

"I just feel like I'm doing what I have to do to protect my First Amendment right to freedom of the press," Leggett told an Associated Press reporter on her way to jail. "I feel like what they are doing is wrong."

After her release almost six months later, Leggett said she would be more than willing to go back to jail if she were subpoenaed again.

"If that's what it takes, that's what it takes. This is not so much about me. It's about the public's right to a free and independent press."

Subpoenas to journalists by government and other litigants rarely result in jail time. Vanessa Leggett's ordeal made national news for being the first time in 30 years that a journalist had spend any significant amount of time behind bars for refusing to comply with a subpoena.



At 168 days, Vanessa Leggett's time in jail is the most served by any journalist for refusing to disclose confidential information.

Yet the practice of subpoenaing journalists creates problems besides the threat of jail. Compliance with subpoenas endangers the freedom of the press. Each time the press is forced to provide evidence to prosecutors, police, criminal defendants or civil litigants, the media's neutral status is compromised, and the free flow of information to the public is chilled.

Moreover, as many managing editors and news archivists will attest, subpoenas to news organizations are burdensome and time consuming, often eating up valuable resources that should be used to gather and disseminate news.

In a friend-of-the-court brief submitted to the U.S. Court of Appeals in New Orleans (5th Cir.) in Leggett's case, The Reporters Committee for Freedom of the Press and other media organizations argued that news organizations should be free from "the threat of administrative and judicial intrusion into the newsgathering and editorial process;

the disadvantage of a journalist appearing to be an investigative arm of the judicial system or a research tool of government or of a private party; the disincentive to compile and preserve nonbroadcast material; and the burden on journalists' time and resources in responding to subpoenas."¹

When it rejected Leggett's appeal in August 2001, the appellate court issued an opinion that made no mention of the burden subpoenas impose on news organizations.²

Other courts have been similarly unwilling to acknowledge the enormity of

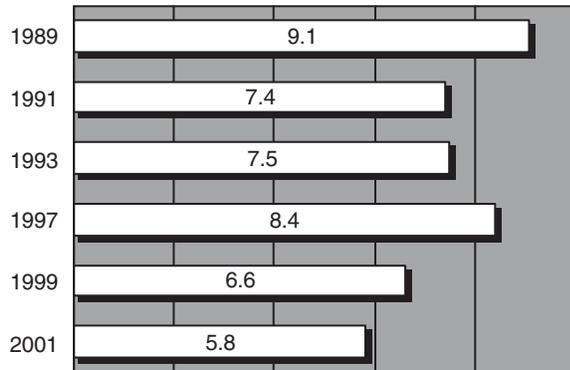
harm that results from media subpoenas. In 1998, a panel of the U.S. Court of Appeals in New York City (2nd Cir.) rejected assertions that subpoenaing the media has deleterious effects on the news-gathering process because those assertions were supported by "no persuasive argument, much less any appealing evidence."³ The U.S. Supreme Court's 1972 landmark opinion in the case *Branzburg v. Hayes* noted that "[e]stimates of the inhibiting effect of such subpoenas . . . are widely divergent and to a great extent speculative."⁴

The Reporters Committee for Freedom of the Press, with the assistance of news outlets around the country, has taken on the task of documenting the burden these subpoenas to satisfy the demand for empirical evidence from judges faced with subpoena challenges.

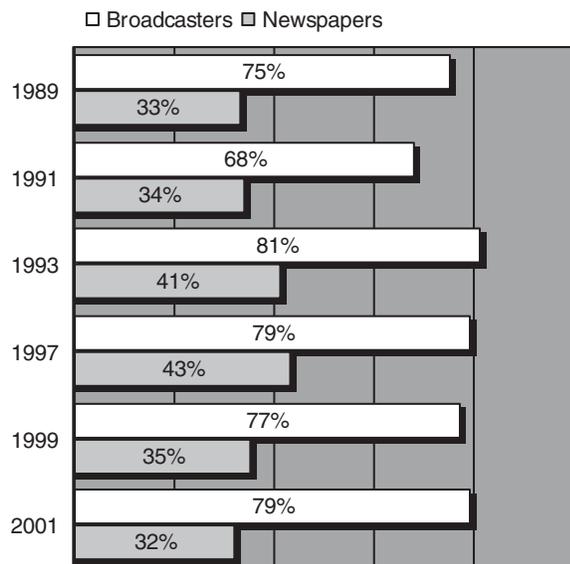
Taken together with the previous editions of *Agents of Discovery* — which surveyed the news media on the same topic in two three-part studies, one cov-

Comparative results from six editions of *Agents of Discovery*

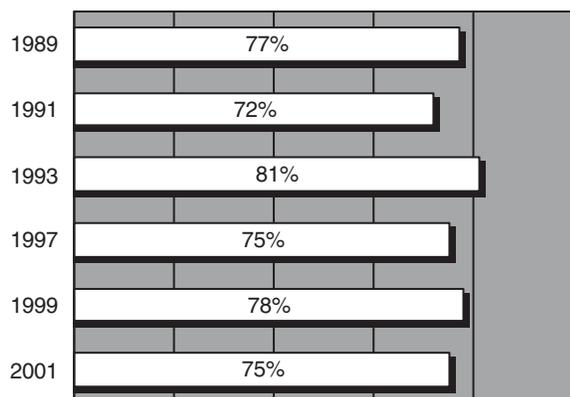
Average number of subpoenas received by organizations reporting at least one subpoena:



Percentage of organizations receiving at least one subpoena:



Percentage of challenged subpoenas that were quashed:



ering the years 1989, 1991, and 1993, and the second covering 1997, 1999 and now 2001 — this is the only current, major study of the incidence of subpoenas issued against news organizations. The last similar national study of this type was published in 1971 by former University of Michigan law professor Vincent Blasi.⁵

The 319 journalists and media attorneys who provided data for this report represent print and television news outlets from all over the country. All together, they received 823 subpoenas in 2001. The managing editors and news directors who replied to the survey almost unanimously agreed that responding to subpoenas from investigators and litigants is a burdensome, and often aggravating, task. Each subpoena drains time and money from a news organization's budget — resources that should be spent on newsgathering. Some subpoenas require expenditures for legal fees, which can mount if an attorney needs to go to court to protect a news organization's press freedoms. Even the simplest subpoena requires the time and attention from a staff person who can discuss the matter with the subpoenaing attorney or locate and dub a videotape.

Some news outlets, in an effort to limit the flow of subpoenas, have developed policies and strategies for avoiding unnecessary requests. Several surveyed newsrooms reported the institution of policies to destroy raw footage or reporters' notes, remove reporters from coverage of an event, notify confidential sources that confidentiality might be compromised in the face of a subpoena, or prohibit the use of confidential sources altogether. The fact that newsrooms are forced, by the threat of overburdensome subpoenas, to modify their newsgathering processes in this manner represents an intrusion on their First Amendment right to gather and disseminate the news. Editorial freedom is lost when newsgatherers destroy or avoid valuable reporting for fear of compelled disclosure.

The subpoenas issued against journalists vary in scope and originate from a variety of sources. A subpoena might request anything from a published article or previously broadcast story to the disclosure of a confidential source. The majority of subpoenas are issued by criminal prosecutors and defense counsel, but many subpoenas also are issued by private litigants in civil lawsuits.

News organizations that want to fight subpoenas often file motions asking courts to "quash" them. A state's case law, the First Amendment, a state constitution, or a state shield law might provide the grounds for such challenges. The news media often invoke these sources for a "privilege" that will defeat any legal obligation to comply with subpoenas. Journalists and attorneys interested in learning the contours of their own state's privilege should take advantage of the Reporters Committee's new Reporter's Privilege Compendium, available online at www.rcfp.org/privilege. The compendium provides comprehensive guides, compiled by media lawyers in each state and every federal jurisdiction, to responding to and fighting against newsroom subpoenas.

Journalists object to subpoenas because they want to maintain their independence from government or from a particular side in a dispute. They worry that willing compliance with subpoenas will turn them into "investigative arms" of prosecutors, police, criminal defendants and civil litigants. This study documents the events that fuel such fears and the burden subpoenas place on the news media.

Methodology

The methodology for this survey was consistent with the process used in compiling prior *Agents of Discovery* reports. A total of 2,300 surveys were mailed to print and broadcast outlets in every state and the District of Columbia. Each daily newspaper listed in the 2001 edition of the *Editor and Publisher Yearbook* was sent a survey, regardless of circulation or geographic location. Each licensed television news outlet affiliated with a broadcast network was sent a survey.

The surveys were first mailed to news outlets in January 2002. The survey form, like that of 1999, contained 20 questions and included space for respondents' comments. See a reproduction of the survey form, *Appendix A*. A cover letter explained the purpose of the study and a pre-addressed, stamped envelope for return of the questionnaire was enclosed. A reminder postcard was sent in April, and in June another letter was sent with a copy of the survey to those who had not yet responded. The Reporters Committee would like to thank Vanessa Leggett, who signed the cover letter of the second mailing urging publishers and broadcasters to answer the survey so that the full extent of the subpoena problem could be documented.

Respondents were asked to provide the number, types and disposition of subpoenas received. They were also asked whether police or other law enforcement officers searched their newsrooms, or if the news organization's telephone records or those of any member of its staff had been subpoenaed during the year. An optional question asked news organizations whether the issuance of subpoenas had affected newsroom policies regarding the retention of unpublished materials or the use of confidential sources.

By the cut-off date, 319 news outlets had responded to the subpoena survey — a 14 percent response rate. See *list of participating news organizations, Appendix B*. In 1999 the response rate was 19 percent; in 1997, it had been 29 percent. Of the returned 2001 surveys, 237 (74 percent) came from newspapers and 82 (26 percent) came from broadcasters. The response rate for newspapers was 16 percent, a drop from 22 percent in 1999 and 28 percent in 1997. The response rate for broadcasters was 10 percent, a drop from 13 percent in 1999 and 31 percent in 1997.

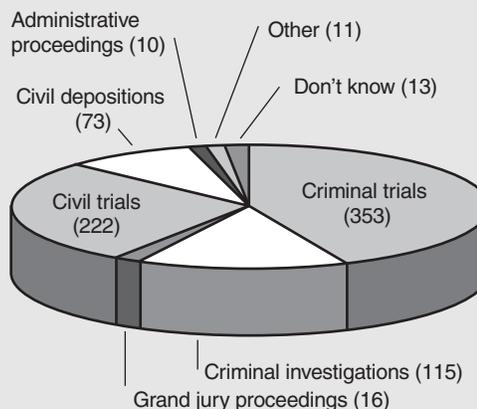
The survey also gave each respondent the option of asking that its identity be kept confidential. Of the 319 news outlets that returned survey responses, 117 — or 37 percent — requested anonymity. In this report, organizations that requested anonymity are identified only by state and medium.

The figures and percentages contained in this report have not been statistically analyzed, and no statistical generalizations have been made outside the group of respondents. This report includes only the data supplied by the responding news organizations. Calculations were rounded to the nearest tenth of a percentage point. The sum of the percentages in some questions may not equal 100 percent, both because of the rounding and because in some instances, respondents could select more than one description or answer for one subpoena.

Survey Population and Returns

Three hundred nineteen news organizations (237 newspapers and 82 television broadcasters) responded to this survey. The total number of subpoenas reported was 823. One

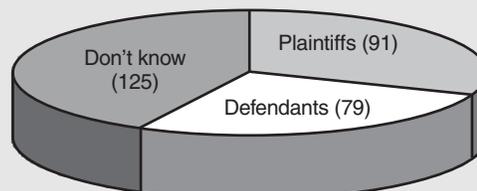
Types of proceedings



Subpoenaing party in criminal proceedings



Subpoenaing party in civil proceedings



hundred forty-two respondents — or 45 percent — reported receiving at least one subpoena. In 1999, 46 percent of the respondents reported receiving at least one subpoena.

The 82 television stations received 638 subpoenas; the 237 newspapers received 185 subpoenas.

Of the 237 newspapers responding,

77 (32 percent) received one or more subpoenas during 2001. Of the 82 broadcasters responding, 65 (79 percent) received one or more subpoenas during the year.

The average number of subpoenas received by all respondents was 2.6. This represents a decline from the 1999 survey, which found that respondents re-

ceived an average of 3.0 subpoenas. The average number of subpoenas per respondent in 1997 was 4.6.

Broadcasters received more subpoenas than newspapers in 2001. The average number of subpoenas received by television news stations was 7.7. The average number received by newspapers was 0.7.

Subpoenas from the federal government

The year 2001 involved more turmoil and dramatic change than any other year in recent history. The events of September 11 shocked the nation and spurred the federal government to take action to punish terrorists, protect the country and compensate for losses. The attacks prompted federal investigations and litigation that will remain active for years to come.

Yet, surprisingly to some media attorneys, the number of subpoenas to news

organizations has not increased in any significant manner since September 11, according to Reporters Committee sources. A year and a half after the attacks, anecdotal evidence showed that media organizations had not received a large number of terrorism-related subpoenas from the federal government since September 11.

One reason for the lack of change may be that news organizations were more willing after Sept. 11 to hand over information to authorities without being subpoenaed. Whether news media organizations are offering tape and other unpublished materials to government is difficult to determine because they apparently are doing so only behind closed doors.

A report released by the Department of Justice in December 2001 said the agency authorized 88 subpoenas of the news media between 1991 and Sept. 6, 2001. Of those subpoenas, 17 sought information

that could identify a reporter's source or source material. And in eight of the cases — five involving subpoenas for reporters' phone records and three involving requests for documents or testimony — the department said it did not negotiate with reporters before issuing the subpoena because negotiations would have threatened a criminal investigation.

The department listed 33 instances of trial subpoenas served on broadcast and print reporters from news outlets. Most of those subpoenas sought aired videotapes of interviews

with criminal defendants or print reporters' testimony to verify the contents of published interviews. Other subpoenas sought reporters' notes.

The figures for the year 2002 have yet to be released. Thus, any change in the number of federal subpoenas to news organizations since Sept. 11, 2001, has not been documented.

Journalists facing subpoenas from federal sources should be aware of internal regulations within the Justice Department known as the "Attorney General Guidelines on Subpoenaing the News Media." The rules, designed to balance the public's interest in a free flow of information with the interest in effective law enforcement, spell out procedures the department must follow when it subpoenas a member of the news media.

Before a federal prosecutor may issue a subpoena to a reporter, the Justice Department regulations require that "[a]ll reasonable attempts should be made

to obtain information from alternative sources."

The regulations also require that prosecutors negotiate with the media. No subpoena may issue without authorization from the Attorney General, unless the material sought has already been published, and the news organization has consented to disclosure.

In addition, Justice attorneys can only subpoena information that is "essential" to a case. "The subpoena should not be used to obtain peripheral, nonessential, or speculative information," under the rules.

The guidelines in place at Justice also limit the use of subpoenas to get at a reporter's telephone records. The provisions concerning phone records are rigorous: the department must have grounds to believe a crime has been committed, the information sought must be essential, and the reporter must be given timely notice of the Attorney General's authorization of the subpoena.

While the Attorney General's guidelines do not have the force of law, experience has shown that they are respected and followed by department attorneys. In May 2002, for example, federal prosecutors in Manhattan withdrew a subpoena to MSNBC after they realized they had not obtained authorization from the Attorney General.

Nevertheless, Attorney General John Ashcroft has shown little commitment to enforcement of the subpoena guidelines. Journalists should take it upon themselves to insist that federal investigators and prosecutors attempting to subpoena the news media follow the procedures laid out in the guidelines.



John Ashcroft

AP PHOTO

One broadcaster reported receiving 53 subpoenas, the most of any respondent in 2001. Two other broadcasters received more than 40 subpoenas during the year. Thirty-five of the 65 broadcasters that received a subpoena in 2001 had more than five subpoenas during the year; 61 of the 65 received more than one subpoena.

The print outlet that received the most subpoenas received 15. All other newspapers that were subpoenaed in 2001 received no more than ten subpoenas over the course of the year.

Of the 319 respondents, 177 reported receiving no subpoenas.

News outlets from every state and the District of Columbia except Delaware, Hawaii, Rhode Island and Wyoming responded to the survey. At least one subpoena was reported in 41 states and in the District of Columbia.

Forums and Proceedings

News organizations reported receiving subpoenas in connection with criminal trials and investigations, civil trials and civil depositions, criminal grand jury proceedings, and administrative proceedings.

Criminal proceedings generated the greatest number of proceedings, surpassing the number of subpoenas issued in civil cases by 189. Subpoenas issued in criminal cases accounted for 484 (56 percent) of the reported 823 subpoenas overall. Of those subpoenas, 353 (73 percent) were served in conjunction with a criminal trial, 115 (24 percent) were served in conjunction with a criminal investigation, and 16 (3 percent) for grand jury proceedings.

“Most subpoenas seek video and audio related to crime,” reported a Kentucky broadcaster, whose news outlet fit the trend in this regard.

Because high-profile crimes are often covered more than once, some criminal subpoenas can be especially burdensome.

“Some stories have run in our newscasts over 400 times,” said a broadcaster in Sarasota, Fla. A murder in that city that went to trial in 2001 required a



STILL IMAGES FROM VIDEO BY TURTLE MAJIK PRODUCTIONS

A Missoula, Mont., trial judge in March 2001 dismissed a subpoena issued to a student journalist who had videotaped disturbances between protestors and police, including assaults on news photographers, at a Hell’s Angels gathering in Missoula.

“massive” effort on the part of the station to respond to a subpoena issued in the case.

Surveyed news organizations reported receiving 295 subpoenas (36 percent) related to civil litigation. The majority of those civil subpoenas, 222 (75 percent) were issued in civil trials, while 73 (25 percent) sought depositions in civil matters.

Responding news outlets indicated that only 10 (1 percent) of the subpoenas they received arose from proceedings within an administrative agency. Media organizations reported another 13 (2 percent) where the type of proceeding involved was unknown. Eleven subpoenas were characterized by the responding organization as being part of some other type of proceeding, rather than a criminal, civil or administrative proceeding.

The majority of subpoenas issued to media outlets in 2001 arose in state court proceedings, accounting for 706 (86 percent) of all reported subpoenas. Only 74 subpoenas reported (9 percent) were issued in proceedings in a federal court. The responding news organizations did not identify the source of the remaining 43 (5 percent).

In almost all of the civil cases, news organizations said they were not parties to the lawsuits in question. Of the civil subpoenas reported, 286 (97 percent) were described as being served upon the media as “third parties” to the litigation. A media organization was directly involved in the civil proceeding to which a subpoena was connected in only nine instances (3 percent).

Out of the nine instances in which the

media outlet receiving the subpoena was a party to the case, usually as the defendant to a lawsuit, two of the suits involved a libel claim, two included an invasion of privacy claim, and the rest involved other types of civil claims. Because claims involving libel and invasion of privacy often are combined in one legal proceeding, both claims can be addressed in the same subpoena.

Who Subpoenaed the News Media?

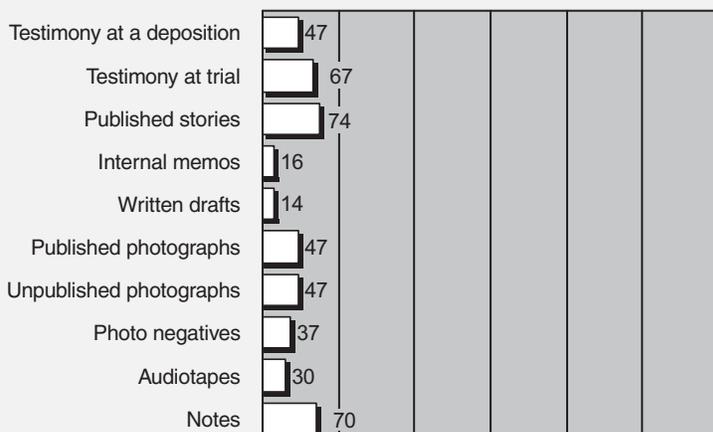
Criminal defendants served more subpoenas on the news media than anyone else, with a total of 223 reported (46 percent of criminal subpoenas and 27 percent of all subpoenas). Prosecutors issued 206 subpoenas to the responding news media outlets (43 percent of criminal subpoenas and 25 percent of all subpoenas).

One broadcaster, in San Antonio, Texas, had so many subpoenas from a local prosecutor that it had to institute a new policy. “We have begun charging the [District Attorney] for copies of tapes of material that we actually broadcast in our newscast,” said Greg Koelfgen of KABB-TV. The station instituted the fees “in hope it would slow the number [of] requests and to account for tapes/man hours required to make dubs,” he wrote.

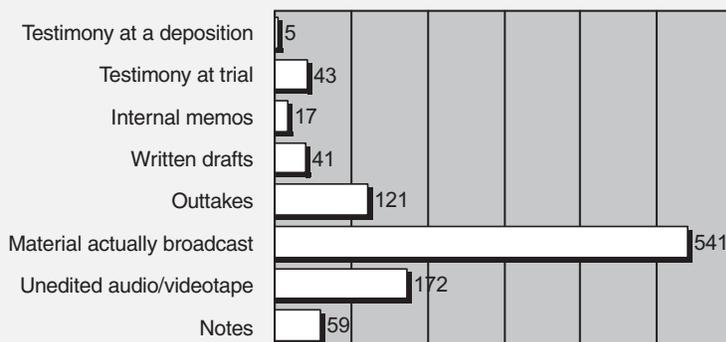
Law enforcement officials issued 22 subpoenas (5 percent of criminal subpoenas and 3 percent of all subpoenas) in 2001. Respondents did not identify a source for 33 subpoenas (7 percent of criminal subpoenas) served in conjunction with criminal proceedings.

Material sought by subpoenas:

Newspapers



Broadcasters



Because subpoenas usually demand more than one type of information, total subpoenas by category will add up to more than the total number of subpoenas.

In civil cases, news organizations reported that plaintiffs issued 91 subpoenas (31 percent), while defendants issued 79 (27 percent). Responding media did not identify a source for the remaining 125 (42 percent).

Administrative agencies issued four subpoenas (less than 1 percent). Private individuals issued three subpoenas in administrative proceedings, with the source of one administrative subpoena remaining unidentified.

Materials the Subpoenas Sought

Newspaper and broadcast outlets were asked to describe the type of material demanded by each subpoena they received in 1999. Broadcasters were given eight categories to classify subpoenas,

and newspapers were given ten. Because subpoenas usually demand more than one type of information, total subpoenas by category will add up to more than the total number of subpoenas.

Newspapers reported receiving their largest number of subpoenas, 114 (61 percent), for testimony. Subpoenas for testimony at trial totaled 67 (36 percent), while subpoenas for testimony at depositions totaled 47 (25 percent).

Published stories and reporters' notes generated the next highest category of results at newspapers, with subpoenas for published stories totaling 74 subpoenas (40 percent) and subpoenas for notes totaling 70 subpoenas (38 percent).

Subpoenas for unpublished photographs numbered 47 (25 percent). Published photo subpoenas also numbered

47 (25 percent). Newspapers reported receiving 37 subpoenas (20 percent) for photograph negatives.

Some respondents noted that photographs of accident scenes seemed to prompt the most subpoenas. As a result, some — like *The Advocate* in Baton Rouge, La., and *The Courier-Tribune* in Asheville, N.C. — have instituted policies instructing employees not to save photos of accidents.

"We do not keep photos of wrecks or other assignments that are not actually published," wrote Ray Criscoe of *The Courier-Tribune*. "And we have been instructed by our corporate lawyer to destroy notes of stories rather than save them."

Newspapers were subpoenaed only 16 times (9 percent) for internal memoranda, 14 times (8 percent) for written drafts, and 30 times (16 percent) for audiotapes.

For broadcasters, material actually aired accounted for the greatest number of subpoenas by a substantial margin — 541 subpoenas (85 percent). Subpoenas that included demands for unedited audio or videotape were the second-most demanded materials from broadcasters, with those subpoenas totaling 172 (27 percent). Demands for outtakes were slightly fewer than those for unedited audio or videotape at 121 (19 percent). Again, film of accident scenes was of particular interest to litigants. John Emmert of WINK-TV in Fort Myers, Fla., said the subpoenas to his station sought "mostly car accidents." One of the two subpoenas served to KDLT-TV in Sioux Falls, S.D., was from an automobile crash victim who wanted video to help describe the scene of the accident.

"It seems like the attorneys are getting more aggressive about trying to get raw video," said one Idaho broadcaster. "We have attorneys that tell reporters while they are interviewing them that they are going to subpoena the raw video and save it."

Broadcasters reported being subpoenaed for notes in 59 instances (9 percent), written drafts in 41 instances (6 percent), and internal memos in 17 (3 percent). Broadcast subpoenas for testimony at trial totaled 43 subpoenas (7 percent), while those for testimony at depositions totaled five (1 percent).

There were 11 subpoenas (1 percent) reported for material related to news organizations' Web site content. This is

an increase from 1999, when subpoenas for Web site materials represented less than one half of one percent of all subpoenas.

Respondents indicated that in six instances (1 percent), subpoenas demanded the identity of a confidential source or information obtained under a promise of confidentiality. Of these subpoenas, four (less than 1 percent) requested confidential information, and two (less than 1 percent) requested the identity of confidential sources. Among the six subpoenas for confidential sources or information, three were served on print outlets and three on broadcasters.

Many news outlets reported charging processing fees to parties who subpoenaed them for materials, such as already-aired tape, that the news outlets were willing to release. Fees ranged from \$25 to \$650 for a single subpoena.

"It takes several hours to answer each subpoena — from archive search to dubbing," reported Paul Lewis of WTIC-TV in Hartford, Conn. "We bill whoever asks \$250-\$500 depending on [the] extent of the subpoena. We sometimes do get paid!"

Another broadcaster, WPMT-TV in York, Pa., reported charging a base fee of \$100 per subpoena, plus \$25 for each extra hour, after the first two, spent

complying with the subpoena.

"We find the best way to get payment is to include a letter describing the contents and make the bill a part of it. The bill is then entered into the court record," said Jim DePury, WPMT-TV's news director.

Newsroom Searches

No newsroom searches were reported by respondents in 2001. However, this does not mean that no newsroom was searched that year. In 1999, no respondents reported being searched. In 1997, five of the 597 respondents reported that law enforcement officers searched their newsrooms during the year. In 1993, three of the 900 responding news outlets reported having their newsroom searched. Two of the 1,010 news organizations responding in 1991 reported having their newsroom searched. No respondents reported being searched in 1989.

The federal Privacy Protection Act generally prohibits federal and state employees from searching a newsroom. The act provides limited exceptions that allow the government to search for certain types of national security information, child pornography, evidence that the journalists themselves have committed

a crime, or materials that must be immediately seized to prevent death or serious bodily injury. Although the act applies to state law enforcement officers as well as federal authorities, eight states — California, Connecticut, Illinois, Nebraska, New Jersey, Oregon, Texas and Washington — have their own statutes providing similar or even greater protection.⁶

Sanctions

No respondent reported suffering court sanctions for refusing to comply with a subpoena. Nevertheless, the year 2001 saw the longest jailing of a journalist in U.S. history.

In July 2001, unpublished author Vanessa Leggett went to jail for refusing to turn over information she had collected while working on a book about the 1997 murder of Houston socialite Doris Angleton. The subpoena came from a federal grand jury investigating the case and sought all of Leggett's tape-recorded interviews with her sources, including all copies of transcripts. Leggett argued that she was protected by a reporter's constitutional privilege against divulging confidential sources. Two federal courts disagreed. U.S. District Judge Melinda Harmon ruled on July 6, 2001,

Reporter's privilege project aids journalists, attorneys

When faced with a subpoena, news organizations and their attorneys should take advantage of The Reporters Committee's new comprehensive guide to the law of the reporter's privilege. The Reporter's Privilege Compendium, released on the Web in December 2002, is the most extensive work on the reporter's privilege available anywhere.

The compendium is a detailed guide to the law of subpoenas and the reporter's privilege in all 50 states,

the District of Columbia, and every federal circuit. Each guide was written by a lawyer in that jurisdiction who has handled subpoena cases.

The compendium is meant to guide attorneys through the process of responding to subpoenas on behalf of journalists under the laws of their jurisdiction. In addition to giving a detailed analysis of each state's privilege laws, the guides provide practical information about subpoenas generally, including when and how a subpoena can be issued and how to

make a motion to quash. The guide also covers contempt proceedings and the appeals process.

The compendium also provides helpful information on resisting newsroom searches by government authorities and fighting subpoenas issued to telephone companies in search of journalists' sources.

The compendium is geared primarily towards lawyers, but journalists will also benefit from the project's comprehensive guide to reporter's privilege laws. The Reporters Committee advises journalists and news organizations to consult an attorney when served with a subpoena or search warrant.

The compendium is on the Reporters Committee Web site at www.rcfp.org/privilege.



that no such privilege protects journalists in Texas. The U.S. Court of Appeals in Houston (5th Cir.) ruled that no reporter's privilege exists against a grand jury subpoena.

Both the Reporters Committee for Freedom of the Press and Rep. Sheila Jackson Lee (D-Texas) asked Attorney General John Ashcroft to intervene in Leggett's case. Justice Department officials deferred to the court rulings and said Leggett, a book author, could not benefit from federal guidelines that limit the government's authority to subpoena journalists.

Sticking to her journalistic principles, Leggett chose to go to jail for contempt rather than comply with the court's order to disclose her sources. In the end, she spent 168 days in jail and was released only when the term of the grand jury before whom she was supposed to testify expired.

While Leggett's experience was unusual because of her lengthy jail stay, reporters have been sanctioned in other cases for noncompliance with subpoenas. In years past, respondents to this survey have reported on the jailing and fining of their reporters. For example, in 1997, a California television news director was sentenced to jail after refusing to turn over outtakes from a jailhouse interview with an accused killer. The California Supreme Court ruled in November 1999 that the shield law should have protected the journalist.⁷

In 1993, three of the responding news outlets reported that a staff member was sanctioned for refusing to comply with a subpoena. In the 1991 survey, six organizations reported that employees had been sanctioned for not responding to subpoenas. In 1989, one news outlet reported that a staff member was subject to a sanction.

Removing Reporters from the Courtroom

Four news organizations out of the 319 respondents (1 percent) reported removing reporters from a story as a result of the threat or use of subpoenas, a decrease from the 5 percent of respondents who indicated they removed reporters from stories in 1999. In all of the instances, the outlet removed the reporter at its own discretion, as opposed to compliance with a judge's order.

In a case not reported by respondents, a radio talk show host in Rhode

Island was named as a possible witness by the defense in a high-profile case he was covering in the fall of 2001. The case, *State v. Cianci*, involved alleged corruption at Providence City Hall. The radio host reportedly had information on how a government videotape of the alleged corruption wound up in the hands of a television station. The trial judge issued a sequestration order preventing all possible witnesses from attending the criminal trial. According to a Rhode Island attorney, an agreement with defense counsel was reached whereby the talk show host was permitted to be present for the testimony of witnesses who were testifying about matters that were not relevant to his potential testimony. Thus, he was able to attend most of the trial.

Responding to Subpoenas

News organizations responded to subpoenas with actions that ranged from full compliance to challenges before an appellate court. Survey respondents fully complied with 560 subpoenas (68 percent) without objection. Only four subpoenas (less than 1 percent) were challenged by the news media beyond the trial court level. An editor or attorney persuaded the party issuing a subpoena to withdraw it in 156 instances (19 percent of the time).

News organizations challenged subpoenas by filing motions to quash on 67 occasions (8 percent of the time). Courts quashed 50 (75 percent) of those subpoenas, and courts denied motions to quash in 17 instances (25 percent).

Of the denied motions, four (24 percent) were appealed to higher courts, and all were quashed on appeal.

Comments from respondents reveal that many news organizations, both print and broadcast, achieved success in negotiating the withdrawal or narrowing of subpoena requests simply by contacting the attorneys who had demanded the information. Such negotiations usually consisted of informing those attorneys of the existence of state shield laws that protect journalists' materials from compelled disclosure, making an offer to partially comply by providing previously published materials only, or agreeing to verify that published materials were accurate. Negotiations were conducted either by news editors or producers or by attorneys on their behalf.

"I personally call each attorney who

subpoenas material to explain to him or her what we have available and what we will comply with. Occasionally an attorney won't talk to me," said Roger Gadley of KMPH-TV in Fresno, Calif. Another California newspaper said: "Our attorney is very good at persuading subpoenaing attorneys to back off."

At times, news organizations have been successful at resisting subpoenas before they are even served.

"There was one instance in mid-2001 where attorneys threatened to seek a subpoena for one of our reporter's notes in a case that was before a grand jury. Our attorney convinced them to drop the idea before it even entered the legal system," reported Phil Haslanger of *The Capital Times* in Madison, Wis.

"If we know a subpoena is going to be attempted, we alert the [photographer or] reporter who then refuses to go downstairs to receive it," explained a newspaper editor in North Carolina. "An editor goes instead and states that we refuse the subpoena. If necessary, our attorney makes a phone call to stop the subpoena. I have been here for 13 years and we have never allowed a subpoena to be served."

Successful Challenges

Responding news organizations cited a variety of grounds for successful challenges. At times, courts quashed subpoenas for several different reasons.

Shield laws were cited in 36 (54 percent of challenges), while provisions of federal or state constitutions were successfully invoked only 12 times (18 percent of challenges). That other sources of the material were available often proved a fatal defect, being reported as the grounds for quashing 21 times (31 percent of challenges). That the subpoenaing party did not have a sufficient need for the materials sought was cited for the reason for quashing 21 subpoenas as well (31 percent of challenges).

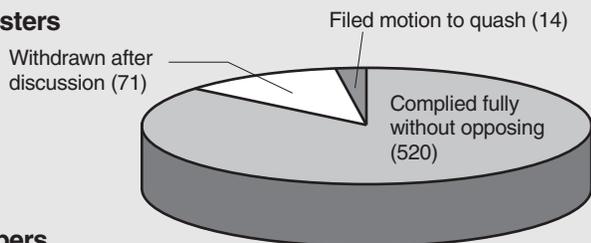
Twelve subpoenas (18 percent of challenges) were quashed because the court found the material requested to be irrelevant, and 22 subpoenas (33 percent of challenges) were quashed because the subpoena was found to be overbroad.

Two subpoenas were reportedly quashed on other grounds, such as a serving technicality or the fact that the organization did not have the subpoenaed material.

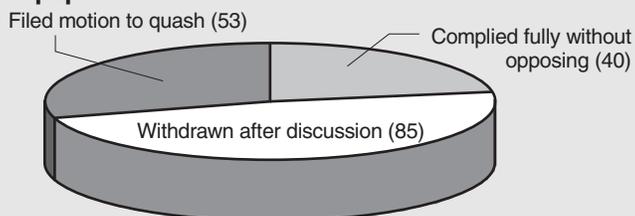
A respondent from Salt Lake City, Utah, described a successful challenge at

Responses to subpoenas

Broadcasters



Newspapers



his paper, *The Deseret News*. The subpoena was served in connection with a case in which the Democratic party in Massachusetts challenged the residency of a candidate for governor who had a home in Utah. The Democrats were citing *Deseret News* stories in an effort to disqualify the candidate, and they sought to depose a reporter from the paper.

Managing editor Rick Hall said: “We retained counsel, fought it in state district court. Ultimately, [the] judge required [the] deposition, but limited the scope. [The r]eporter was not forced to give info not already published.”

How Effective are Shield Laws?

A surprising aspect of the survey responses concerned whether the media respondent in a state is covered by a shield law. In 2001, 31 states and the District of Columbia had shield laws. News organizations in shield law states reported receiving an average of 3.1 subpoenas per outlet, while news organizations in non-shield law states reported an average of 1.7 subpoenas per outlet.

Other years have shown similarly unexpected results. In 1999, shield law state outlets reported an average of 3.4 subpoenas, while non-shield law states reported 2.3. In 1997, shield law state outlets received an average of 4.7 sub-

poenas per outlet, compared to 4.3 in non shield law states.

Nevertheless, the responses from media organizations suggest that shield laws did make a difference in 2001 in whether a subpoena was quashed. The quash rate for shield law states was 22 percent, compared to 5 percent in non-shield law states.

Several respondents in shield law states expressed how their shield law benefitted them.

A newspaper in Nebraska reported: “In the one subpoena given to us this year, I contacted our legal counsel and the defending attorney who issued the subpoena. I explained that Nebraska is a strong shield law state and that our reporter would only cite the published article and not offer any other information. The attorney acknowledged that and later withdrew as defending counsel on that case.”

“I believe our state law governing payment for materials and affording protection for both confidential and non-confidential unpublished material is tremendously helpful,” said Linda Lightfoot, executive editor of *The Advocate* in Baton Rouge, La. She also said that on the rare occasion reporters for her paper use confidential sources, “the source is fully briefed on our shield law provisions.”

“The shield law is immensely useful

in prompting lawyer[s] to withdraw subpoenas without a fight,” said a newspaper editor in Maryland, which has the nation’s oldest shield law, adopted in 1896.

And a newspaper in New York wrote that “the New York shield law discourages most subpoenas for material from reporters.”

Print v. Broadcast: Who Gets More Subpoenas?

Television stations received an average of 7.7 subpoenas, and newspapers received an average of 0.7. The disproportionate share of subpoenas served on television stations correlates with previous survey results.

Of the 237 newspapers responding 77 (32 percent) received one or more subpoenas during 2001. Of the 82 broadcasters responding, 65 (79 percent) received one or more subpoenas during the year.

Print and broadcast respondents reported similar experiences regarding the type of proceedings involved and the sources of those subpoenas. But subpoenas demanded different types of material from different media, and the outlets responded to subpoenas differently as well.

Newspaper staff were more often asked to testify at trial or at a deposition, receiving 114 subpoenas (61 percent) for testimony. In contrast, 48 (8 percent) of the subpoenas received by broadcasters were for testimony at trial or deposition.

Newspapers also reported more success in negotiating the withdrawal of subpoenas. Newspapers indicated that 85 (46 percent) of the subpoenas issued against them were withdrawn, while television stations negotiated withdrawal on 71 occasions (11 percent). Likewise, print media reported greater success in getting subpoenas quashed. Newspapers quashed 40 subpoenas (22 percent), while broadcasters quashed only 10 (2 percent).

Print and broadcast media differed greatly when it came to complying with subpoenas without opposing them. Television stations reported full compliance in 520 situations (82 percent). Newspapers, on the other hand, fully complied with only 40 (22 percent) of the subpoenas issued against them. Among subpoenas issued against broadcasters, 523 (82

percent) demanded material already aired, and among newspapers, 74 (40 percent) requested published articles.

The two different types of media also found success through different grounds when challenging subpoenas. Newspapers cited state shield laws successfully in 30 instances (57 percent of challenges), but television stations asserted shield protections in six successful challenges (43 percent of challenges). Newspapers relied on constitutional privileges in 11 successful challenges (21 percent of challenges); broadcasters cited a constitutional challenge in one victory (7 percent). Subpoenas issued against newspapers were deemed overbroad by a court in 14 cases (26 percent of challenges); subpoenas to broadcasters were ruled overbroad in eight cases (57 percent of challenges).

Retention of Notes And Use of Confidential Sources

The 2001 survey form asked respondents whether the threat of subpoenas or the receipt of subpoenas had affected newsroom policies regarding the retention of notes or videotape, or the use of confidential sources. Out of 319 respondents, 49 (15 percent) reported a change in newsroom policies as a result. Forty-four (14 percent) said their policies regarding the retention of notes, drafts or other unpublished or nonbroadcast material had been affected. Five (2 percent) reported that changes had been made pertaining to the use of confidential sources due to the threat of subpoenas.

Some respondents described strict institutional policies regarding the retention of notes or videotape, and some news organizations even promulgated formal, written policies that reporters and editors were expected to follow at all times.

For example, Rick Larson of the *Tri-City Herald* in Washington said: "We established a policy that notes should not be retained longer than 30 days unless legal action is threatened."

"After attending a seminar discussing the possibilities of subpoenas, we put a 6-month time limit on keeping old notes, then they are to be destroyed," reported Stan Hojnacki of *The Hickory Daily Record* in North Carolina.

Some broadcast outlets said they recycle tapes frequently, so that raw footage is not available for subpoenaing

parties. The policy at KCRG-TV in Cedar Rapids, Iowa, is "not to keep unedited raw videotape longer than 24 hours," according to news director Rebecca Lutgen Gardner.

At a station in Texas, "field tapes are kept in constant service so raw video is often recorded over from day to day. This way unedited video is non-existent."

Some outlets tried to balance the desire to destroy materials for the purpose of avoiding subpoenas against the need to retain information in the event a story is questioned or becomes news again.

"We save notes only long enough to make sure that those written about in critical (i.e. controversial) stories have a chance to claim corrections," said an editor in Vermont. "Most notebooks are tossed within weeks."

Similarly, a South Carolina editor said: "For many years it has been our policy not to keep notes or drafts beyond a reasonable period of accountability for a story's accuracy."

"We destroy all emails after 90 days," explained another southern respondent. "We keep notes only as necessary to attribute information in the event of a libel suit."

Not all news outlets have written policies or formal timetables. Many respondents simply described policies that "encourage" or "recommend" the destruction of unpublished materials, including notes, unedited videotape, and photographic negatives, within a "reasonable" amount of time. Some, like Jonie Larson of *The Daily Gazette* in Sterling, Ill., said they decide what to retain on a "case-by-case" basis.

"Our reporters and editors do not retain drafts of stories unless there is a specific reason to do so," said Frank Barrows of *The Charlotte Observer* in North Carolina.

A number of news organizations said they discourage reporters from using confidential sources due to concerns about subpoenas, and many indicated that reporters are allowed to quote or use unnamed sources only with prior approval from editors.

"Confidential sources are a continuing topic of conversation. Typically a senior editor's approval is required," said an editor in South Carolina.

Another newspaper in Oregon has instituted "increased training with reporters on potential limits and pitfalls

with confidential sources in legally tricky situations."

The "Lazy Lawyer" Syndrome

As in past years, respondents indicated that subpoenas are taking time and resources away from their newsgathering efforts, and most do not seem to be serving any legitimate need for information. Many demand material that often can be found elsewhere.

"In one case, because the attorney asked for material on an old crime, the [research and dubbing] bill was \$650; much of the tape was stories in which file tape was used, so he got the bit of silent video over and over again. Most attorneys don't know what they are asking for," wrote Roger Gadley of KMPH-TV in Fresno, Calif.

John M. Humenik in Davenport, Iowa, said that at his newspaper, the *Quad-City Times*, "Each [subpoena] case involved defense attorneys unfamiliar with press practices or on a fishing expedition for a pre-trial venue motion."

"Mainly they're time-consuming," lamented the news director at a station in Iowa. "I had one that needed legal counsel and took me away from my daily duties. They're a headache!"

One tactic some broadcasters used for avoiding the hassle of a subpoena for video already aired was referrals to a video monitoring service. Such companies, which do not exist in all markets, keep archives of television programs they tape off the air and sell the tapes to requesters.

A broadcaster in Indiana described his station's policy: "We do not offer 'raw' tapes, only the aired versions are available. We have successfully challenged any and all requests for 'raw' footage. Because of that we have been referring attorneys to a video tape transcribing company to get copies of stories and transcripts of tapes. The company charges 10 times less than we do for such a service. I would say that has cut our workload, in regards to subpoenas, by nearly half."

A station in Fresno, Calif., went so far as to suggest to its local bar association that the bar contract with the local clipping service to permanently keep all recordings, so that attorneys could go to the service instead of to broadcasters for their evidence. According to Roger Gadley, news director of KMPH-TV, the

Consistency is the best policy

Several survey respondents voiced their view that resisting subpoenas on a consistent basis is the best way to avoid them. These respondents felt that aggressive approaches to subpoenas will result not only in subpoenas being quashed, but also will serve to deter future subpoenas:

“We had none this year, but we’ve taken a firm stance: If you want it, subpoena ... and we’ll fight the subpoena, even for broadcast material. We just say ‘no.’”

— Al Aamodt of WDAY-TV in Fargo, N.D.

“Our experience: If you fight subpoenas effectively and intelligently, they arrive far less frequently.”

— Thomas Kearney of *The Keene Sentinel* in Keene, N.H.

“We have consistently responded to subpoenas with a pledge to file a motion to quash. This has ended most problems immediately, or soon after we sent over a copy of what [we] would file. Most attorneys leave us alone these days.”

— Charles D. Mitchell of *The Vicksburg Post* in Vicksburg, Miss.

“Our practice is to provide copies of anything we air — we refuse to provide anything else. Everyone seems to understand this.”

— Griff Potter of WQAD-TV in Moline, Ill.

“We have been aggressive in past years in resisting subpoenas, and the local legal community is well aware of that.”

— News organization in Illinois

bar association was not interested, and the idea was dropped after one meeting.

Undermining Independence

Underlying the news media’s resistance to subpoenas is a fear that providing information in response to subpoenas, especially when those subpoenas come from government sources, interferes with their ability to function as independent newsgatherers.

“We train reporters/line editors to be constantly vigilant to lawyers/subjects of stories asking about stories which may trigger subpoenas. We ask they report all such conversations,” said Frank Gibson of *The Tennessean* in Nashville. “When a subpoena seems likely, we ask lawyers to negotiate ways to avoid being used by prosecutors or litigants.”

In its friend-of-the-court brief arguing that book author Vanessa Leggett should be entitled to a legal privilege allowing her to refrain from testifying before a grand jury in 2001, The Reporters Committee for Freedom of the Press wrote: “Absent this protection, the press will be reduced to an investigative arm of prosecutors, police, criminal defendants, and civil litigants, resulting in a severe chilling of the flow of information to the public. It is this public need for information that should be at the center of this debate, particularly with respect to confidential sources and information.”⁸

The “investigative arm” analogy is not new. In 1972, in the U.S. Supreme Court’s watershed reporter’s privilege case *Branzburg v. Hayes*, Justice Byron White, in his concurrence, made sure to point out: “[w]e do not hold . . . that state and federal authorities are free to annex the news media as an investigative arm of the government.”⁹

The court hearing Leggett’s case took a narrow view of the privilege and said journalists have an obligation to help the government prosecute crimes. Many in the news media disagree and, like most respondents to the 2001 survey, resist all requests for unpublished or nonbroadcast newsgathering information.

Some efforts to remain independent are successful, while others are not. Another newsgatherer in Texas recalled having spent considerable time “haggling with [a] prosecutor” over a particular subpoena. “We opposed being used as part of their investigation,” reported the publication’s editor, but ultimately a motion to quash was defeated.

Calculating the Cost

As noted earlier, even news outlets that comply with demands for published or broadcast material or negotiate the withdrawal of most subpoenas may end up spending significant amounts of time and money dealing with the subpoenas they receive. Respondents’ estimates as to the average time spent on a typical subpoena ranged from 30 minutes to six hours; a majority said each subpoena takes between one and four hours.

“It is a lengthy process to pull tapes and dub them,” explained one broadcaster.

At a Texas newspaper, “one criminal subpoena took dozens of hours from top editors and lawyers.”

Kay Lain of WGHP-TV in High Point, S.C., explained that each request involves “archive searches, locating tape, viewing tape and finding footage,” plus “paperwork to have [a] copy of [the] tape made,” time for drafting a cover letter and official declaration for the court, conversations with the station’s legal department, as well as discussions with the requesting party. All in all, the process takes “several hours,” Lain said.

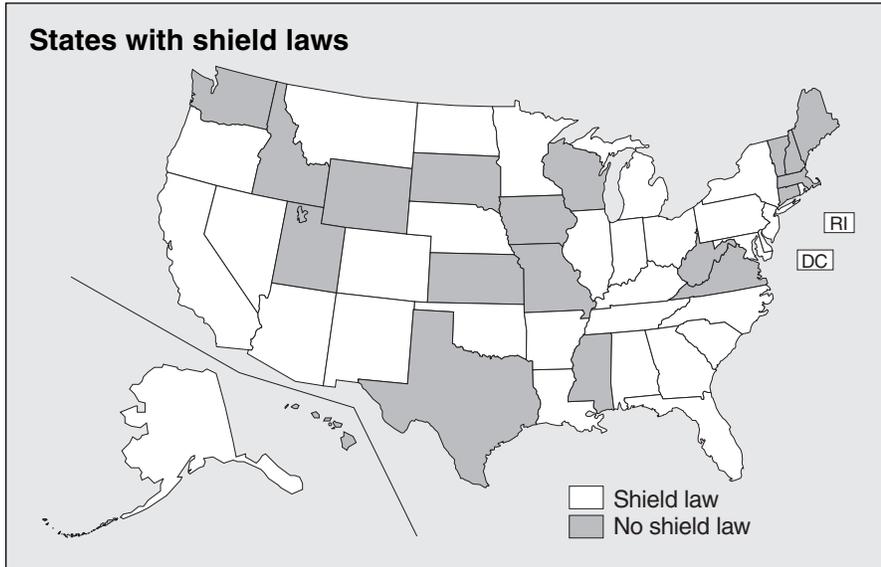
And subpoenas pulled reporters and editors away from other duties. An Idaho broadcaster estimated each subpoena took up “a couple of hours between talking with counsel, the General Manager, the reporter, photographer, [and] looking at the tape.”

“The average subpoena fight involves a few hours of legal conversation, which costs about \$500 each time. At a small paper, that’s a big enough hit to hurt a bit,” wrote one newspaper in Florida.

Of course, time and money spent on a particular subpoena depends on the materials requested. “A non-problematic subpoena takes about 30 minutes or so,” said John Emmert of WINK-TV in Fort Myers, Fla. However, if the subpoena demands “numerous tapes and research, it can take up to several days.”

Doug Merbach of KIMT-TV in Mason City, Iowa, reported that an average subpoena at his outlet usually requires between one and two hours. In one instance, however, he “received a subpoena just two days before a hearing on a case that had extensive coverage. Much of the next two days was spent dubbing video and gathering scripts.”

Time and money spent negotiating and complying with subpoenas is one thing; the costs increased significantly



when outlets had to pay attorneys to go to court for them.

“Court appearances and briefing to quash overly broad subpoenas generally add an additional four to eight hours,” said Gerald R. Ortals of KSDK-TV in St. Louis.

“Lawyers are expensive, but worth it when you need them,” said a broadcaster in South Carolina. Still, the fees can be “tough to swallow.” A representative from *The Orlando Sentinel* said the newspaper’s legal expenses are “significant”: “roughly more than \$30,000 for a subpoena.”

The time and money that went to responding to subpoenas could have been spent on reporting. An editor in Ohio summed up the problem: “It takes time away from newsgathering and supervision and it is an additional cost.”

Conclusion

Subpoenas to the news media are burdensome in several respects. First, they threaten the neutrality and independence of the media, casting them as “agents of discovery” in lawsuits that often do not involve them. Fighting subpoenas in order to maintain journalistic independence drains significant resources that should be spent on collecting and disseminating news. It also can result in court sanctions for journalists, such as Vanessa Leggett, who choose to guard their sources in the face of a court order.

Even when news outlets comply, rather than resisting a subpoena, the cost to the organization can include countless

employee hours and thousands of dollars. The burden is especially onerous when, as in most situations, the media organization is not a party to the lawsuit, and the materials requested are available from other means. The media is too often subjected to the “fishing expeditions” of attorneys and investigators seeking to bolster their cases with unnecessary data or footage. As one survey respondent wrote, the impact of subpoenas on the news media is “immeasurable, but considerable.”

The Reporters Committee has documented the burden of subpoenas in two three-part studies, the second of which terminates with this report. Over the course of the two studies — which analyzed data from six years out of a 13-year period — the data has not shown any significant increase or decrease in the number or burden of subpoenas to the news media. The data shows, at least anecdotally, that subpoenas pose a consistent problem in newsrooms around the country and that this burden is not going away.

This report attempts to quantify the harm that subpoenas cause to news organizations and the public’s right to know. The Reporters Committee compiles this report in the hope that the statistics and anecdotes contained herein will be useful to attorneys, judges and legislators when they are called upon to make important decisions about the use of subpoenas against journalists. The freedom of the press to perform its essential function of informing the public in a neutral and impartial manner is at stake.

Footnotes

¹ *Brief of Amici Curiae The Reporters Committee for Freedom of the Press, American Society of Newspaper Editors, Radio-Television News Directors Association, and Society of Professional Journalists, Supporting Reversal of Contempt Order Against Vanessa Leggett*, Case No. 01-20745, <http://www.rcfp.org/news/documents/leggett.html>, quoting *Shoen v. Shoen*, 5 F.3d 1289, 1294-95 (9th Cir. 1993).

² *In re Grand Jury Subpoenas*, 29 Med. L. Rptr. 2301 (5th Cir. 2001) (unpublished opinion).

³ *Gonzales v. National Broadcasting Co., Inc.*, 155 F.3d 618 (2d Cir. 1998). This opinion was later vacated; the court found a lesser privilege applied. *Gonzales v. National Broadcasting Co., Inc.*, 186 F.3d 102 (2d Cir. 1999), amended by 194 F.3d 29 (2d Cir. 1999).

⁴ *Branzburg v. Hayes*, 408 U.S. 665, 693-94 (1972).

⁵ Vincent Blasi, *The Newsman’s Privilege: An Empirical Study*, 70 Mich. L. Rev. 229 (1971). A more abbreviated follow-up study was conducted by Boston attorney John E. Osborn in 1984. John E. Osborn, *The Reporter’s Confidentiality Privilege: Updating the Empirical Evidence After a Decade of Subpoenas*, 17 Colum. Hum. Rts. L. Rev. 57 (1985). A study of non-confidential information was conducted in Florida before and after a watershed Florida Supreme Court case in the 1990s. Lawrence B. Alexander et al., *Branzburg v. Hayes Revisited: A Survey of Journalists Who Become Subpoena Targets*, Newspaper Res. J., spring 1994, at 97.

⁶ Cal. Pen. Code § 1524(g); Conn. Gen. Stat. § 54-33j; Ill. Stat. ch. 725 § 5/108-3; Neb. Rev. Stat. § 29-813(2); N.J. Stat. § 2A: 84A-21.9; Or. Stat. § 44.520(2); Tex. Code Crim. Proc., art. 18.01(e); Rev. Code Wash. § 10.79.015(3).

⁷ *Miller v. Superior Court*, 986 P.2d 170 (Cal. 1999)

⁸ *Brief of Amici Curiae The Reporters Committee for Freedom of the Press, American Society of Newspaper Editors, Radio-Television News Directors Association, and Society of Professional Journalists, Supporting Reversal of Contempt Order Against Vanessa Leggett*, Case No. 01-20745, <http://www.rcfp.org/news/documents/leggett.html>.

⁹ *Branzburg*, 408 U.S. at 709 (White, J. concurring).

State-by-state comparison of subpoenas served

State	Shield law?			Survey responses			Total subpoenas		
	1997	1999	2001	1997	1999	2001	1997	1999	2001
Alabama	✓	✓	✓	7	7	5	30	30	21
Alaska	✓	✓	✓	3	3	2	0	0	0
Arizona	✓	✓	✓	9	6	1	30	10	0
Arkansas	✓	✓	✓	8	10	5	2	19	3
California	✓	✓	✓	49	31	13	322	233	41
Colorado	✓	✓	✓	11	13	7	30	115	57
Connecticut				8	6	3	84	32	15
Delaware	✓	✓	✓	1	0	0	0	0	0
District of Columbia	✓	✓	✓	3	1	1	35	7	15
Florida		✓	✓	29	17	13	234	68	79
Georgia	✓	✓	✓	12	5	2	80	9	12
Hawaii				2	3	0	4	5	0
Idaho				4	3	2	0	7	6
Illinois	✓	✓	✓	29	21	15	131	52	77
Indiana	✓	✓	✓	16	21	12	62	51	31
Iowa				20	16	15	34	12	23
Kansas				11	7	9	13	1	1
Kentucky	✓	✓	✓	9	4	6	135	1	13
Louisiana	✓	✓	✓	12	11	5	81	61	39
Maine				5	2	1	9	9	1
Maryland	✓	✓	✓	7	5	5	20	14	19
Massachusetts				10	3	7	65	20	22
Michigan	✓	✓	✓	13	15	13	40	48	32
Minnesota	✓	✓	✓	12	10	5	41	10	9
Mississippi				11	6	6	26	12	29
Missouri				16	17	11	85	29	30
Montana	✓	✓	✓	8	3	4	4	1	1
Nebraska	✓	✓	✓	7	5	9	14	16	53
Nevada	✓	✓	✓	1	3	3	0	2	8
New Hampshire				3	2	2	1	1	0
New Jersey	✓	✓	✓	7	4	3	29	24	5
New Mexico	✓	✓	✓	6	5	1	0	11	3
New York	✓	✓	✓	23	17	12	188	119	53
North Carolina		*	✓	15	19	11	51	52	7
North Dakota	✓	✓	✓	5	4	5	8	0	1
Ohio	✓	✓	✓	23	11	8	96	5	4
Oklahoma	✓	✓	✓	12	9	7	13	12	9
Oregon	✓	✓	✓	7	9	8	14	5	8
Pennsylvania	✓	✓	✓	30	17	14	188	11	20
Rhode Island	✓	✓	✓	2	0	0	0	0	0
South Carolina	✓	✓	✓	7	7	8	19	23	12
South Dakota				6	3	6	1	15	6
Tennessee	✓	✓	✓	12	11	1	43	16	0
Texas				39	20	24	218	37	46
Utah				5	2	2	29	5	1
Vermont				10	3	3	1	2	0
Virginia				10	9	3	45	36	2
Washington				15	8	8	47	9	0
West Virginia				8	6	3	37	48	2
Wisconsin				16	19	10	83	21	7
Wyoming				3	1	0	3	0	0
TOTAL	30	31	32	597	440	319	2725	1326	823

* North Carolina's shield law took effect in October 1999.

Appendix A: The 2001 survey



THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS SUBPOENA SURVEY (2001)

NAME / TITLE _____

ORGANIZATION _____

ADDRESS, CITY, STATE, ZIP _____

TELEPHONE _____

Note that in many cases, more than one response will be appropriate for each subpoena mentioned. For instance, in question 10, you may have filed a motion to quash the subpoena *and* later appealed the decision.

If your answers to any of these questions need explanation or if you feel additional details would be helpful, please feel free to include these under question 20, or on a separate sheet of paper.

This survey can be completed on the RCFP web site. Go to: <http://www.rcfp.org/subpoenasurvey2001.html>

Please correct any of the information above.

Because of the sensitive nature of some responses to these questions, please indicate if you would like us to keep your responses anonymous, identifying only the state, medium (newspaper or television) and approximate size of your news organization.

_____ Yes, I would like my responses to be kept anonymous.

1. How many subpoenas seeking information or material relating to newsgathering activities were served on reporters, editors or other news employees at your organization in 2001?

IF THE ANSWER TO QUESTION 1 IS "NONE," SKIP TO QUESTION 15.

2. Of those subpoenas, what kind of proceedings were involved? (Indicate *number* of subpoenas received in each type.)

CRIMINAL TRIAL

CIVIL TRIAL

OTHER (DESCRIBE)

CRIMINAL INVESTIGATION

CIVIL DEPOSITION

DON'T KNOW

GRAND JURY

ADMINISTRATIVE PROCEEDING

3. How many of these proceedings took place in a federal forum (U.S. District Court)?

How many were state proceedings?

4. Of those subpoenas issued in **criminal** proceedings, how many were issued at the request of:

PROSECUTION

DEFENSE

POLICE

DON'T KNOW

5. a. Of those subpoenas issued in **civil** proceedings, *how many* were issued in cases where the reporter or news organization:

WAS A PARTY TO THE SUIT?
(SUCH AS A LIBEL SUIT)

WAS NOT A PARTY TO THE SUIT?
(BROUGHT IN AS A "THIRD PARTY")

b. Of those subpoenas issued in "third party" proceedings, *how many* were issued at the request of:

PLAINTIFF

DEFENDANT

DON'T KNOW

c. Of those issued in civil proceedings in which your news organization was a party, *how many* were:

LIBEL CLAIMS

OTHER (PLEASE DESCRIBE)

INVASION OF PRIVACY CLAIMS

DON'T KNOW

6. a. Of those subpoenas issued in **administrative** proceedings, *how many* were issued at the request of:

ADMINISTRATIVE AGENCY

PRIVATE INDIVIDUAL

OTHER

DON'T KNOW

b. Of those issued by federal agencies, how many were issued by the:

COMMODITIES FUTURES TRADING COMMISSION

NATIONAL LABOR RELATIONS BOARD

IMMIGRATION AND NATURALIZATION SERVICE

SECURITIES AND EXCHANGE COMMISSION

INTERNAL REVENUE SERVICE

OTHER AGENCIES _____

7. Please indicate the *number* of subpoenas received seeking:

If you are answering for a broadcaster:

NOTES

UNEDITED AUDIO/VIDEOTAPE

MATERIAL ACTUALLY BROADCAST (AUDIO/VIDEO)

OUTTAKES

WRITTEN DRAFTS

INTERNAL MEMOS

TESTIMONY AT TRIAL

TESTIMONY AT A DEPOSITION

If you are answering for a newspaper:

NOTES

AUDIOTAPES

PHOTO NEGATIVES

UNPUBLISHED PHOTOGRAPHS

PUBLISHED PHOTOGRAPHS

WRITTEN DRAFTS

INTERNAL MEMOS

PUBLISHED STORIES

TESTIMONY AT TRIAL

TESTIMONY AT A DEPOSITION

8. a. *How many* of the subpoenas asked for the names of confidential sources?

b. *How many* asked for other information received under a promise of confidentiality?

9. *How many* subpoenas requested material related to your organization's World-Wide Web site on the Internet?

10. How did you deal with the subpoenas? Please indicate the *number* of instances in which you:

COMPLIED FULLY, WITHOUT OPPOSING

FILED MOTION TO QUASH; COURT DID NOT QUASH SUBPOENA

PERSUADED INDIVIDUAL ISSUING SUBPOENA TO WITHDRAW IT AFTER DISCUSSION WITH ATTORNEY/EDITOR/OTHER

APPEALED RULING TO HIGHER COURT.

FILED MOTION TO QUASH; COURT QUASHED SUBPOENA

ULTIMATE RULINGS WERE: FAVORABLE UNFAVORABLE

11. If courts' rulings were favorable (subpoenas quashed or modified), briefly explain the reasons for their rulings:

SHIELD LAW

PROTECTED UNDER THE FEDERAL OR STATE CONSTITUTION

IF KNOWN, PLEASE BE MORE SPECIFIC:

OTHER SOURCES AVAILABLE

MATERIAL SOUGHT IRRELEVANT

SUBPOENA "OVERBROAD"

INSUFFICIENT SHOWING OF "NEED"

IF KNOWN, PLEASE BE MORE SPECIFIC:

OTHER SOURCES AVAILABLE

MATERIAL SOUGHT IRRELEVANT

SUBPOENA "OVERBROAD"

INSUFFICIENT SHOWING OF "NEED"

OTHER (DESCRIBE)

12. If the ruling at the highest level of appeal was unfavorable, how did you finally respond to the subpoenas?

COMPLIED FULLY

DID NOT COMPLY

OTHER

13. Were any reporters removed from a story as a result of the threat or use of subpoenas? Indicate the number of times this happened:

AS YOUR OWN EDITORIAL DECISION

AS A RESULT OF A JUDGE'S SEPARATION ORDER (FORBIDDING A REPORTER-WITNESS TO BE IN THE COURTROOM)

IF YOU ANSWERED YES, PLEASE PROVIDE DETAILS HERE, ON THE BACK PAGE, OR ON A SEPARATE SHEET OF PAPER.

14. If the reporter or organization refused to comply with a subpoena, was the reporter or organization sanctioned by the court?

YES

NO

Was any other employee (editor? publisher?) sanctioned?

YES

NO

IF YOU ANSWERED YES TO EITHER QUESTION, PLEASE PROVIDE DETAILS HERE, ON THE BACK PAGE, OR ON A SEPARATE SHEET OF PAPER.

For example, how long were any jail sentences, or how much time was served for civil contempt? Were monetary fines paid or assessed? Was community service required?

15. Was your newsroom searched by police or other law enforcement agencies during 2001, or was a search warrant used to take materials from a journalist?

YES

NO

IF YOU ANSWERED YES, PLEASE PROVIDE DETAILS HERE, ON THE BACK PAGE, OR ON A SEPARATE SHEET OF PAPER.

Describe who conducted the search (state or federal authorities), what was sought, what was seized, whether the search was challenged by your organization, and the outcome.

16. Were the telephone toll records of any of your staff or of your organization subpoenaed at any time in 2001? *Do not include subpoenas served on you or your organization to produce these records; indicate only subpoenas served on a telephone company for your records.*

YES

NO

IF YOU ANSWERED YES, PLEASE PROVIDE DETAILS HERE, ON THE BACK PAGE, OR ON A SEPARATE SHEET OF PAPER.

Describe who subpoenaed the records, from which telephone company, whether you challenged the subpoena, and the outcome.

17. Were the credit card, hotel, car rental or other newsgathering-related records of any of your staff or of your organization subpoenaed at any time in 2001? *Do not include subpoenas served on you or your organization to produce these records; indicate only subpoenas served on the companies holding your records.*

YES

NO

IF YOU ANSWERED YES, PLEASE PROVIDE DETAILS HERE OR ON ANOTHER PAGE.

Describe who subpoenaed the records, from which credit card issuer, hotel or other business, whether you challenged the subpoena, and the outcome.

18. Effect of subpoenas

a. Has the threat or use of subpoenas against your news organization affected your policy on retention of notes, drafts, or other unpublished/unbroadcast material?

YES NO

b. Has it affected your policy on use of confidential sources?

YES NO

IF YOU ANSWERED YES TO EITHER QUESTION, PLEASE PROVIDE DETAILS.

19. Subpoenas answered. Describe generally *how much* time and resources were expended on subpoenas with which you complied. Tell us if you are describing the average subpoena you respond to, or are recounting the "horror stories" that sometimes occur. Include information such as how many people are involved, how much discussion is required in the newsroom, consultation with legal counsel, or anything else that required the use of your staff's time and energy.

20. Other: Please feel free to add any comments, anecdotes, or other information you may wish to contribute to this survey. Use additional pages if necessary, or e-mail your comments to rcfp@rcfp.org. If using e-mail, be sure to include your ID number from the front of this survey.

Please return your completed survey form by **March 1**, or as soon as possible thereafter. We can accommodate late returns if you notify us (703-807-2100) when you expect to have the results ready. We plan to compile the results and release the report in Summer 2002. Your timely response is greatly appreciated. Return the survey:

➡ by mail:

Reporters Committee for Freedom of the Press
1815 N. Fort Myer Drive, Suite 900
Arlington, VA 22209

➡ by fax to (703) 807-2109

➡ by telephone, by calling (703) 807-2100, Monday through Friday during office hours (Eastern Time).

➡ on our Web site, by visiting <http://www.rcfp.org/subpoenasurvey2001.html>

➡ by e-mail to rcfp@rcfp.org.

Be sure to include the ID number from the front of this survey in any communications.

THANK YOU FOR YOUR COOPERATION IN THIS PROJECT!

Appendix B: Organizations participating in the survey

Alabama

The Gadsden Times
Times Daily (Florence)
WAFF-TV (Huntsville)
WHOA-TV (Montgomery)
WVTM-TV (Birmingham)

Alaska

KTUU-TV (Anchorage)
The Daily Sitka Sentinel

Arizona

Casa Grande Dispatch

Arkansas

Arkansas Democrat-Gazette
(Little Rock)
Batesville Guard
Log Cabin Democrat
(Conway)
Northwest Arkansas Times
(Fayetteville)
The Jonesboro Sun

California

Berkeley Daily Planet
Daily Republic (Fairfield)
KCOY-TV/KKFX-TV (Santa
Maria)
KMPH-TV (Fresno)
KRCR-TV (Redding)
Mountain Democrat
(Placerville)
Pasadena Star-News
Press-Telegram (Long
Beach)
San Jose Mercury News
The Californian (Salinas)
The Record (Stockton)
Vallejo Times-Herald
Visalia Times-Delta

Colorado

Daily Times-Call (Longmont)
Durango Herald
Glenwood Springs Post
Independent
Journal-Advocate (Sterling)
KCNC-TV (Denver)
KRDO-TV (Colorado
Springs)
The Denver Post

Connecticut

Connecticut Post
(Bridgeport)

The Hartford Courant
WTIC-TV (Hartford)

District of Columbia

WJLA-TV (Washington)

Florida

Cape Coral Daily Breeze
Orlando Sentinel
Palm Beach Daily News
Press Journal (Vero Beach)
Tallahassee Democrat
The St. Augustine Record
(Saint Augustine)
The Tampa Tribune
The Villages Daily Sun
WFOR-TV (Miami)
WINK-TV (Fort Myers)
WKMG-TV (Orlando)
WTVT-TV (Tampa)
WWSB-TV (Sarasota)

Georgia

Columbus Ledger-Enquirer
WSB-TV (Atlanta)

Idaho

KTVB-TV (Boise)
The Moscow-Pullman Daily
News

Illinois

Commercial News (Danville)
Daily Union (Shelbyville)
Herald & Review (Decatur)
Rockford Register Star
The Courier (Lincoln)
The Courier News (Elgin)
The Daily Chronicle (De
Kalb)
The Daily Gazette (Sterling)
The Daily Journal
(Kankakee)
The State Journal-Register
(Springfield)
Times-Republic (Watseka)
WEEK-TV (East Peoria)
WFLD-TV (Chicago)
WQAD-TV (Moline)
WTVO-TV (Rockford)

Indiana

Chronicle-Tribune (Marion)
Journal Gazette (Fort
Wayne)
La Porte Herald-Argus

Palladium-Item (Richmond)
Princeton Daily Clarion
The Herald (Jasper)
The Herald Bulletin
(Anderson)
The Reporter-Times
(Martinsville)
The Washington Times-
Herald
WISH-TV (Indianapolis)
WKJG-TV (Fort Wayne)
WSJV-TV (South Bend)

Iowa

Ad Express & Daily Iowegian
(Centerville)
Boone News-Republican
Creston News-Advertiser
Daily Gate City (Keokuk)
Daily Times Herald (Carroll)
KCRG-TV (Cedar Rapids)
KIMT-TV (Mason City)
KTIV-TV (Sioux City)
KYOU-TV (Ottumwa)
Quad-City Times
(Davenport)
Sioux City Journal
The Daily Nonpareil (Council
Bluffs)
The Gazette (Cedar Rapids)
The Newton Daily News
The Tribune (Ames)

Kansas

Arkansas City Traveler
Columbus Daily Advocate
Council Grove Republican
Iola Register
Parsons Sun
The Goodland Daily News
The Hays Daily News
The Wichita Eagle
Wellington Daily News

Kentucky

Owensboro Messenger-
Inquirer
The Advocate-Messenger
(Danville)
The Ledger Independent
(Maysville)
The Winchester Sun
WLKY-TV (Louisville)
WPSD-TV (Paducah)

Louisiana

Alexandria Daily Town Talk
KNOE-TV (Monroe)
The Advocate (Baton
Rouge)
The Daily Comet
(Thibodaux)
WWL-TV (New Orleans)

Maine

Morning Sentinel (Waterville)

Maryland

The Baltimore Sun
The Capital (Annapolis)
The Star-Democrat (Easton)
WBOC-TV (Salisbury)
WHAG-TV (Hagerstown)

Massachusetts

Cape Cod Times (Hyannis)
Daily Times Chronicle
(Woburn)
North Adams Transcript
Sentinel & Enterprise
(Fitchburg)
The Patriot Ledger (Quincy)
The Salem Evening News
(Beverly)
WBZ-TV (Boston)

Michigan

Battle Creek Enquirer
Cadillac News
Detroit Free Press
Detroit Newspapers
Jackson Citizen Patriot
Ludington Daily News
Midland Daily News
Niles Daily Star
The Herald-Palladium (St.
Joseph)
The Monroe Evening News
The Muskegon Chronicle
WLNS-TV (Lansing)
WLUC-TV (Negaunee)

Minnesota

Albert Lea Tribune
KARE-TV (Minneapolis)
KSTP-TV (Minneapolis)
The Daily Journal
(International Falls)
WIRT-TV (Duluth)

Mississippi

The Natchez Democrat
 The Vicksburg Post
 WAPT-TV (Jackson)
 WLBT-TV (Jackson)
 WLOX-TV (Biloxi)
 WXVT-TV (Greenville)

Missouri

Columbia Daily Tribune
 Kirksville Daily Express &
 News
 KOMU-TV (Columbia)
 KQTV-TV (Saint Joseph)
 KRCG-TV (Jefferson City)
 KSDK-TV (St Louis)
 Moberly Monitor-Index &
 Democrat
 News Tribune (Jefferson
 City)
 The Lebanon Daily Record
 The Nevada Daily Mail/
 Herald
 The Sedalia Democrat

Montana

Independent Record
 (Helena)
 KECI-TV (Missoula)
 Missoulian (Missoula)
 The Havre Daily News

Nebraska

Columbus Telegram
 KHAS-TV (Hastings)
 KNOP-TV (North Platte)
 KOLN-TV (Lincoln)
 Lincoln Journal Star
 Nebraska City News-Press
 Omaha World-Herald
 The Grand Island
 Independent
 The North Platte Telegraph

Nevada

KRNV-TV (Reno)
 Nevada Appeal (Carson
 City)
 The Daily Sparks Tribune

New Hampshire

The Keene Sentinel
 The Telegraph (Nashua)

New Jersey

Courier News (Bridgewater)
 The Press of Atlantic City
 (Pleasantville)
 The Star-Ledger (Newark)

New Mexico

KOBF-TV (Farmington)

New York

Daily Messenger
 (Canandaigua)
 Newsday (Melville)
 Press-Republican
 (Plattsburgh)
 The Daily News (Batavia)
 The Journal News (White
 Plains)
 The Oneida Daily Dispatch
 The Post-Standard/Syracuse
 Herald-Journal/American
 The Post-Star (Glens Falls)
 WBNG-TV (Johnson City)
 WOKR-TV (Rochester)
 WPTZ-TV (Plattsburgh)
 WXXA-TV (Albany)

North Carolina

High Point Enterprise
 The Asheville Citizen-Times
 The Charlotte Observer
 The Courier-Tribune
 (Asheboro)
 The Hickory Daily Record
 The Observer-News-
 Enterprise (Newton)
 The Shelby Star
 The Wilson Daily Times
 WGHP-TV (High Point)
 Wilmington Star-News Inc
 Winston-Salem Journal

North Dakota

Dickinson Press
 Forum (Fargo)
 Grand Forks Herald
 The Jamestown Sun
 WDAY-TV (Fargo)

Ohio

Chillicothe Gazette
 Herald (Circleville)
 Morning Journal (Lisbon)
 Mount Vernon News
 Springfield News-Sun
 Telegraph-Forum (Bucyrus)
 Times-Gazette (Hillsboro)
 Vindicator (Youngstown)

Oklahoma

Alva Review-Courier
 Durant Daily Democrat
 KOKH-TV (Oklahoma City)
 Muskogee Daily Phoenix &
 Times Democrat
 The Anadarko Daily News
 The News Press (Stillwater)
 The Norman Transcript

Oregon

Argus Observer (Ontario)
 Herald and News (Klamath
 Falls)

KPIC-TV (Roseburg)
 KTVL-TV (Medford)
 Statesman Journal (Salem)
 The News-Review
 (Roseburg)
 The Oregonian (Portland)
 The World (Coos Bay)

Pennsylvania

Bedford Gazette
 Delaware County Daily
 Times (Primos)
 KYW-TV (Philadelphia)
 Lebanon Daily News
 Observer-Reporter
 (Washington)
 Pocono Record
 (Stroudsburg)
 The Bradford Era
 The Daily Courier
 (Connellsville)
 The Daily Press (Saint
 Marys)
 The Indiana Gazette
 The Philadelphia Daily News
 The Wayne Independent
 (Honesdale)
 Valley News Dispatch
 (Tarentum)
 WPMT-TV (York)

South Carolina

Anderson Independent-Mail
 Herald-Journal
 (Spartanburg)
 The Index-Journal
 (Greenwood)
 The Post and Courier
 (Charleston)
 The State (Columbia)
 Union Daily Times
 WHNS-TV (Greenville)
 WYFF-TV (Greenville)

South Dakota

Aberdeen American News
 Argus Leader (Sioux Falls)
 KDLT-TV (Sioux Falls)
 KNBN-TV (Rapid City)
 KOTA-TV (Rapid City)
 Watertown Public Opinion

Tennessee

The Tennessean (Nashville)

Texas

Amarillo Daily News
 Big Spring Herald
 Corpus Christi Caller-Times
 Corsicana Daily Sun
 El Paso Times
 Houston Chronicle
 KABB-TV (San Antonio)
 KACB-TV (San Angelo)

KBTX-TV (Bryan)
 KCEN-TV (Temple)
 KFDA-TV (Amarillo)
 KJAC-TV (Port Arthur)
 KTSM-TV (El Paso)
 KWTX-TV (Waco)
 Longview News-Journal
 Port Arthur News
 San Angelo Standard-Times
 San Antonio Express-News
 Sulphur Springs News-
 Telegram
 Temple Daily Telegram
 Texas City Sun
 The Hereford Brand
 The Orange Leader
 The Vernon Daily Record

Utah

Deseret News (Salt Lake
 City)
 Standard-Examiner (Ogden)

Vermont

Bennington Banner
 Brattleboro Reformer
 WCAX-TV (Burlington)

Virginia

Richmond Times-Dispatch
 The Daily News Leader
 (Staunton)
 Virginian Review
 (Covington)

Washington

Daily Record (Ellensburg)
 KIMA-TV (Yakima)
 Seattle Post-Intelligencer
 The Chronicle (Centralia)
 The Olympian
 The Wenatchee World
 Tri-City Herald (Tri-Cities)
 Walla Walla Union-Bulletin

West Virginia

Charleston Daily Mail
 Moundsville Daily Echo
 The Journal (Martinsburg)

Wisconsin

Antigo Daily Journal
 Daily Tribune (Wisconsin
 Rapids)
 Shawano Leader
 The Capital Times (Madison)
 The Daily Press (Ashland)
 The Journal Times (Racine)
 The Sheboygan Press
 Waukesha Freeman
 WFRV-TV (Green Bay)
 Wisconsin State Journal
 (Madison)