

Reporters Committee for Freedom of the Press Annual Report 2013

Fighting Back: Secrecy, Surveillance And Subpoenas



Annual Report 2013

**Fighting back:
Secrecy, surveillance
and subpoenas**



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Annual Report 2013

Fighting back: Secrecy, surveillance and subpoenas

The catalyst for founding the Reporters Committee in 1970 was a subpoena to New York Times reporter Earl Caldwell. Caldwell had been reporting on the Black Panthers, and the Nixon Administration wanted to know who his sources were. Leading journalists responded by forming the committee to provide legal assistance when the rights of a free press were threatened.

Yet here we are, almost 45 years later, and government officials are still trying to get to reporters' sources.

It was spring 2013 when The Associated Press learned that the Justice Department had secretly subpoenaed the records of more than 20 of its phone lines. Soon thereafter, we learned that Justice had similarly tapped into the email account of a Fox News Reporter. In both cases government officials argued that the actions were justified by the need to discover the reporters' sources for leaked, classified information.

The Reporters Committee disagreed, loudly and with significant numbers. Within 24 hours of the disclosure of the AP subpoena we organized more than 50 news organizations for a protest to the Attorney General and top Justice Department officials. They heard us, and since then we have worked with them on revising guidelines for subpoenas and search warrants to reporters and have started a dialogue about newsgathering rights in general.

In 2013 we also saw technology used by government agencies in vast, new ways to collect and review surveillance data, which put reporters and sources on notice that their communications might not be as confidential as they believed. Again, we challenged the government's reasoning and continue to fight for the protection of reporter-source relationships.

As you'll read in this annual report, 2013 certainly provided its challenges to the press, but it also gave the Reporters Committee wonderful opportunities to continue development of First Amendment and freedom of information resources and to utilize new means of delivering them. Biggest among them was the launch of iFOIA.org, our online system for filing and tracking federal and state Freedom of Information Act requests.

The greatest constant in all this, however, is our deep appreciation for the support from our foundation, corporate and individual donors, who make our work on behalf of a free press possible. We thank you.



Pierre Thomas
Chairman
Steering Committee
2014-2015



Bruce D. Brown
Executive Director

The Year in Review: 2013

Protecting metadata, opening the FISA court

FEBRUARY: The Reporters Committee, which earlier had filed a brief seeking to allow journalists to challenge federal surveillance policy, is disappointed that the U.S. Supreme Court ruling in *Clapper v. Amnesty International* focused not on the constitutional merits of the government's warrantless wiretapping program, but on whether plaintiffs had standing to challenge the law based on their ability to show it provided concrete and imminent injury to reporter-source confidentiality.

JULY: Joined by 14 media organizations, the Reporters Committee files an amicus brief in the FISA court arguing that Google and Microsoft should be allowed to broadly discuss their compelled participation in government surveillance activity. The brief also argues that the court should release those decisions that interpret the FISA laws and create binding precedent, as sought by the ACLU and the Media Freedom and Information Access Clinic at Yale Law School.

SEPTEMBER: In an amicus brief filed with the U.S. District Court in New York, the Reporters Committee and 18 news media organizations argue that the NSA's widescale collection of metadata from telephone records threatens the ability of journalists to gather news and protect confidential sources.

"There is a long history in this country of news media reporting that has exposed abuses of official power, and when that power is brought to bear in a way that directly threatens the ability of journalists to gather news and to promise confidentiality to their sources, it is ultimately the public that suffers," the brief argues.

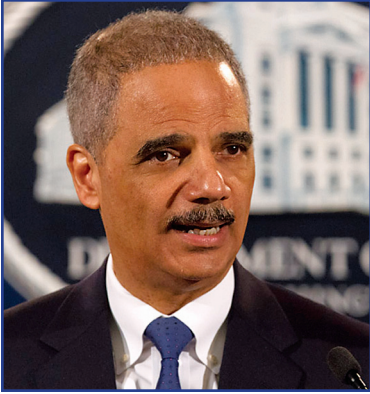
OCTOBER: Thirty-six media organizations join the Reporters Committee in calling for better protection of First Amendment rights in National Security Agency and FISA court matters. In public comments to the president's Review Group on Intelligence and Communications Technologies, they ask for a more careful balance between the secrecy sometimes required in national security investigations and the public's right to know what government is doing.

NOVEMBER: In a brief to the FISA court, the Reporters Committee and 25 media organizations argue that the court's decision to deny standing to the Yale Media Freedom and Information Access Clinic violates the First Amendment right of access to court proceedings, which all members of the public share equally, and casts an unnecessary shadow over a judicial process already shrouded in secrecy.

NOVEMBER: The mass tracking of the public's telephone calls by the National Security Agency has a "corrosive effect" on the ability of the news media to report on crucial issues and "frightens sources into silence," the Reporters Committee and 13 news organizations argue in a brief filed in U.S. District Court in San Francisco (Northern District of California).



Developing subpoena guidelines



MAY: The Reporters Committee brings together a coalition of 50 media organizations to protest secret Justice Department subpoenas of Associated Press phone lines and a search warrant for Fox News emails.

“The scope of this action calls into question the very integrity of Department of Justice policies toward the press and its ability to balance, on its own, its police powers against the First Amendment rights of the news media and the public’s interest in reporting on all manner of government conduct, including matters touching on national security which lie at the heart of this case,” they wrote.

JUNE: The Reporters Committee leads a coalition of media organizations in submitting comments to the Attorney General to improve the Department’s policies for media subpoenas. This initiative includes suggestions regarding a strong statement of principles, the opportunity and notice to be heard, oversight of the types of records sought and how they are collected, and creation of an annual report and meeting.

Seeking access to mugshots

JANUARY: The Reporters Committee and 37 media organizations write to Attorney General Eric H. Holder, Jr., asking that a recently enacted Marshals Service policy to block the release of federal criminal booking photographs be rescinded.

MARCH: In a letter to the Senate Judiciary Committee, the Reporters Committee asks senators to raise the Justice Department’s mugshot policy with Holder when he testifies at an oversight hearing.

A win for confidential sources

APRIL: The Reporters Committee files an affidavit with a Colorado district court urging the judge not to compel Fox News reporter Jana Winter to reveal the identities of confidential sources who gave her information from the notebook of movie-theater shooting suspect James Holmes.



MAY: The Reporters Committee and 42 news organizations file an amicus brief arguing that New York-based Winter should be protected by New York’s shield law and not be subpoenaed for her confidential sources.

OCTOBER: The Reporters Committee joins news organizations in a letter opposing a motion by Holmes’ attorney to suppress and otherwise limit access to some trial documents.

DECEMBER: Freedom of the press triumphs, as the New York Court of Appeals rules that Winter should not be compelled to reveal her sources.

The Year in Review: 2013

iFOIA.org launches

OCTOBER: One of the most innovative original products launched by the Reporters Committee, iFOIA debuts to acclaim at the Online News Association convention.

A free online filing and tracking system for federal and state freedom of information requests, iFOIA can be used on a desktop or mobile device. iFOIA was funded by a grant from the Stanton Foundation.



Steering Committee 2013

JUNE: Sandra Torrey of USA TODAY is elected chair, Pierre Thomas of ABC News is vice chair, and retired Associated Press editor John C. Henry becomes secretary-treasurer of the Steering Committee.



By the numbers:

36 Briefs, letters and comments filed with courts, legislatures and government agencies.

42 Statements and other media releases.

127 News and other organizations joining the Reporters Committee on briefs, comments and letters.

492 Journalist queries answered by Reporters Committee legal experts.

Celebrating open government

MARCH: The Reporters Committee renews its partnership with the American Society of News Editors to coordinate the annual open government Sunshine Week, which included the launch of a new Sunshine Week website, sunshineweek.org, developed by Reporters Committee staff.

Hundreds of news organizations, public officials at all levels of government, nonprofit and civic groups, colleges and universities and many others participated.



Spotlight on U.S. Supreme Court transparency



OCTOBER: The Reporters Committee hosts a panel discussion at the National Press Club in Washington with judges, legal experts and journalists discussing transparency gaps at the U.S. Supreme Court and how technology could be utilized to offer more insight into the Court's proceedings.



Panelists (l-r): Judge Ken Starr, president of Baylor University and former U.S. solicitor general; Chief Justice Maureen O'Connor, Supreme Court of Ohio; Neal Katyal, Hogan Lovells partner, Georgetown Law professor and former acting U.S. solicitor general; Alan Morrison, George Washington Law associate dean; and Pete Williams, NBC News Justice Correspondent.

Reporters Committee makes news

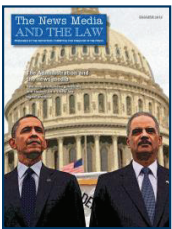
Reporters Committee news and comments are frequently included in media law news stories produced by outlets large and small. In addition to being cited prominently in myriad news stories, the year in press included:

JANUARY: Reporters Committee Executive Director Bruce D. Brown and former Google executive Alan B. Davidson pen a New York Times op-ed on the FTC-Google investigation.



The News Media & The Law

The last print issues of the quarterly magazine are produced as it prepares for all-digital publication.



MAY: Legal Defense Director Gregg Leslie is interviewed on the Today show about government intrusion into journalists' phone records.

OCTOBER: Then-FOI Director Mark Caramanica is featured prominently in a New York Times article about access to mugsshots. **ALSO:** The Reporters Committee is cited for its role in securing the release of grand jury documents that provide new information about the JonBenet Ramsey murder case.

DECEMBER: A Reporters Committee letter becomes part of the international discussion as Guardian Editor Alan Rusberger is questioned about publishing leaked NSA and GCHQ materials.

In memoriam: Sara Fritz Steering Committee Member from 1982-2005

Sara never wavered in her enthusiasm, passion and dedication to the work of the Reporters Committee and in making sure that journalists could always do their best work, unencumbered by those who would seek to withhold the truth.



Briefly Stated

JANUARY:

02: Reporters Committee, 53 leading media organizations file an amicus brief asking the U.S. Supreme Court to strike the residency restriction on Virginia's FOIA. *McBurney v. Young*

14: Reporters Committee, 12 media organizations ask the U.S. Court of Appeals (3rd. Cir.) to uphold a ban on secret corporate arbitration in Delaware. *Delaware Coalition for Open Government v. Strine*

28: Reporters Committee, E.W. Scripps Company urge the Kentucky Supreme Court to reject an expansion of the public records law privacy exemption. *Lawson v. Office of the Attorney General*

FEBRUARY:

12: Reporters Committee, 19 news organizations ask Texas Supreme Court for clarification on the scope of a defendant's right to appeal under the state's anti-SLAPP law. *Jennings v. Wallbuilder Presentations Inc.*

MARCH:

22: The Reporters Committee writes to the court clerk and three-judge panel of the D.C. Circuit Court seeking insight into proceedings of a sealed case involving a local businessman accused of running a shadow campaign for the D.C. mayor.

25: Reporters Committee Legal Director Gregg Leslie appears before the U.S. Court of Appeals for the Federal Circuit arguing for access to documents in the *Apple v. Samsung* patent case.

APRIL:

02: Reporters Committee, media groups file a letter brief to an appellate court arguing that a California law that penalizes newsgathering by imposing steep penalties for engaging in commercial photography from a moving vehicle is overbroad and unconstitutional. *California v. Superior Court of California, County of Los Angeles (Raef)*

17: Reporters Committee says split decision of the U.S. Court of Appeals for the Armed Forces denying public access to the court-martial of Pfc. Chelsea Manning shows need for congressional action.

22: Reporters Committee, 37 media organizations' amicus brief urges appeals court to reaffirm judiciary oversight of Executive Branch classification and review and order the disclosure of memos detailing federal policy on drone strikes against U.S. citizens. *New York Times v. Department of Justice*

30: Government business must be made public, even if officials utilize personal email and texting accounts, the Reporters Committee and national and state media organizations argue in letter brief to the Third Court of Appeals of Texas. *Adkisson v. Abbott*

MAY:

08: Strict standards for protecting anonymous online commenters are crucial to protecting speakers' First Amendment rights and the public good, say Reporters Committee, news organizations in amicus brief filed in the Virginia Court of Appeals. *Hadeed Carpet Cleaning v. Does, Yelp Inc.*

JUNE:

05: Reporters Committee, 35 media organizations ask federal court in Baltimore for more access to documents and dockets in court-martial of Pfc. Chelsea Manning, on trial for leaking classified information to WikiLeaks. *Center for Constitutional Rights v. Lind*

27: Reporters Committee, media groups urge Maine Supreme Court to keep records of 911 calls to the state's Emergency Communications Bureau accessible to the public. *Maine Today Media Inc. d/b/a Portland Press Herald/Maine Sunday Telegram v. State of Maine*

JULY:

02: Reporters Committee asks U.S. Supreme Court to ensure records detailing interactions between government and third-party contractors are not shielded from public disclosure under the federal Freedom of Information Act. *American Management Services Inc. d/b/a Pinnacle v. Dep't of the Army*

AUGUST:

21: A coalition of 46 news organizations, including the Reporters Committee, asks U.S. Attorney General Eric Holder to withdraw a subpoena issued to *New York Times* reporter James Risen.

SEPTEMBER:

04: Reporters Committee, 26 media organizations ask U.S. Supreme Court to review automatic closure of N.Y. courts when undercover officers testify, allowing closure only if a compelling interest is demonstrated. *Johnson v. New York; Moss v. New York*

05: Reporters Committee, 21 media organizations ask Department of Health and Human Services to release “incredibly newsworthy” Medicare physician billing data online.

05: Reporters Committee, 15 news organizations argue in a U.S. Supreme Court brief that a Colorado Supreme Court ruling allowing a defamation claim to stand without considering whether the statements were substantially true could have a chilling effect on the First Amendment and should be overturned. *Air Wisconsin v. Hoeper*

12: Reporters Committee commends passage of a shield bill, the Free Flow of Information Act of 2013, by the Senate Judiciary Committee, saying, “It goes a long way toward ensuring that reporters will be protected from subpoenas for their confidential information and sources. It’s not a perfect bill, but it tries to cover a broad array of reporters.”

16: Reporters Committee, news organizations urge U.S. Court of Appeals (9th Cir.) to allow greater access to wild horse roundups run by the Bureau of Land Management to the press and public. *Leigh v. Jewell*

OCTOBER:

22: The Reporters Committee and seven organizations file an amicus brief with the D.C. Court of Appeals urging it to reverse a lower court’s order denying a Wikipedia editor’s motion to quash under the anti-SLAPP law. *Doe v. Burke*

25: A successful fight by the Reporters Committee and a Colorado journalist for release of documents from the JonBenet Ramsey murder investigation is a win for the public, even years later, as new information is revealed.

NOVEMBER:

07: The Reporters Committee writes to a Shelby County, Ala. circuit court judge urging the release of blogger Roger Shuler, jailed for contempt after refusing to remove articles from his website.

12: In an amicus brief to the Virginia Supreme Court, the Reporters committee argues that a lower court’s definition of “proprietary information” regarding access to a University of Virginia professor’s email is too broad. *The American Tradition Institute v. University of Virginia*

13: Reporters Committee, 19 news organizations file an amicus brief in the D.C. Court of Appeals urging it to hear an immediate appeal of a motion to dismiss under the anti-SLAPP law. *Mann v. National Review*

21: Media groups, including the Reporters Committee, sign a letter to the White House press secretary protesting access limits for news photographers covering the president.

DECEMBER:

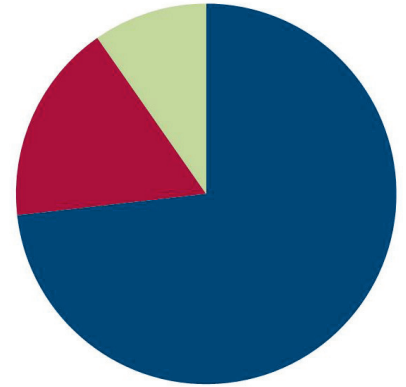
02: Reporters Committee, leading U.S. news media call on U.K. Parliament to reaffirm its commitment to a free press on the eve of a hearing for The Guardian regarding its publication of information leaked by former NSA contractor Edward Snowden.

11: Utah’s “ag-gag” law banning audio and image recording at meat-processing plants interferes with First Amendment rights, the Reporters Committee argued in a brief to federal court in Salt Lake City. *Animal Legal Defense Fund v. Herbert*

Financial Report 2013*

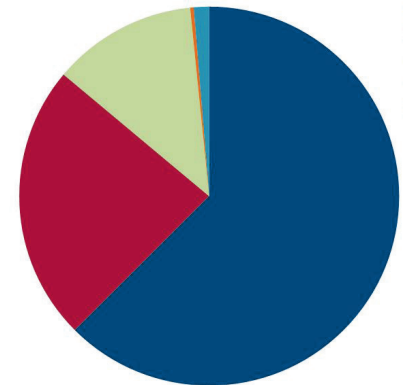
Functional Expenses, Cash Basis

Legal Defense and Research		\$872,080	73.2%
Management and General		203,226	17.1
Fundraising		116,046	9.7
Total		\$1,191,352	100%



Revenue

Contributions and Grants		\$686,147	62.5%
Interest, Dividends and Capital Gains		259,084	23.6
Program Services		134,636	12.3
Publications and Subscriptions		3,379	0.3
Other		13,808	1.3
Total		\$1,097,054	100%



Assets, Liabilities and Fund Balances, Cash Basis

Assets

Current Assets:	
Cash	\$197,571
Investments:	
Certificates of Deposit	450,150
Government Bond Obligations	409,715
Corporate Bond Obligations	1,600,399
Corporate Stocks	2,617,408
Money Market funds	436,033
Total investments	5,513,705
Total current assets	5,711,222
Other Assets:	
Security Deposits	7,655
Total Assets	\$5,718,877

Fund Balances

Fund Balances:	
Unrestricted Fund Balances	\$892,906
Restricted Fund Balances	4,825,971
Total Fund Balances	\$5,718,877

**For the year ended Dec. 31, 2013*

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About the Reporters Committee

The Reporters Committee for Freedom of the Press was created by leading journalists and media lawyers in 1970, at a time when the nation's news media faced a wave of government subpoenas asking reporters to name confidential sources.

Today it provides pro bono legal advocacy, resources and support to protect First Amendment freedoms and the newsgathering rights of journalists.

The Reporters Committee:

Drafts, coordinates and files amicus briefs in courts around the country, often in conjunction with major news and transparency organizations.

Writes statements of support and organizes the opposition when newsgathering rights and the freedom to publish are under attack.

Participates in legislative and public affairs outreach on reporters' privilege, the Freedom of Information Act and other issues important to journalists.

Develops new tools for journalists, such as mobile apps and the iFOIA electronic Freedom of Information Act request and tracking system.

Provides on-the-spot legal assistance to reporters and produces comprehensive publications and media law resources, all of which are available online at no charge.

Offers a variety of fellowships and internships for the next generation of free press lawyers and reporters.

Assists journalists on media law stories.

Funded by corporate, foundation and individual contributions, the Reporters Committee serves the nation's leading news organizations; thousands of reporters, editors and media lawyers who call for help; and many more who use our online and mobile resources.

How to donate

Online: Secure online donations can be made to the Reporters Committee at www.rcfp.org/donate via the Network for Good system.

By check: Please send checks payable to Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, VA 22209.

Legacy giving: Please consider ensuring that your support for freedom of the press continues for future generations of journalists with a legacy gift. Learn more at www.rcfp.org/donate/legacy-giving.

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FOR FREEDOM OF THE PRESS
