



Written by [Raven Clabough](#) on November 8, 2013

## Journalist Continues to Fight Courts to Protect Her Sources

The New York State Court of Appeals in Albany will begin hearing [arguments](#) next week in a bid by a Fox News journalist to squash a subpoena that would require her to ultimately reveal her sources behind a report she did on Aurora, Colorado, gunman James Holmes.

On July 20, 2012, James Holmes opened fire on unsuspecting patrons in a movie theater in Aurora, Colorado, killing 12 and injuring 70. Fox News sent Jana Winter to cover the aftermath. Just five days later, Winter [broke](#) her exclusive story that Holmes had forwarded a notebook to a University of Colorado psychiatrist “filled with details about how he was going to kill people.” Her story was based on information she had received from law-enforcement sources who were not to discuss the case because of a gag order issued by County Judge William Sylvester.

Jana Winter is so committed to keeping secret the identity of her sources of information in the Aurora, Colorado, movie theater shootings that she is willing to face [jail time](#) rather than expose the unnamed persons. Though both a Colorado judge and a New York judge have ordered her to turn over her notes related to the killings — that likely contain the names of her law-enforcement sources — Winter has so far refused.

Her fight to protect her rights continues. Jana Winter will be asking the New York court to determine that New York’s strong policy of protecting the identity of confidential sources should also protect her from having to testify in Colorado, where she could be ordered to reveal her sources.

Fox News explains, “New York’s shield law, among the strongest in the nation, bars the jailing of journalists for refusing to identify their sources.”

Colorado too has a shield law, but one that is not nearly as protective as New York’s. Though Colorado’s Shield Law is supposed to protect any reporter from having to reveal a source, it does include provisions that allow a judge to circumvent it and compel a reporter to provide the ordered information to the court. *Forbes* [explained](#):

Should the court determine that the reporter’s information is directly relevant to a substantial element in the case; that the information cannot be obtained by any other reasonable means; and that the interests of the party seeking disclosure (in this case Mr. Holmes) outweighs the First Amendment rights of the reporter, along with the public’s right to receive the news, the court can





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ignore the Shield Law and force the reporter to provide all requested information.

At the request of Holmes' defense team, a lower court in New York had issued a subpoena last January that requires Winter to appear in Colorado. An appellate court issued a 3-2 ruling against Winter, but Winter has the right to take the case to the Court of Appeals.

Winter's defense team will argue that the New York court should never have approved the subpoena because of the shield law. Likewise, according to Winter's attorneys, her testimony is not "directly relevant" to Holmes' crime, and forcing her to reveal her sources would [destroy](#) her career.

Winter will appear in court on Tuesday to ask the high court to protect her from having to testify in Colorado. She is expected to ask the court to recognize the damage that such a subpoena would do to her career as an investigative journalist.

Reports indicate that the case has already hampered her ability to perform her duties as an investigative journalist. She contends that long-time sources are now refusing to speak to her, and that she has lost leads on other news stories as a result of the court battle.

"We are hoping that the high court will agree with our position that the subpoena should be squashed," said Dori Ann Hanswirth, lead attorney on Winter's legal team. "What could happen to Jana in Colorado would never happen in New York."

A wide array of media organizations as well as First Amendment groups have advocated on behalf of Winter. Many have issued statements and spoken on Winter's behalf in the case.

Fox News reported, "They argue the courts in both states have sent a chilling message to journalists, who need the protection of shield laws to do their jobs and keep the public informed. Without that protection, Winter's supporters argue, journalists and whistleblowers are much less likely to reveal vital information in the public interest."

These groups recognize the significant implications that the case represents if Winter is indeed required to obey the subpoena and appear before Arapahoe County District Court Judge Carlos Samour, Jr. on January 3. "I think this is something that journalists, regardless of the outlet you work for, should be concerned about," wrote conservative blogger Matt K. Lewis. "I certainly hope that the fact that she is from Fox News isn't impacting the coverage you see from other outlets. I would hope that we would see more journalists stepping forward."

Peter Scheer, executive director of the First Amendment Center, asserts that the subpoena should not be enforced, particularly since Winter's testimony is not central to the Holmes case. Holmes' attorneys have already admitted that Holmes is guilty of the attack. "The fact is that it has to do with punishing [the source], but that is not important enough to outweigh the First Amendment," he said. "It's really just to vindicate the authority of the Colorado court that imposed this gag order."



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