



## Washington Times Settles With DHS in Case Involving Improper Seizure

When the Department of Homeland Security illegally seized notes from *Washington Times* reporter Audrey Hudson in 2013, the *Times* and the reporter took the DHS to court. A settlement has now been reached that includes a review of training for the DHS' Coast Guard criminal investigators.



On August 6, 2013, DHS agents entered the home of Audrey Hudson with a warrant to collect information about guns that her husband possessed in the house. While in the Hudson home, the agents also took the opportunity to seize reporting materials from Hudson, including items that she obtained from under the Freedom of Information Act and documents pertaining to issues in the agency's Federal Air Marshal Service. Hudson had reported that the DHS Air Marshal's program lied about the number of air marshals actually protecting American flights. Hudson stated the seized files contained information on a number of "whistleblowers."

The *Times* and Hudson elected to take the agency to court for its flagrant constitutional violations. In a settlement reached with the help of a federal magistrate, the agency was forced to return the documents that had been stolen during the raid, though it is more than likely the agency has already obtained what it needed from the documents. However, according to John Solomon, editor and vice president for content and business development for the *Washington Times*, the settlement also includes assurances that the government destroyed any information it derived from the seized records. The government will also be paying the legal bills for both the newspaper and Hudson.

The *Times* emphasized, however, that the most important aspect to this resolution was not the money, but the message. "While the settlement payments cover just a fraction of the legal bills we accrued, the fight was, in the end, about protecting a journalist's right to keep her sources confidential and to engage in the First Amendment protected activity of reporting without unwarranted government intrusion," said Larry Beasley, president and chief executive officer of the *Washington Times*.

Hudson echoed these sentiments. "The importance of this case was that we just were not going to let it stand, the idea that federal officers at will could confiscate a reporter's notes without any sort of subpoena or search warrant seeking the notes or even directed at the reporter," said Hudson.

The department also agreed to require the director of the Coast Guard Investigative Service to "initiate



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an internal review and analysis of current training and policy related to the Privacy Protection Act.”

Naturally, journalists all over the country had an investment in Hudson’s case. Fred Brown, member of the Ethics Committee for the Society of Professional Journalists, observed, “If you’re a reporter, who wants to subject himself or herself to that kind of disruption? For this kind of thing to happen, for the government to enter a house, seize documents that have to do with the reporting of a legitimate story, that’s inexcusable bullying.”

Hudson’s fight for journalistic protections is reminiscent of a similar battle fought by Fox News journalist Jana Winter, who fought to protect her right to maintain the confidentiality of her sources. Fox News sent Jana Winter to cover the aftermath of the 2012 Aurora, Colorado, movie theatre shooting. 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.

Two lower courts had ruled that Winter could be found in contempt of court and sentenced to jail indefinitely if she refused to turn over her notes related to the killings. Jana Winter was so committed to keeping secret the identity of her sources of that she repeatedly declared her willingness to face [jail time](#) rather than expose the unnamed persons. “I promised my sources I would keep their identities confidential and would have ended up having to go to jail to do so,” she said.

In December of 2013, New York’s highest court protected her rights through a 4-3 ruling. The New York Court of Appeals ruled on December 10 that Winter could not be compelled to testify in Holmes’ trial, citing the state’s shield law for journalists. In that ruling, Judge Victoria Graffeo wrote for the appeals court that “New York public policy provides a mantle of protection for those who gather and report the news — and their confidential sources — that has been recognized as the strongest in the nation. And safeguarding the anonymity of those who provide information in confidence is perhaps the core principle of New York’s journalistic privilege, as is evident from our colonial tradition, the constitutional text and the legislative history of the shield law.”

Unfortunately, not all of these cases end in favor of constitutional freedoms. Take, for example, the case of *New York Times* reporter James Risen, who faces jail over his refusal to reveal a source and testify against a former CIA agent accused of leaking secrets.

*The Guardian* reported, “Risen faces jail over his reporting of a botched intelligence operation that ended up spilling nuclear secrets to Iran. The Justice Department has long been seeking to force him to testify and name the confidential source of the account, which is contained in his 2006 book *State of War*.”

Risen failed in his effort to have the Supreme Court review an order for him to testify, ultimately exhausting the last of his legal options. Risen has been an outspoken critic against the Obama administration for its claims about supporting press freedom, noting their hypocrisy. It’s hypocritical,” Risen said. “A lot of people still think this is some kind of game or signal or spin. They don’t want to believe that Obama wants to crack down on the press and whistleblowers. But he does. He’s the greatest enemy to press freedom in a generation.”

A number of groups have rallied for Risen, and have compiled a petition of over 100,000 signatures asking the Justice Department to drop the case against Risen.

Similarly, in 2005, former *New York Times* reporter Judith Miller was jailed for contempt of court after



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she refused to testify about a source in an investigation into the leak of an undercover CIA officer's name before a federal grand jury. "If journalists cannot be trusted to guarantee confidentiality, then journalists cannot function, and there cannot be a free press," she said reading a statement to the court shortly before she was taken away. "The right of civil disobedience is based on personal conscience; it is fundamental to our system and it is honored throughout our history."

Perhaps the settlement in Hudson's case will call further attention to what appears to be a concerted effort to root out leaks and target journalists, even as Attorney General Eric Holder published new rules in the *Federal Register* earlier this year that should have limited access to journalists' records. Those changes were in [response](#) to public fury over the Department of Justice's investigations into leaks of alleged national security interests involving the Associated Press and Fox News.



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