Preface

Before he was a businessman, Time Warner Inc. CEO Dick Parsons was a lawyer, and a very good one. So it was with mixed emotions that I met him and nine other Time Warner officers and attorneys the morning of October 20, 2004, to discuss contempt citations against Time Inc. and Matthew Cooper, a reporter for Time magazine. Parsons, who had assisted Rudy Giuliani on complex libel and First Amendment cases when they were young lawyers at the white-shoe New York firm Patterson, Belknap, Webb & Tyler, understood the issues. That was a plus. But his strongly held views were a problem.

A federal district court judge in Washington, D.C., had held Cooper and Time Inc., Time Warner's magazine division and the publisher of Time, in civil contempt for refusing to tell a grand jury the source for a story by Cooper, published on Time's website, naming Valerie Plame as a CIA operative. The refusal was the result of a decision I, as editor in chief, had made, in accordance with long practice at the magazine and in American journalism. Cooper had been sentenced to a jail term, and Time Inc. had been fined $1,000 per day. Both sentences had been suspended pending our appeal.

I had learned that Parsons had told his board of directors about the case in a memo two months earlier and had said, "At the end of the day, the company will abide by the final determination of the courts." In other words, he would stand with the courts, not with me and my journalistic colleagues. I was alarmed by his declaration and had sought the October meeting to talk about it.

I told Parsons I thought it unlikely the district court ruling would be reversed on appeal, and equally unlikely that the Supreme Court would agree to hear it if we were to seek its review. Although we agreed to continue to litigate, he repeated what he had told his board: "If we exhaust our legal remedies, Matt should testify and you must turn over our files."

The mood inside the conference room turned as somber as the sky outside when I told him we would do no such thing. "The decision is mine to make," I said, "and if we lose, we shall pay the fines and Matt will do the time."

I was editor in chief of Time Inc. We were the world's largest magazine publisher, and I was responsible for the

words and pictures in more than 150 titles, including Time, People, Sports Illustrated, Entertainment Weekly, and Fortune. I had been brought to Time Inc. in 1994 after a lengthy career in publishing, including nine years in which I served as The Wall Street Journal's top news executive.

I reminded Parsons that he and the rest of Time Warner's board had granted me unprecedented editorial independence in 1997, when it had signed off on a short document I had presented that defined the role of Time Inc.'s editor in chief. I told him that many of our best stories relied on confidential sources, and I showed him where Time Inc.'s Editorial Guidelines stipulated that it was our policy "not to reveal the identity of a confidential source." The guidelines also warned that there might be occasions involving federal grand jury proceedings "in which the only way to keep your promise of confidentiality to a source is to serve a jail term for contempt of court."

I noted the distinction between civil and criminal contempt. In our case, fines and jail terms were threatened to induce cooperation. In criminal contempt cases the punishment, usually resulting from a felony conviction, is for wrongdoing. I cited more than two hundred years of tradition in which reporters went to jail and publishers paid fines to protect their editorial independence. Finally, after more than an hour's heated discussion, during which I never disclosed our source, Parsons grudgingly accepted my position.

We didn't discuss the matter again over the next eight months, while the grand jury case dragged on, as the special prosecutor urged us to reveal our source. But on June 27, 2005, the Supreme Court announced that it wouldn't hear our petition, leaving the adverse appellate court ruling intact.

Two days later I called Parsons to tell him we would turn over our files to the grand jury. "You've surprised me," he said. "I was just getting comfortable with your earlier position." I could hear a chuckle as he hung up the phone.

Both of us knew, however, that my decision was no laughing matter. In nearly forty years working as a reporter and editor, I had never faced such a difficult decision. I knew that many of America's most respected journalists, including some of my role models, would denounce me, often in the pages of their publications. Nonetheless, I thought that we should comply with the court's orders. And the more I learned about the use of confidential sources, the more I

came to understand how their misuse was undermining the press's credibility.

Since then, of course, the battles over confidential sources have escalated, with important implications for the nation and for the press. The Plame case grew out of George Bush's State of the Union address, in which he asserted that Iraq had been trying to buy uranium in Africa to restart its nuclear weapons program. As a result, the special counsel's investigation became an important part of the fight over the President's decision to invade Iraq and the overall conduct of his war on terrorism.

Bush's detractors say Plame was outed by the administration to punish her husband, Joseph Wilson. Wilson, a retired diplomat who had served in Iraq and in Africa, had visited Niger on behalf of the CIA and had concluded that there was no evidence that Iraq had bought uranium in Africa. That argument buttressed other evidence that there was no basis for going to war with Saddam Hussein, prompting critics to conclude that Bush, Vice President Cheney, and their key aides had deliberately lied to the American public.

The President's defenders see the Plame episode as an example of routine political skirmishing inside the Beltway, and they insist that the revelation of Plame's CIA status should never have led to an investigation, let alone the indictment, trial, and conviction of Vice President Dick Cheney's chief of staff, I. Lewis (Scooter) Libby Jr., and the investigation of Bush's key aide Karl Rove.

Our case developed against the backdrop of the Bush administration's war on the press. The administration has produced video news releases that masquerade as stories, has paid columnists to spout the party line, and has questioned the press's check-and-balance function in society. Special Counsel Patrick Fitzgerald acted independently of and often against the administration, but the courts' support for his tactics has emboldened the Department of Justice, other prosecutors, and civil plaintiffs, leading to the biggest increase in subpoenas since the Nixon era, all seeking reporters' testimony about their confidential sources and about the information gained from them. To cite one example, the Hearst Corp.'s general counsel says it received more than eighty subpoenas in 2005–2006—the vast majority from prosecutors—compared with about half a dozen in the prior two years.

Judith Miller of The New York Times served eighty-five days in jail for contempt of court before agreeing to testify and reveal a confidential source in the Plame case. The Bush administration has stepped up its attacks on publications and broadcasters that rely on confidential sources. The FBI demanded that the widow of investigative reporter Jack Anderson turn over nearly two hundred boxes of his papers before the donated files were transferred to the archives of George Washington University. The administration has called for investigations to determine who leaked information to The New York Times about warrantless domestic wiretapping by the National Security Agency. President Bush has also denounced the Times for printing stories about his administration's secret international-banking surveillance program, designed to track terrorists, calling the paper's disclosure a "disgraceful" act that does "great harm" to the nation. The Washington Post has similarly been criticized for its reports about CIA interrogation camps in Eastern Europe. Those stories also prompted radio personality William J. Bennett, a former Republican secretary of education, to pronounce the reporters "worthy of jail" for breaching national security. The editors who judge the Pulitzer Prizes, however, gave awards to the Times and Post reporters who broke the NSA and CIA stories.

Attorney General Alberto Gonzales, stretching his own department's guidelines, has contemplated draconian measures, including possible criminal prosecution under the nation's espionage laws. Two former lobbyists for the American Israel Public Affairs Committee (AIPAC) were indicted in August 2005 and charged with violating the Espionage Act of 1917 by passing U.S. state secrets to Israel. Although the case involves lobbyists, it is otherwise no different from potential cases against reporters.

And so, a generation after Watergate, the use and misuse of anonymous sources and their most important subset, confidential sources, have again become central to any discussion of the role of the press in a free society. As essential as these sources may be, their misuse has undermined the public's support for and interest in the press, making it more difficult for reporters to get the legal protections needed to do their jobs.

As I made my way through the thicket of our case, I realized how little I understood what I had always assumed were long-standing rules for the press when dealing with sources and the public. In truth, there are no rules, and there is no

common understanding of what qualifies as proper behavior. Ask a group of reporters or editors to tell you the difference between "confidential" and "anonymous," or between "not for attribution," "background," "deep background," and "off the record," and you will get a lot of different answers. As screenwriter William Goldman once said of Hollywood, "Nobody knows anything."

I never expected to go where my journey took me. But the journey has been revealing, showing the abuse of anonymity, the incestuous relations between reporters and sources, particularly in Washington, and the far too casual way journalists can imperil their own freedom and even the survival of their publications through the careless granting of promises or through the assumption of promises never explicitly made.

Although my decision to hand over Matt Cooper's notes, thus revealing his confidential sources, has divided reporters, editors, lawyers, legislators, and the public, it is, nonetheless, my hope that the decision will help pave the way for new laws, standards, and guidelines that will improve and protect journalism and that will restore the public's faith in the press.