



# Office of Special Counsel

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## STATEMENT OF SPECIAL COUNSEL

Statement of Special Counsel Patrick J. Fitzgerald regarding today's decision by the United States Supreme Court to deny a writ of certiorari in the matters captioned *Judith Miller v. United States of America*, and *Matthew Cooper and Time, Inc. v. United States of America*, Nos. 04-1507 and 04-1508:

“The lower courts that thoroughly reviewed this matter ruled that reporters do not have a First Amendment privilege to refuse to comply with a grand jury subpoena issued in good faith, citing the Supreme Court's decision in the *Branzburg* case in 1972. Further, the lower courts also held that even if a qualified privilege existed, the Special Counsel's reasons for needing the reporters' testimony overcame any such privilege, and the Court of Appeals said the government had shown a “critical need” for the reporters to comply with the subpoenas. Following each ruling in the lower courts, the Special Counsel agreed to a stay of the civil contempt sanctions imposed after the reporters and Time, Inc. refused to comply with court orders to allow them to fully pursue their appeals.

Today, the Supreme Court declined to hear the appeal, which allows the decision of the lower courts to stand, preserving the legal precedent it established more than 30 years ago. As noted in our Court filings, by October 2004 when the appeal in this matter was first filed, the factual investigation – other than the testimony from these reporters and any further investigation that might result – was for all practical purposes completed.

Now that the legal obligations of the reporters are settled and all appeals exhausted, we look forward to resuming our progress in this investigation and bringing it to a prompt conclusion on behalf of the citizens we represent.”

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