



**Media Law Presentation:
Reporter's Privilege**

[Note to Presenter: The notes that follow work as either a presentation script or as preparatory material for the presenter. If you're reading the notes as a script and allow for moderate discussion, the full presentation should last between 40 and 50 minutes.]

A legal guide to protecting confidential sources and information for high school student journalists and their advisers

This presentation was made possible by a generous grant from:



This presentation provides high school student journalists with an introduction to the reporter's privilege. Allowing for a few questions or comments along the way, it should last about 45 minutes and is designed to help students and their advisers better understand the reasons for and the law behind protecting journalists' sources and information.

Student Press Law Center

Provides free legal help and information on media law issues to student journalists and their advisers

Web site: www.splc.org

Phone: (703) 807-1904

Monday - Friday 9 a.m. - 6 p.m. Eastern Time

This presentation will not make you a legal expert on reporter's privilege law. What it will do, we hope, is help you make more informed decisions and give you a better sense of when you might have a problem that requires outside help. For those cases, you may want to keep the contact information for the Student Press Law Center handy.

The SPLC is a nonprofit organization based just outside Washington, D.C., that since 1974 has provided free legal help and information to student journalists and their advisers on a variety of media law issues. Much more information about reporter's privilege is available on the SPLC Web site and in various publications produced by the Center. In addition, "live" help is generally available from the SPLC staff Monday through Friday.

Well, we've got a lot to discuss. Let's get started.

Reporter's Privilege

Protecting the right of a free
and independent press to
gather and report the news

We're going to talk today about what is collectively known as the reporter's privilege.

The first question, of course: What is a reporter's privilege?

What is a Reporter's Privilege?

A privilege in law is exactly what it sounds like: something that gives one person an advantage another may not have. The reporter's privilege includes the right of the press not to be compelled to testify or disclose sources and information to the government or third parties. It also includes the right of journalists to be free from intrusive searches and seizures of their persons and property.

When a prosecutor wants a reporter to reveal a confidential source or a police officer demands that a photojournalist turn over his digital media card, a reporter's privilege may provide some protection.

Fortunately, it is a problem that comes up infrequently for student media.

Unfortunately, however, it's a problem that — when it does come up — often arises in a physically and emotionally charged setting that requires a quick and informed response.

But before we get to what that response should be, it is important to take a step back and ask the even bigger question: Why should reporter's have such a privilege in the first place?

Why should reporters have a privilege?

- Public trust/editorial independence

The fact is, not everyone — including some courts and lawmakers — think they should.

Most journalists and proponents of a reporter's privilege argue that because of their unique and necessary role in providing the public with independent, accurate and complete information, the law — dictated at least in part by the First Amendment's guarantee of freedom of the press — should recognize a privilege that protects journalists from legal actions that threaten the integrity of their efforts to gather and disseminate news.

And it is not just when confidential sources or information are at issue that journalists feel compelled to maintain their independence. Journalists generally strive to remain independent and balanced in their reporting and many are concerned that by testifying in any context — even where no promises of secrecy have been made — or turning over their notes or photos they will be perceived as "private investigators" or advocates for law enforcement, school officials or other private individuals or companies.



Maintaining editorial independence is vital. Journalists often have access to people or “hot” news events to which police or other non-neutral parties would be unwelcome. Such access gives the public a close-up look at news from a perspective that would likely otherwise go unreported.

If the press is viewed as merely an extension or “puppet” of government or other authorities — if they lose their status as independent, neutral observers — such access quickly ends and the public loses.

Why should reporters have a privilege?

- Public trust/editorial independence
- Ensuring good sources of information for important stories remain available

Another reason for a reporter's privilege, supporters argue, is to protect sources.

Good sources are crucial to the newsgathering process.

They can provide vital information of which reporters and the public would otherwise be unaware — information that, without a promise of confidentiality, they would be unwilling to share.

THE NEW YORKER

ANNALS OF NATIONAL SECURITY

TORTURE AT ABU GHRAIB

American soldiers brutalized Iraqis. How far up does the responsibility go?
by Seymour M. Hersh

MAY 10, 2004

In the era of Saddam Hussein, Abu Ghraib, twenty miles west of Baghdad, was one of the world's most notorious prisons, with torture, weekly executions, and vile living conditions. As many as fifty thousand men and women—no accurate count is possible—were jammed into Abu Ghraib at one time, in twelve-by-twelve-foot cells that were little more than human holding pits.

In the looting that followed the regime's collapse, last April, the huge prison complex, by then deserted, was stripped of everything that could be removed, including doors, windows, and bricks. The coalition authorities had the floors tiled, cells cleaned and repaired, and toilets, showers, and a new medical center added. Abu Ghraib was now a U.S. military prison. Most of the prisoners, however—by the fall there were several thousand, including women and teenagers—were civilians, many of whom had been picked up in random military

The Washington Post

Wednesday, November 2, 2005

CIA Holds Terror Suspects in Secret Prisons

Debate Is Growing Within Agency About Legality and Morality of Overseas System Set Up After 9/11

By [Dana Priest](#)
Washington Post Staff Writer

The CIA has been hiding and interrogating some of its most important al Qaeda captives at a Soviet-era compound in Eastern Europe, according to U.S. and foreign officials familiar with the arrangement.

The secret facility is part of a covert prison system set up by the CIA nearly four years ago that at various times has included sites in eight countries, including Thailand, Afghanistan and several democracies in Eastern Europe, as well as a small center at the Guantanamo Bay prison in Cuba, according to current and former intelligence officials and diplomats from three continents.



NSA has massive database of Americans' phone calls

Updated 5/11/2006 10:38 AM ET

By [Leslie Cauley](#), USA TODAY

The National Security Agency has been secretly collecting the phone call records of tens of millions of Americans, using data provided by AT&T, Verizon and BellSouth, people with direct knowledge of the arrangement told USA TODAY.

The NSA program reaches into homes and businesses across the nation by amassing information about the calls of ordinary Americans — most of whom aren't suspected of any crime. This program does not involve the NSA listening to or recording conversations. But the spy agency is using the data to analyze calling patterns in an effort to detect terrorist activity, sources said in separate interviews.

Sources have many reasons for wanting to stay out of the spotlight. In many cases, sources fear that revealing information to a reporter could jeopardize their job security with an employer who would rather keep a lid on “bad” news. In other cases, a source might worry about retribution against his family or fear damage to personal relationships.

Whatever the reason, some of the most important stories of the day would probably not have been told without the cooperation of sources who insisted on remaining anonymous.

Central H.S. is a prescription drug 'shopping mall'

Editor's Note: Many of the names in this story have been changed or omitted

Recent national studies show that prescription drug abuse among teens is on the rise and if a recent investigative report by the *Student Times* of Central High School's drug scene is indicative of what goes on at other schools, it's no wonder why.

Prescription drugs of all types are being illegally sold and used by students on and off school grounds, *Times* reporters found during their six-week look into CHS's undercover drug scene. More than a dozen students — both drug dealers and users — agreed to be interviewed for this story on the condition that their identities not be revealed. Their stories provide a rare, inside look at a world that many students, and probably most parents and school officials, have no idea they are passing through daily.



Photo by *Student Times* staff

This is a typical day's supply of popularly used prescription drugs, says this CHS student dealer who spoke only on the condition that she not be identified

Photo Illustration

The same holds true for some stories reported by student media.

Whether reporting on private, highly sensitive personal issues — such as a student eating disorders, mental health conditions, sexual orientation or sexual activity — or academic issues — such as cheating or grade-fixing — or criminal matters — such as drag racing, underage drinking or drug abuse — the sources that are in a position to shed light on such issues are often also unwilling to come forward and talk openly.

Embarrassment or worries about being targeted or shunned by their classmates, concern about retaliation by teachers or those in authority or the fear of criminal prosecution are all commonly cited reasons by sources for not wanting to reveal their identity.

Unfortunately, without the cooperation of such sources, the problems and issues don't disappear; they simply remain hidden and unresolved.

Why should reporters have a privilege?

- Public trust/editorial independence
- Ensuring good sources of information for important stories remain available
 - Ethical Obligations
 - Legal Obligations

Once a journalist makes a promise to a source, he or she has an obligation to keep that promise for both ethical and legal reasons.

Many journalists believe that by revealing confidential information you have not only put your source in a position she was unwilling to put herself in voluntarily, you may also have breached your professional code of ethics as a journalist.

Additionally, by making a promise to a source in return for their information, you may have entered into a legally binding agreement for which you can be held responsible should you subsequently break your promise.

Keeping a promise to a source helps ensure that they will continue to trust you and your publication. This is important because sources not only talk to you but also to each other. News spreads and an untrustworthy reporter will find it hard to find future sources.

The Poynter Institute's
Confidential Source Checklist

- Is the story of overwhelming public concern?

First, is the story of overwhelming public concern?

When a reporter uses an unnamed source he has decided to make a trade off. Because it is the business of the press to reveal the truth, a reporter who pledges confidentiality has decided it is worth the price of concealing part of the truth — and risking some loss of credibility — in order to expose a greater or larger truth.

Given this, it only makes sense to reserve your promises of confidentiality to report news that simply cannot be ignored. News organizations that rely on too many confidential sources will find the public more suspicious of the accuracy of their work.

The Poynter Institute's
Confidential Source Checklist

- Is the story of overwhelming public concern?
- Is there any other way to get the information on the record?

Next, is there any other way to get the information on the record?

It might take more work to spend hours pouring through unsorted documents or tracking down other reluctant witnesses, but if hard — and sometimes boring — tasks scare you, it's probably best to drop the story altogether.

Confidential sources should not be used as a shortcut to diligent reporting.

The Poynter Institute's
Confidential Source Checklist

- Is the story of overwhelming public concern?
- Is there any other way to get the information on the record?
- Is the information from the confidential source verifiable?

Third, is the information from the confidential source verifiable?

Just because you might not reveal the source's identity doesn't mean you are relieved of your responsibility as a reporter to ensure that the information he or she tells you is accurate.

If anything, because you may be the only one in a position to verify its accuracy, the standard you use to make sure the information is sound may be even higher.

The Poynter Institute's Confidential Source Checklist

- Is the story of overwhelming public concern?
- Is there any other way to get the information on the record?
- Is the information from the confidential source verifiable?
- Are you willing to reveal to the public why the source cannot be named (without accidentally revealing the identity of the source) and what, if any, promises you made to get the information?

Would you be willing to publicly disclose why the source cannot be named (without accidentally revealing the identity of the source) and what, if any, promises you made to get the information?

If not, why not? Using a confidential source should always be a carefully considered decision. While some may not agree with your decision, it must be one that you would be prepared to publicly defend. If the potential deal with your source or the reasons that you are considering promising him confidentiality make you uneasy, it's a strong indication that you should probably rethink your plans.

The Poynter Institute's
Confidential Source Checklist

- Is the story of overwhelming public concern?
- Is there any other way to get the information on the record?
- Is the information from the confidential source verifiable?
- Are you willing to reveal to the public why the source cannot be named (without accidentally revealing the identity of the source) and what, if any, promises you made to get the information?
- How would your audience evaluate the same information if they knew the source's identity?

Finally, how would your audience evaluate the same information if they knew the source's identity?

A confidential source is only worth using if the information he or she provides enhances, not detracts from, your story.

A source whose credibility is questionable is not worth the risk.



Confidential
sources:

A last resort?

As we just talked about, using a confidential source is a tradeoff. Telling your audience to believe you — without giving them verifiable evidence of the truth — tarnishes a story's credibility. It can also be risky both to your reputation as a journalist if your facts are questioned or if your promise of secrecy is challenged. Such reasons make clear that the use of confidential sources should generally be reserved for extraordinary occasions.

Now that we've talked a bit about what a reporter's privilege is, why it's important to journalists and some of the factors to consider before considering its use, let's look at some of the more common threats faced by news media.

Subpoenas

Demands for for journalists'
sources and information

One of the more common methods of forcing a reporter to provide information is through the use of a subpoena.

What is a subpoena?

STATE OF ILLINOIS
 COUNTY OF WILL
 IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
 WILL COUNTY, ILLINOIS

JONATHAN F. ROMERO
 VS
 KATHERINE SCHAFER
 CASE NO. 02 L 303

SUBPOENA DUCES TECUM
 TO THE CENTRAL TIMES, NEWS, 640 N. MICHIGAN, NAPERVILLE, IL 60540
 YOU ARE COMMANDED to appear ~~personally~~ before the Honorable Law Offices of Robert M. Romero
 at ~~55 N. Michigan, Suite 3660, Chicago, Illinois~~
 on ~~September 27~~ 2002, at 11:00 (a.m.) O'CLOCK

YOU ARE COMMANDED ALSO to bring the following: (1) Any and all notes/records pertaining to an assault/battery by Katherine Schaffer against Jonathan Romero occurring at NCS on or about November 13, 2001; (2) Any and all notes/records now pertaining to Central Times news story "Student Speaks out against sexual harassment", dated 12/21/01.
 In your possession or control. NOTES: BRINGING OR FAILING TO BRING THE REFERENCED DOCUMENTS TO THE UNDERSIGNED ATTORNEY AT THE ABOVE ADDRESS WILL SUFFICE IN LIEU OF YOUR PERSONAL APPEARANCE.
 YOUR FAILURE TO APPEAR IN RESPONSE TO THIS SUBPOENA WILL SUBJECT YOU TO PUNISHMENT FOR CONTEMPT OF THIS COURT.

Witness: *Sept 11 20 02*
 Pamela J. McGuire
 Pamela J. McGuire
 Clerk of the Circuit Court

BY: *JRS*

I served the subpoena by ~~personal delivery~~, mailing a copy, certified mail 7001 2510 0004 9286 7812, on September 11, 2002, to ~~Jonathan Romero~~

Signed and sworn to before me
[Signature]
 (Deputy Clerk)

(Plaintiff's attorney or plaintiff if he is not represented by an attorney)
 NAME: Law Offices of Robert M. Romero
 ATTORNEY FOR PLAINTIFF: Jonathan F. Romero
 ADDRESS: 55 N. Michigan, Suite 3660
 CITY: Chicago, IL 60611
 TELEPHONE: 312-464-1314

Court - Original Receiving Party - Copy 14A-1 (Revised 12-99) 2 Part Form

A subpoena is a court order that — when it is delivered according to the court’s rules — requires a person to show up at a particular place and time to provide information.

Subpoenas can be sought by law enforcement officials and prosecutors, by lawmakers or by parties to a lawsuit.

They can seek a number of different things.

Types of subpoenas

- Subpoena to reveal confidential sources

For journalists, the most troublesome and threatening subpoena is usually one that orders them to name a source to whom they have promised anonymity.

Types of subpoenas

- Subpoena to reveal confidential sources
- Subpoena to testify

Sometimes a subpoena orders you to answer questions under oath, during which a questioner may seek to ask you about an event you have witnessed firsthand or information obtained during your reporting.

Types of subpoenas

- Subpoena to reveal confidential sources
- Subpoena to testify
- Subpoena to produce unpublished notes, photos, outtakes and other newsgathering materials

At other times, a subpoena orders you to provide material, such as notes or a photograph.

Often, subpoenas include demands for all of the above.

So what do you do if you're ever served with a subpoena?

Responding to a subpoena: A checklist

- Do not ignore it!

First, a subpoena is an official court order. Even though you may still be able to avoid disclosing the information it seeks, you cannot simply ignore it or hope that it will go away.

Responding to a subpoena: A checklist

- Do not ignore it!
- Seek legal assistance immediately

Carefully note the deadlines for complying with the order and seek legal help from the SPLC or an experienced media law attorney as soon as possible. Failure to respond in a timely, appropriate manner often limits or eliminates your options — and could land you in legal hot water. Because subpoenas often have a fairly short response time, it is essential that you act quickly.

Responding to a subpoena: A checklist

- Do not ignore it!
- Seek legal assistance immediately
- Do *not* destroy newsgathering material after receiving subpoena

Once you've received a subpoena, it is against the law to destroy, hide or alter your notes, electronic data or any other newsgathering material that you believe may be targeted.

Responding to a subpoena: A checklist

- Do not ignore it!
- Seek legal assistance immediately
- Do not destroy newsgathering material after receiving subpoena
- You have the right to challenge the subpoena in court before complying with it

Finally — and most importantly — know that you have a legal right to challenge the subpoena in court before complying with it. Understanding the risk subpoenas pose to a free and independent press, student media in particular have a long and proud tradition of fighting attempts to force their disclosure of confidential sources and material.

Legal protection from subpoenas

- Shield Laws
- Court-recognized
Qualified Privilege

If you receive a subpoena, there are two primary legal “shields” that you can try to use to avoid having to testify or provide other information or material. The first is called, simply enough, a “shield law.” A shield law is a statute enacted by lawmakers and written specifically to protect journalists from having to comply with a subpoena in certain cases. Currently, over 30 states and the District of Columbia have a shield law on the books. There is, at present, no federal shield law, though Congress continues to seriously debate the matter.

Even where lawmakers have not passed a shield law, courts in many states have recognized some kind of reporter’s privilege.

Legal protection from subpoenas: A balance of interests

- Highly material and relevant to the underlying claim
- Necessary and critical to the maintenance of the claim and
- Unavailable from alternative sources

Shield laws and privileges do not provide absolute protection to journalists in *every* situation where they might want to keep information or material to themselves.

In most cases a balancing test is used to weigh the need to disclose the information against the public's interest in ensuring a free and independent press.

Generally a reporter can only be forced to testify or turn over information if the party issuing the subpoena can establish that the information sought is: (1) highly material and relevant to the underlying claim, (2) necessary and critical to the maintenance of the claim and (3) unavailable from alternative sources.

Shield Laws vs. Qualified Privilege

- Shield Laws
 - Created by lawmakers
 - Protection varies by statute
 - Can provide more specific, more certain protection
 - Protection may or may not be absolute
 - May contain very specific requirements for its use (in a few states, student journalists may not qualify for protection)
- Qualified Privilege
 - Recognized by courts
 - Protection varies by jurisdiction
 - Provides more general, but sometimes more “fuzzy” protection
 - Protection not absolute
 - Often less stringent qualifications for those seeking protection

There are strengths and weaknesses to each type of protection, which can also vary by state or federal jurisdiction.

Shield laws tend to provide more specific and defined protection. For example, a shield law may state that it protects a reporter from testifying in cases where he or she has promised a source confidentiality, but not where the reporter himself witnessed an event or where only information is sought. Some laws only protect unpublished information, but will not shield journalists from complying with demands for information their news organization has already published or aired.

On the other hand court-recognized qualified privileges, which are not part of a written statute, are usually based on the federal First Amendment, a state’s constitution or common law. This can sometimes leave reporters guessing about the extent of their legal protection until a court takes up their case to define the scope of the law.

But a shield law’s specificity can also sometimes exclude from its protection information or individuals — including, in rare cases, student journalists — that a court may conclude are protected by a more general, more flexible qualified reporter’s privilege.

Student journalists:



A special classification?

Fortunately, most courts have found that student journalists have the same protections as their commercial counterparts, but there have been a few exceptions.

While court-recognized privileges typically offer protection based on the intent of the journalist to disseminate the information to the public, state shield laws often focus on professional affiliation in determining who is protected. This can be problematic for student journalists, especially those who are unpaid. For example, some state laws limit their protection to reporters who either earn a living through their work as a journalist or work for a media organization that publishes or broadcasts at least once a week. These limitations on the privilege favor career journalists and the commercial news media organizations that tend to publish or broadcast on a more regular basis than many student publications.

Before making a promise of secrecy to a source, it is important to know and understand what legal protections may — or may not — be available to you.

There are a number of resources that can help, including the SPLC's *Student Media Guide to Protecting Sources and Information* and *The Reporters Privilege* compendium, published by the Reporters Committee for Freedom of the Press, both of which are discussed later.

Intrusion into journalists' newsgathering process

Responding to unlawful searches and seizures

Another way to obtain information from a reporter is simply to take it by force.

Police, school officials and others are not permitted to simply show up and physically take a journalist's unpublished work on their own. The law can provide significant protection and recourse against unlawful searches and seizures of journalists' newsrooms and newsgathering materials.

But because these events often happen quickly and in volatile or pressure-packed situations, reporters need to think ahead of time about how they will respond.

Let's take a quick look at some of the more common problems.

Intrusion into journalists' newsgathering process

- Newsroom searches

Besides the subpoena, another type of document that can be brought to bear against journalists is the search warrant. A search warrant is like a subpoena in that it is a legal device to gather information. But while subpoenas apply to people and their possessions, search warrants apply to places and allow law enforcement officials to collect the information themselves. Fortunately, newsroom searches are rare.

Intrusion into journalists' newsgathering process

- Newsroom searches
- Confiscation of journalists' notes, photos

While newsroom searches are infrequent, the confiscation of material such as cameras, film, tape recorders and notes by school officials or other individuals (for example, police or private security guards and shopkeepers) with neither warrant nor subpoena is a much more common problem.

Intrusion into journalists' newsgathering process

- Newsroom searches
- Confiscation of journalists' notes, photos
- Tracking journalists' communication records

Another threat to independent newsgathering can occur where a journalist's information is obtained by wiretapping a reporter's phone, tracing his phone calls, or hacking into a news organization's computer system to obtain e-mail or track a journalist's Internet usage

Intrusion into journalists' newsgathering process

- Newsroom searches
- Confiscation of journalists' notes, photos
- Tracking journalists' communication records
- **Detention of journalists**

Finally, journalists can be physically detained and/or questioned when involved in otherwise lawful reporting activities.

So, what can be done to limit such intrusions?

Blocking newsroom searches and confiscation of “work product”

- Federal Privacy Protection Act of 1980

The most important court case concerning newsroom searches actually involved a student newspaper. In 1978, the Supreme Court found that a warranted police search of the Stanford University student newspaper office to obtain photographs of a campus demonstration did not violate the First Amendment. In response to that decision, Congress passed the Privacy Protection Act of 1980.

Blocking newsroom searches and confiscation of “work product”

- Federal Privacy Protection Act of 1980
 - Applies to any “government officer or employee” (including police and other law enforcement officials, school officials, campus safety, maintenance workers, teachers, etc.)
 - Applies only in criminal investigations
 - Restricts both newsroom searches and the confiscation of a reporter’s material or personal searches of reporters outside the newsroom

In a nutshell, the PPA provides members of the media protection from most newsroom searches and seizures by government officials engaged in a criminal investigation — even if they produce a search warrant.

The PPA applies to any “government officer or employee” not just law enforcement officials. This is significant, especially for student media who not only have to worry about police and other law enforcement officials, but also principals, campus safety personnel, maintenance workers, teachers and a host of other government officers or employees who might want to snoop around a student newsroom or obtain a journalist’s work.

The PPA should provide student media some protection from prying eyes (and hands) as long as the search or seizure relates to a criminal investigation.

Finally, while the PPA is often referred to as the “newsroom search law,” its protection is not limited to the physical confines of a newsroom, but rather can protect reporters — wherever they are — from improper searches or confiscation of their working material.

Blocking newsroom searches and confiscation of “work product”

- State newsroom search laws
- First Amendment claim
- Criminal theft

In addition to the federal Privacy Protection Act, some state laws, as well as the federal First Amendment, can also prohibit or limit interference by government officials into the newsgathering process.

It may also be possible to pursue a criminal claim where government officials or other third parties take or destroy a journalist's property without permission or justification.

The Bottom Line

Some final thoughts about the reporter's privilege

Before we finish, let's do a quick review and look at some special concerns for student media and their advisers.

The General Rule

There is no obligation to respond to a demand to reveal information or provide newsgathering material absent a properly served subpoena or other court order

Rare exception:

Urgent threat to safety or welfare

First, remember that — other than in a few rare, “emergency-type” situations — law enforcement and other government officials have no legal authority to force reporters to open up their newsroom or disclose other editorial information unless they follow the rules, which generally means properly obtaining and issuing a subpoena — which you then have a right to contest.

Demands by school officials

Public school officials likely do not have the legal authority to compel disclosure of newsgathering material from student journalists absent an emergency or court order

The same should hold true for demands made by school officials. Though courts have yet to address the issue head-on, a very strong argument can be made that absent a properly issued court order or bona fide emergency, public school administrators — like all government officials — have no legal authority to search student newsrooms or to force student journalists to turn over their newsgathering material or reveal information they have collected.

Unofficial demands made by other third parties, such as business owners, lawyers or disgruntled readers can also be politely refused or ignored.

Keeping your cool at a “hot” news scene

If law enforcement officials are unmoved by your objections, you should generally comply with their demand, but formally contest the order as soon as possible

All of that said, however, if in a face-to-face, physical confrontation with officials, it is *usually* best for journalists — while clearly voicing their objections — to comply with demands for materials even if they believe the demands are unlawful. Once the immediate confrontation is over, journalists should formally challenge the actions taken against them as soon as possible.

A first step would be to file a written police report. Of course, if a confiscating official exposes undeveloped film or destroys notes, complaints and criminal charges will not bring the material back. But at least a complaint and charges might bring disciplinary action, fines or other legal penalties and will send the message that journalists will not tolerate such unauthorized confiscations.

Student media advisers: Ignorance is bliss!

A student media adviser should never be privy to confidential information provided by a student reporter's source nor should they know a confidential source's identity.

In the case of a story about unlawful or dangerous activity on school grounds, for example, the adviser — a school employee — may be legally bound to report what he or she knows. The adviser could then be faced with either revealing the confidential information — thus violating ethical and possibly legal obligations to the source and damaging the trust of his student staff — or keeping the secret and being subject to possible sanctions or punishment from the school. Obviously, neither of these are attractive choices.

Before promising a source confidentiality, advisers and their students should create a system that shields an adviser from protected information. While keeping an adviser in the dark is not an ideal solution, it can help student media avoid even bigger and more serious headaches.

Define your terms

“Off the record”

“Background only”

“Not for
attribution”

“Double super-secret background!”

A promise of confidentiality is, at its core, simply an agreement between a source and reporter. As such, it is essential that you and your source agree on the terms.

Even with the more common terms, such as "off-the-record" or "for background only," there is a surprising lack of consensus about their precise meaning. The term "off-the-record," for example, is not a defined legal term. While it is commonly understood that a remark made "off-the-record" cannot be reported in the same way as something said "on-the-record," not all journalists — and certainly not all sources — would agree on precisely what such a deal means. And that can cause serious practical, ethical and, potentially, legal problems.

For example, where a reporter agrees to go "off-the-record," has she agreed to not use the information provided by the source at any time, under any circumstances? Or has she agreed not to attribute the information to the source but can point to some mystical "school official"? Or can the information be used only as a "tip," allowing the reporter to develop the lead on her own and report the information only if she can confirm it by other means? Each of these possible agreements varies significantly and it's essential that the precise meaning of "off-the-record" (or "background only" or whatever phrase is used) and other important terms be ironed out before an interview proceeds.

And finally...

- If you make a promise of confidentiality, you *must* be prepared to keep it
- Promises should be rare

Finally, no matter what protection the law may or may not offer, always remember that if you make a promise to a source, you *must* be prepared to keep it.

No matter what.

Breaking a promise to a source is a serious ethical breach that violates not only the trust your source has placed in you, but harms journalists everywhere by making it less likely that other sources will come forward with information the public may need to know. Reporters have gone to jail in increasing numbers over the last few years to keep promises they have made to confidential sources in defiance of a court order. If you make a promise of confidentiality, you must ultimately be prepared to join them.

With all of this in mind it should be clear that promises of confidentiality should always be the exception rather than the rule.

Newsroom “Must Have” Reporter’s Privilege Resources

- RCFP *The Reporter’s Privilege* compendium

www.rcfp.org

- SPLC *Student Media Guide to Protecting Sources and Information* and *Student Media Guide to the Privacy Protection Act*

www.splc.org

Well, that’s it.

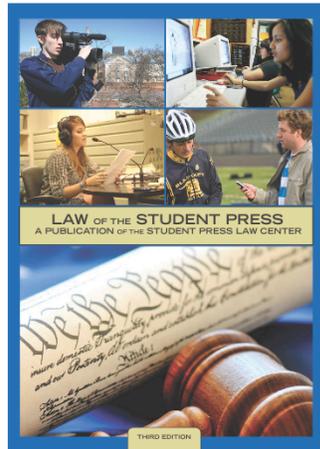
Hopefully, you now feel better prepared to weigh the risks involved in making promises of confidentiality and better prepared to protect yourself and your sources when confronted by demands to turn over newsgathering information or material.

Because of the urgent nature of a newsroom search or the confiscation of newsgathering material — and to a somewhat lesser degree the receipt of a subpoena — it is important to know where to find information when you need it fast.

Three good online sources are the SPLC’s *Student Media Guide to Protecting Sources and Information*, the *Student Media Guide to the Privacy Protection Act* and *The Reporters Privilege* compendium, published by the Reporters Committee for Freedom of the Press. All are free and provide quick, comprehensive information for help in responding to challenges to your newsgathering independence.

Other Student Media Law Resources

Student media
“must have”
newsroom resource



One of the most important resources for additional help is the Student Press Law Center’s book, *Law of the Student Press*, which every student newsroom in the country should have on hand. The book includes much more information about each of the topics talked about today — and many, many others. It is the only media law book available geared specifically to student journalists and the unique problems they face.

Purchase information is available on the SPLC Web site.

Other Student Media Law Resources

- SPLC monthly podcast (splc.org/podcasts)
- SPLC Report: thrice-yearly magazine
- SPLC News Flashes: news stories about legal issues affecting student media
- News Media and the Law: RCFP's magazine

Other helpful resources — all of which are free and online — include SPLC News Flashes (which can be sent to your e-mail account or read on the Web site), SPLC Podcasts, the SPLC's magazine, the *SPLC Report*, and *News Media and the Law*, a magazine published by the Reporters Committee for Freedom of the Press. All of these can help you stay up to date on the very latest developments affecting America's student and professional news media.

Finally, as noted earlier, the SPLC Web site is packed full of resources and information on student press law issues. Of particular interest is the site's Virtual Lawyer, which is available at any time and ready to conduct a short, online interview to answer your questions and help get you pointed in the right direction.

On behalf of the Student Press Law Center and the Newspaper Association of America Foundation, thank you for taking the time to watch this presentation. We hope you have found it helpful. Enjoy your time as a student journalist — and good luck!

Seek help when you need it!

Student Press Law Center

www.splc.org

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Monday - Friday, 9 a.m. to 6 p.m. Eastern Time

Reporter's Privilege for High School Student Journalists was written and produced by the Student Press Law Center with the support of a generous grant from the Newspaper Association of America Foundation.

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A special thanks to Dana Smith, her yearbook class and *Windjammer* staff photographer Keturah May at Sehome High School, Bellingham, Wash., for their help with this project. Thanks also to Norman Mallard for his assistance with design elements and art for the project.

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