

# learning from the headlines

## IN THE NEWS



Welsh documented daily life in Hunter's Point, Calif. for a photography project. Photo by Alex Welsh

San Francisco State University college student Alex Welsh was taking photos for a journalism class project at the scene of an illegal dice game on a San Francisco street corner. Suddenly, a shooting broke out and a young man was killed. The police tried to get Welsh to turn over the memory card from his camera in hopes of finding evidence.

Welsh claimed that, as a photojournalist gathering news, he was protected by California's "reporter shield law," which is also known as the "reporter's privilege." Under the reporter shield, a journalist can refuse to provide information to police or attorneys if the information was obtained while gathering and distributing news.

The police got a search warrant and raided Welsh's apartment, seizing his cameras and other items. Welsh went to court, claiming that the police could not keep any of the seized items because those materials were privileged under the reporter shield. A California judge ruled in favor of Welsh and against the police, and ordered the police to return all of Welsh's materials and not to use any of the information in their investigation.

It turned out that Welsh did not actually get a photo identifying the killer – he was facing the wrong way, and his camera only captured the scene after the shooting.

## think about

- What is the purpose of having a privilege that allows a reporter to avoid turning over evidence that an ordinary non-journalist witness would have to reveal? Are there other categories of people who should also have legal immunity from having to turn over what they know to the police (or to a lawyer involved in a lawsuit)?
- Are there times when reporters' information is so important they shouldn't be allowed to hold back what they know? How should that be decided?
- Some of Welsh's photographs became public after he entered a college photojournalism contest run by the University of Missouri. His entry – which included one picture from the shooting scene – earned him a first-place award. Was it wrong of Welsh to reveal the photos for a contest but hold them back from the police?

## terms to know

**Privilege** – The law sometimes allows witnesses to refuse to testify or turn over evidence, if there is some reason it's important to keep the information confidential. A person protected by a privilege can refuse to provide information that ordinary witnesses would have to provide.

**Subpoena** – A subpoena is a written demand to give testimony or evidence to one side in a lawsuit. Lawsuits usually involve disputes over money. A person who has information important to the case may receive a subpoena that requires the person to provide evidence. If the person thinks that the information is exempt from being turned over because of a privilege – including the reporter's privilege – the person can ask a judge to dismiss the subpoena.

**Warrant** – The police investigating a crime, or the prosecuting attorney working with the police, can get a warrant from a judge that allows them to seize evidence from a home, business or other non-public place. To get a warrant, the officer must be able to show adequate cause to believe that the place being searched contains evidence of a crime.

**Contempt** – A journalist who refuses to obey a court order to give testimony or turn over evidence can be held in contempt. Being in contempt of court can be punished with fines or even imprisonment.

The purpose of reporter shield laws is: (1) to allow journalists to get information from confidential sources who might not be comfortable talking if they knew their names would be made public, and (2) to protect journalists against being harassed by government officials who don't like what they are reporting.

Thirty-nine states and the District of Columbia now have formal reporter's shield laws on their books. Ten other states have some type of less formal reporter's privilege that judges have created but that hasn't been formally adopted by their legislatures. Only Wyoming has no reporter shield.

All reporter shield laws at least allow a journalist to refuse to reveal a confidential source – a person who has given information under a promise that his name will be kept secret. Many laws, such as the one in California, go even further and also allow journalists to refuse to reveal tapes of their interviews, their notes, and any other unpublished material.

Some shield laws are “absolute,” which means that the journalist can never be forced to turn over unpublished information. But most privileges are more

limited, so a judge can force the journalist to provide information if the information is urgently needed and can't be found anywhere else.

Even though shield laws refer to “reporters,” they actually apply to anyone who is part of the process of gathering and distributing news, including photo editors, layout editors, and other newsroom employees who might have access to confidential material.

State reporter shields apply in state courts. State courts deal with most of the crimes that make the daily news, including serious violent crimes. There is also a federal (U.S. government) court system that deals with major drug trafficking cases, terrorism cases, and other violations of federal law. But there is no federal shield law that journalists can use if they are called to testify or provide documents in federal court. Congress has been debating for years over creating a shield law, but the bill has been stalled since the end of 2009. One of the disagreements is about how to define a “reporter” now that so many non-professionals have blogs, websites and other means of distributing news.

## why it matters

The California reporter's privilege law protects anyone who is or was “connected with or employed upon” a media outlet. Alex Welsh was not being paid by any media organization when he shot his photos, yet the judge believed that his employment was not the deciding factor. It was more important that Welsh regularly gathered news for distribution to the public and intended to continue doing so. This is a broad view of the reporter's privilege that will protect many student news-gatherers.

Because money problems have caused many news organizations to reduce paid staffing, unpaid freelancers – including students – are providing coverage that used to be provided by salaried professionals. Supporters of a broad shield law say that it makes sense to relax the definition of who is a “reporter” as the journalism profession broadens to include more casual participants.

Since 2008, six states – Hawaii, Maine, Utah, Kansas, Wisconsin and Texas – have adopted formal reporter shield laws. All of those states, except Texas, have used a broad definition of “reporter,” so that people not working as salaried professional journalists can claim the benefit. The trend is in favor of a broad shield law like California's that covers even unpaid people like Alex Welsh who intend to share their reporting with the public.

### for further reference

California's shield law, Evidence Code Sec. 1070:

<http://law.justia.com>

Reporter's Committee Guide to the Reporter's Privilege:

<http://www.rcfp.org/privilege/item.php?pg=intro>

SPLC's state-by-state shield law guide:

<http://www.splc.org/knowyourrights/legalresearch.asp?id=60>

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