

# REPORTER'S PRIVILEGE: OKLAHOMA

**The Reporters Committee for Freedom of the Press**

*A chapter from our comprehensive compendium of information  
on the reporter's privilege —the right not to be compelled  
to testify or disclose sources and information in court —  
in each state and federal circuit.*

The complete project can be viewed at  
[www.rcfp.org/privilege](http://www.rcfp.org/privilege)

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This project was initially made possible by a generous grant from the Phillip L. Graham Fund.

Published by The Reporters Committee for Freedom of the Press.

Executive Director: Lucy A. Dalglish

Editors: Gregg P. Leslie, Elizabeth Soja, Wendy Tannenbaum, Monica Dias, Dan Bischof

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## The Reporter's Privilege Compendium: An Introduction

Since the first edition of this guide was published in 2002, it would be difficult to say that things have gotten better for reporters faced with subpoenas. Judith Miller spent 85 days in jail in 2005 for refusing to disclose her sources in the controversy over the outing of CIA operative Valerie Plame. Freelance videographer Josh Wolf was released after 226 days in jail for refusing to testify about what he saw at a political protest. And at the time of this writing, former *USA Today* reporter Toni Locy is appealing her contempt conviction, which was set to cost her as much as \$5,000 a day, for not revealing her sources for a story on the anthrax investigations.

This recent round of controversies underscores a problem that journalists have faced for decades: give up your source or pay the price: either jail or heavy fines. Most states and federal circuits have some sort of reporter's privilege—the right to refuse to testify—that allows journalists to keep their sources confidential. But in every jurisdiction, the parameters of that right are different. Sometimes, the privilege is based on a statute enacted by the legislature—a shield law. In others, courts have found the privilege based on a constitutional right. Some privileges cover non-confidential information, some don't. Freelancers are covered in some states, but not others.

In addition, many reporters don't work with attorneys who are familiar with this topic. Even attorneys who handle a newspaper's libel suits may not be familiar with the law on the reporter's privilege in the state. Because of these difficulties, reporters and their lawyers often don't have access to the best information on how to fight a subpoena. The Reporters Committee for Freedom of the Press decided that something could be done about this, and thus this project was born. Compiled by lawyers who have handled these cases and helped shape the law in their states and federal circuits, this guide is meant to help both journalists who want to know more about the reporter's privilege and lawyers who need to know the ins and outs of getting a subpoena quashed.

Journalists should note that reading this guide is not meant as a substitute for working with a licensed attorney in your state when you try to have a subpoena quashed. You should always consult an attorney before trying to negotiate with a party who wants to obtain your testimony or when appearing in court to get a subpoena quashed or testifying. If your news organization does not have an attorney, or if you are not affiliated with an established organization, the Reporters Committee can help you try to find an attorney in your area.

### Above the law?

Outside of journalism circles, the reporter's privilege suffers from an image problem. Critics often look at reporter's shield laws and think that journalists are declaring that they are "above the law," violating the understood standard that a court is entitled to "every man's evidence," as courts themselves often say.

But courts have always recognized the concept of "privileges," allowing certain individuals to refuse to testify, out of an acknowledgment that there are societal interests that can trump the demand for all evidence. Journalists need to emphasize to both the courts and the public that they are not above the law, but that instead they must be able to remain independent, so that they can maintain their traditional role as neutral watchdogs and objective observers. When reporters are called into court to testify for or against a party, their credibility is harmed. Potential sources come to see them as agents

of the state, or supporters of criminal defendants, or as advocates for one side or the other in civil disputes.

Critics also contend that exempting journalists from the duty to testify will be detrimental to the administration of justice, and will result in criminals going free for a lack of evidence. But 35 states and the District of Columbia have shield laws, and the Department of Justice imposes restrictions on federal agents and prosecutors who wish to subpoena journalists, and yet there has been no indication that the courts have stopped working or that justice has suffered.

Courts in Maryland, in fact, have managed to function with a reporter's shield law for more than a century. In 1896, after a reporter was jailed for refusing to disclose a source, a Baltimore journalists' club persuaded the General Assembly to enact legislation that would protect them from having to reveal sources' identities in court. The statute has been amended a few times—mainly to cover more types of information and include broadcast journalists once that medium was created. But the state has never had the need to rescind the protection.

And the privilege made news internationally in December 2002 when the appeals court of the United Nations International Criminal Tribunal decided that a qualified reporter's privilege should be applied to protect war correspondents from being forced to provide evidence in prosecutions before the tribunal.

### The hows & whys of the reporter's privilege

In the course of gathering news, journalists frequently rely on confidential sources. Many sources claim that they will be subject to retribution for exposing matters of public importance to the press unless their identity remains confidential.

Doctor-patient, lawyer-client and priest-penitent relationships have long been privileged, allowing recipients to withhold confidential information learned in their professional capacity. However, the reporter's privilege is much less developed, and journalists are frequently asked to reveal confidential sources and information they have obtained during newsgathering to attorneys, the government and courts. These "requests" usually come from attorneys for the government or private litigants as demands called subpoenas.

In the most recent phase of a five-year study on the incidence of subpoenas served on the news media, *Agents of Discovery*, The Reporters Committee for Freedom of the Press reported that 1,326 subpoenas were served on 440 news organizations in 1999. Forty-six percent of all news media responding said they received at least one subpoena during 1999.

In criminal cases, prosecutors argue that reporters, like other citizens, are obligated to provide relevant evidence concerning the commission of a crime. Criminal defendants argue that a journalist has information that is essential to their defense, and that the Sixth Amendment right to a fair trial outweighs any First Amendment right that the reporter may have. Civil litigants may have no constitutional interest to assert, but will argue that nevertheless they are entitled to all evidence relevant to their case.

When reporters challenge subpoenas, they argue that they must be able to promise confidentiality in order to obtain information on matters of public importance. Forced disclosure of confidential or unpublished sources and information will cause individuals to re-

fuse to talk to reporters, resulting in a "chilling effect" on the free flow of information and the public's right to know.

When asked to produce their notes, documents, or other unpublished material obtained during news gathering, journalists argue that these subpoenas intrude on the editorial process, and thus violate their First Amendment right to speak without fear of state interference. Some litigants who request information from the media are simply lazy. Rather than investigating to find appropriate witnesses, these litigants find it simpler and cheaper to compel journalists to reveal their sources or to hand over information.

But journalists also have legitimate reasons to oppose subpoenas over published, non-confidential information. Responding to such subpoenas consumes staff time and resources that should be used for reporting and editing.

If a court challenge to a subpoena is not resolved in the reporter's favor, he or she is caught between betraying a source or risking a contempt of court citation, which most likely will include a fine or jail time.

Most journalists feel an obligation to protect their confidential sources even if threatened with jail time. When appeals have been exhausted, the decision to reveal a source is a difficult question of journalism ethics, further complicated by the possibility that a confidential source whose identity is revealed may try to sue the reporter and his or her news organization under a theory of promissory estoppel, similar to breach of contract. The U.S. Supreme Court has held that such suits do not violate the First Amendment rights of the media. (*Cohen v. Cowles Media Co.*, 501 U.S. 663 (1991))

### The sources of the reporter's privilege

**First Amendment protection.** The U.S. Supreme Court last considered a constitutionally based reporter's privilege in 1972 in *Branzburg v. Hayes*, 408 U.S. 665 (1972). Justice Byron White, joined by three other justices, wrote the opinion for the Court, holding that the First Amendment does not protect a journalist who has actually witnessed criminal activity from revealing his or her information to a grand jury. However a concurring opinion by Justice Lewis Powell and a dissenting opinion by Justice Potter Stewart recognized a qualified privilege for reporters. The privilege as described by Stewart weighs the First Amendment rights of reporters against the subpoenaing party's need for disclosure. When balancing these interests, courts should consider whether the information is relevant and material to the party's case, whether there is a compelling and overriding interest in obtaining the information, and whether the information could be obtained from any source other than the media. In some cases, courts require that a journalist show that he or she promised a source confidentiality.

Two other justices joined Justice Stewart's dissent. These four justices together with Justice William O. Douglas, who also dis-

sent from the Court's opinion and said that the First Amendment provided journalists with almost complete immunity from being compelled to testify before grand juries, gave the qualified privilege issue a majority. Although the high court has not revisited the issue, almost all the federal circuits and many state courts have acknowledged at least some form of a qualified constitutional privilege.

However, some courts, including the federal appeals court in New Orleans (5th Cir.), have recently interpreted *Branzburg* as holding that the First Amendment protects the media from subpoenas only when the subpoenas are being used to harass the press. (*United States v. Smith*, 135 F.3d 963 (5th Cir. 1998)).

**State constitutions, common law and court rules.** Many states have recognized a reporter's privilege based on state law. For example, New York's highest court recognized a qualified reporter's privilege under its own state constitution, protecting both confidential and non-confidential materials. (*O'Neill v. Oakgrove Construction Inc.*, 71 N.Y.S.2d 521 (1988)). Others states base a reporter's privilege on common law. Before the state enacted a shield law in 2007, the Supreme Court in Washington state recognized a qualified reporter's privilege in civil cases, later extending it to criminal trials. (*Senear v. Daily Journal-American*, 97 Wash.2d 148, 641 P.2d 1180 (1982), *on remand*, 8 Media L. Rep. 2489 (Wash. Super. Ct. 1982)). And in a third option, courts can create their own rules of procedure. The Utah Supreme Court adopted a reporter's privilege in its court rules in 2008, as did the New Mexico high court years before.

Even in the absence of an applicable shield law or court-recognized privilege, journalists occasionally have been successful in persuading courts to quash subpoenas based on generally-applicable protections such as state and federal rules of evidence, which allow the quashing of subpoenas for information that is not relevant or where the effort to produce it would be too cumbersome.

**Statutory protection.** In addition to case law, 35 states and the District of Columbia have enacted statutes —shield laws —that give journalists some form of privilege against compelled production of confidential or unpublished information. The laws vary in detail and scope from state to state, but generally give greater protection to journalists than the state or federal constitution, according to many courts.

However, shield laws usually have specific limits that exclude some journalists or certain material from coverage. For instance, many of the statutes define "journalist" in a way that only protects those who work full-time for a newspaper or broadcast station. Freelance writers, book authors, Internet journalists, and many others are left in the cold, and have to rely on the First Amendment for protection. Broad exceptions for eyewitness testimony or for libel defendants also can remove protection from journalists, even though these situations often show the greatest need for a reporter's privilege.

## The Reporter's Privilege Compendium: Questions and Answers

### What is a subpoena?

A subpoena is a notice that you have been called to appear at a trial, deposition or other court proceeding to answer questions or to supply specified documents. A court may later order you to do so and impose a sanction if you fail to comply.

### Do I have to respond to a subpoena?

In a word, yes.

Ignoring a subpoena is a bad idea. Failure to respond can lead to charges of contempt of court, fines, and in some cases, jail time. Even a court in another state may, under some circumstances, have authority to order you to comply with a subpoena.

### What are my options?

Your first response to a subpoena should be to discuss it with an attorney if at all possible. Under no circumstances should you comply with a subpoena without first consulting a lawyer. It is imperative that your editor or your news organization's legal counsel be advised as soon as you have been served.

Sometimes the person who subpoenaed you can be persuaded to withdraw it. Some attorneys use subpoenas to conduct "fishing expeditions," broad nets cast out just to see if anything comes back. When they learn that they will have to fight a motion to quash their subpoenas, lawyers sometimes drop their demands altogether or agree to settle for less than what they originally asked for, such as an affidavit attesting to the accuracy of a story rather than in-court testimony.

Some news organizations, particularly broadcasters whose aired videotape is subpoenaed, have deflected burdensome demands by agreeing to comply, but charging the subpoenaing party an appropriate fee for research time, tape duplication and the like.

If the person who subpoenaed you won't withdraw it, you may have to fight the subpoena in court. Your lawyer will file a motion to quash, which asks the judge to rule that you don't have to comply with the subpoena.

If the court grants your motion, you're off the hook —unless that order is itself appealed. If your motion isn't granted, the court will usually order you to comply, or at the very least to disclose the demanded materials to the court so the judge may inspect them and determine whether any of the materials must be disclosed to the party seeking them. That order can itself be appealed to a higher court. If all appeals are unsuccessful, you could face sanctions if you continue to defy the court's order. Sanctions may include fines imposed on your station or newspaper or on you personally, or imprisonment.

In many cases a party may subpoena you only to intimidate you, or gamble that you will not exercise your rights. By consulting a lawyer and your editors, you can decide whether to seek to quash the subpoena or to comply with it. This decision should be made with full knowledge of your rights under the First Amendment, common law, state constitution or statute.

### They won't drop it. I want to fight it. Do I have a chance?

This is a complicated question.

If your state has a shield law, your lawyer must determine whether it will apply to you, to the information sought and to the type of proceeding involved. Even if your state does not have a shield law, or if your situation seems to fall outside its scope, the state's courts may have recognized some common law or constitu-

tional privilege that will protect you. Each state is different, and many courts do not recognize the privilege in certain situations.

Whether or not a statutory or other privilege protects you in a particular situation may depend on a number of factors. For example, some shield laws provide absolute protection in some circumstances, but most offer only a qualified privilege. A qualified privilege generally creates a presumption that you will not have to comply with a subpoena, but it can be overcome if the subpoenaing party can show that information in your possession is essential to the case, goes to the heart of the matter before the court, and cannot be obtained from an alternative, non-journalist source.

Some shield laws protect only journalists who work full-time for a newspaper, news magazine, broadcaster or cablecaster. Freelancers, book authors, scholarly researchers and other "non-professional" journalists may not be covered by some statutes.

Other factors that may determine the scope of the privilege include whether the underlying proceeding is criminal or civil, whether the identity of a confidential source or other confidential information is involved, and whether you or your employer is already a party to the underlying case, such as a defendant in a libel suit.

The decision to fight may not be yours alone. The lawyer may have to consider your news organization's policy for complying with subpoenas and for revealing unpublished information or source names. If a subpoena requests only published or broadcast material, your newspaper or station may elect to turn over copies of these materials without dispute. If the materials sought are unpublished, such as notes or outtakes, or concern confidential sources, it is unlikely that your employer has a policy to turn over these materials —at least without first contesting the subpoena.

Every journalist should be familiar with his or her news organization's policy on retaining notes, tapes and drafts of articles. You should follow the rules and do so consistently. If your news organization has no formal policy, talk to your editors about establishing one. Never destroy notes, tapes, drafts or other documents once you have been served with a subpoena.

In some situations, your news organization may not agree that sources or materials should be withheld, and may try to persuade you to reveal the information. If the interests of the organization differ from yours, it may be appropriate for you to seek separate counsel.

### Can a judge examine the information before ordering me to comply with a subpoena?

Some states require or at least allow judges to order journalists to disclose subpoenaed information to them before revealing it to the subpoenaing party. This process, called *in camera* review, allows a judge to examine all the material requested and determine whether it is sufficiently important to the case to justify compelled production. The state outlines will discuss what is required or allowed in your state.

### Does federal or state law apply to my case?

A majority of the subpoenas served on reporters arise in state cases, with only eight percent coming in federal cases, according to the Reporters Committee's 1999 subpoena survey, *Agents of Discovery*.

State trial courts follow the interpretation of state constitutional, statutory or common law from the state's highest court to address the issue. When applying a First Amendment privilege, state courts may rely on the rulings of the United States Supreme Court as well as the state's highest court.

Subpoenas in cases brought in federal courts present more complicated questions. Each state has at least one federal court. When a federal district court is asked to quash a subpoena, it may apply federal law, the law of the state in which the federal court sits, or even the law of another state. For example, if a journalist from one state is subpoenaed to testify in a court in another state, the enforcing court will apply the state's "choice of law" rules to decide which law applies.

Federal precedent includes First Amendment or federal common law protection as interpreted by the United States Supreme Court, rulings of the federal circuit court of appeals for the district court's circuit, or earlier decisions by that same district court. There is no federal shield law, although as of May 2008 a bill had passed the House and was moving to the Senate floor.

The federal district court will apply the state courts' interpretation of state law in most circumstances. In the absence of precedent from the state's courts, the federal district court will follow prior federal court interpretations of the state's law. In actions involving both federal and state law, courts differ on whether federal or state law will apply.

Twelve federal circuits cover the United States. Each circuit has one circuit (appellate) court, and a number of district (trial) courts. The circuit courts must follow precedent established by the U.S. Supreme Court, but are not bound by other circuits' decisions.

#### **Are there any limits on subpoenas from federal agents or prosecutors?**

Ever since 1973, the Attorney General of the United States has followed a set of guidelines limiting the circumstances in which any agents or employees of the Department of Justice, including federal prosecutors and FBI agents, may issue subpoenas to members of the news media or subpoena journalists' telephone records from third parties. (28 C.F.R. 50.10)

Under the guidelines, prosecutors and agents must obtain permission from the Attorney General before subpoenaing a member of the news media. Generally, they must exhaust alternative sources for information before doing so. The guidelines encourage negotiation with the news media to avoid unnecessary conflicts, and specify that subpoenas should not be used to obtain "peripheral, nonessential or speculative" information.

In addition, journalists should not be questioned or arrested by Justice employees without the prior approval of the Attorney General (unless "exigent circumstances preclude prior approval") and agents are not allowed to seek an arrest warrant against a journalist or present evidence to a grand jury against a journalist without the same approval.

Employees who violate these guidelines may receive an administrative reprimand, but violation does not automatically render the subpoena invalid or give a journalist the right to sue the Justice Department.

The guidelines do not apply to government agencies that are not part of the federal Department of Justice. Thus agencies like the National Labor Relations Board are not required to obtain the Attorney General's permission before serving a subpoena upon a member of the news media.

#### **Do the news media have any protection against search warrants?**

Subpoenas are not the only tool used to obtain information from the news media. Sometimes police and prosecutors use search warrants, allowing investigators to enter newsrooms and search for evidence directly rather than merely demanding that journalists release it.

The U.S. Supreme Court held that such searches do not violate the First Amendment. *Zurcher v. Stanford Daily*, 436 U.S. 547 (1978). Congress responded by passing the federal Privacy Protection Act in 1980. (42 U.S.C. 2000aa)

In general, the Act prohibits both federal and state officers and employees from searching or seizing journalists' "work product" or "documentary materials" in their possession. The Act provides limited exceptions that allow the government to search for certain types of national security information, child pornography, evidence that the journalists themselves have committed a crime, or materials that must be immediately seized to prevent death or serious bodily injury. "Documentary materials" may also be seized if there is reason to believe that they would be destroyed in the time it took to obtain them using a subpoena, or if a court has ordered disclosure, the news organization has refused and all other remedies have been exhausted.

Even though the Privacy Protection Act applies to state law enforcement officers as well as federal authorities, many states, including California, Connecticut, Illinois, Nebraska, New Jersey, Oregon, Texas and Washington, have their own statutes providing similar or even greater protection. (See section IX.A. in the state outlines.) Other states, such as Wisconsin, require that search warrants for documents be directed only at parties suspected of being "concerned in the commission" of a crime, which generally exempts journalists.

If law enforcement officers appear with a warrant and threaten to search your newsroom unless you hand over specific materials to them, contact your organization's attorney *immediately*. Ask the officers to delay the search until you have had an opportunity to confer with your lawyer. If the search proceeds, staff photographers or a camera crew should record it.

Although the news organization staff may not impede the search, they are not required to assist with it. But keep in mind that the warrant will probably list specific items to be seized, and you may decide it is preferable to turn over a particular item rather than to allow police to ransack desks and file cabinets or seize computers.

After the search is over, immediately consult your attorney about filing a suit in either federal or state court. It is important to move quickly, because you may be able to obtain emergency review by a judge in a matter of hours. This could result in your seized materials being taken from the law enforcement officials and kept under seal until the dispute is resolved.

Another option allows you to assert your claim in an administrative proceeding, which may eventually lead to sanctions against the official who violated the act. You would not receive damages, however. Your attorney can help you decide which forum will offer the best remedy in your situation.

Whichever option you choose, a full hearing will vindicate your rights in nearly every case, and you will be entitled to get your materials back, and in some cases, monetary damages including your attorney's fees.

## The Reporter's Privilege Compendium: A User's Guide

This project is the most detailed examination available of the reporter's privilege in every state and federal circuit. It is presented primarily as an Internet document (found at [www.rcfp.org/privilege](http://www.rcfp.org/privilege)) for greater flexibility in how it can be used. Printouts of individual state and circuit chapters are made available for readers' convenience.

Every state and federal section is based on the same standard outline. The outline starts with the basics of the privilege, then the procedure and law for quashing a subpoena, and concludes with appeals and a handful of other issues.

There will be some variations on the standard outline from state to state. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

*For our many readers who are not lawyers.* This project is primarily here to allow lawyers to fight subpoenas issued to journalists, but it is also designed to help journalists understand the reporter's privilege. (Journalists should *not* assume that use of this book will take the place of consulting an attorney before dealing with a subpoena. You should contact a lawyer if you have been served with a subpoena.) Although the guides were written by lawyers, we hope they are useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a legal citation for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute sup-

porting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 F.2d 456 means the case could be found in the Federal Reports, second series, volume 123, starting at page 456. In most states, the cites will be to the official reporter of state court decisions or to the West Publishers regional reporter that covers that state.

Note that the complete citation for a case is often given only once, and subsequent cites look like this: "*Jackson* at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Because this outlines were written for each state, yet searches and comparisons result in various states and sections being taken out of the sequence in which they were written, it may not always be clear what these second references refer to. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively. You may have to work backwards through that state's outline to find the first reference in some cases.

We have encouraged the authors to avoid "legalese" to make this guide more accessible to everyone. But many of the issues are necessarily technical and procedural, and removing all the legalese would make the guides less useful to lawyers who are trying to get subpoenas quashed.

*Updates.* This project was first posted to the Web in December 2002. The last major update of all chapters was completed in September 2007. As the outlines are updated, the copyright notice on the bottom of the page will reflect the date of the update. All outlines will not be updated on the same schedule.

REPORTER’S PRIVILEGE COMPENDIUM

OKLAHOMA

*Prepared by:*

Robert D. Nelon  
 Jon Epstein  
 Ashley Bowen Murphy  
 Hall, Estill, Hardwick, Gable  
 Golden & Nelson  
 Chase Center, Suite 2900  
 100 North Broadway  
 Oklahoma City, OK 73102  
 Telephone (405) 553-2828  
 Facsimile (405) 553-2855  
 E-mail: bnelon@hallestill.com

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## I. Introduction: History & Background

Oklahoma has had a shield law since 1974. Originally adopted at the urging of the Oklahoma Press Association following the Supreme Court's decision in *Branzburg v. Hayes*, 408 U.S. 665 (1972), the journalist's privilege statute is now incorporated in the state's evidence code. It has been the subject of only one reported case, *Taylor v. Miskovsky*, 1981 OK 143, 640 P.2d 959. However, in the twenty-five years since that decision, the privilege has often been invoked by reporters who have found themselves the target of discovery in criminal and civil proceedings in which they are not directly involved. As a result, there are a number of unreported decisions at the trial level that give some indication how the courts treat the statute and the First Amendment principles that underlie it.

## II. Authority for and source of the right

The Oklahoma Supreme Court has treated *Branzburg* as recognizing a qualified First Amendment privilege. *Taylor v. Miskovsky*, 1981 OK 143, 640 P.2d 959. The Tenth Circuit, of which Oklahoma is a part, has utilized a tripartite balancing test to determine whether a constitutional privilege applies. *Silkwood v. Kerr-McGee*, 563 F.2d 433 (10th Cir. 1977). Oklahoma also has a qualified statutory privilege.

### A. Shield law statute

Oklahoma's shield law is found at Okla. Stat. tit. 12, § 2506. The text of the statute is as follows:

#### A. As used in this section:

1. "State proceeding" includes any proceeding or investigation before or by any judicial, legislative, executive or administrative body in this state;
2. "Medium of communication" includes any newspaper, magazine, other periodical, book, pamphlet, news service, wire service, news or feature syndicate, broadcast station or network, cable television system, or record;
3. "Information" includes any written, oral or pictorial news or other record;
4. "Published information" means any information disseminated to the public by the person from whom disclosure is sought;
5. "Unpublished information" includes information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated, and includes, but is not limited to, all notes, outtakes, *photographs*, tapes or other data of whatever sort not itself disseminated to the public through a medium of communication, whether or not published information based upon or related to such material has been disseminated;
6. "Processing" includes compiling, storing and editing of information; and
7. "Journalist" means any person who is a reporter, photographer, editor, commentator, journalist, correspondent, announcer, or other individual regularly engaged in obtaining, *writing*, reviewing, editing, or otherwise preparing news for any newspaper, periodical, press association, newspaper syndicate, wire service, radio or television station, or other news service. Any individual employed by any such news service in the performance of any of the above-mentioned activities shall be deemed to be regularly engaged in such activities. However, journalist shall not include any governmental entity or individual employed thereby engaged in official governmental information activities.

#### B. No journalist shall be required to disclose in a state proceeding either:

1. The source of any published or unpublished information obtained in the gathering, receiving or processing of information for any medium of communication to the public; or

2. Any unpublished information obtained or prepared in gathering, receiving or processing of information for any medium of communication to the public; unless the court finds that the party seeking the information or identity has established by clear and convincing evidence that such information or identity is relevant to a significant issue in the action and could not with due diligence be obtained by alternate means.

This subsection does not apply with respect to the content or source of allegedly defamatory information, in a civil action for defamation wherein the defendant asserts a defense based on the content or source of such information.

The journalist's privilege statute was originally adopted in 1974, 1974 Okla.Sess.Laws, c. 123, §§ 1-3, and codified as Okla. Stat. Tit. 12, §§ 385.1-385.3. A privilege for newsmen was not incorporated in the initial draft of the Oklahoma Evidence Code when it was proposed in 1978 by the Subcommittee on Evidence of the Oklahoma Bar Association's Code Procedure — Civil Committee, but the Oklahoma legislature inserted the privilege without change in substance from the then-current statutory version. Although the legislative history of the privilege is scant, it is believed that the Oklahoma Press Association was instrumental in persuading legislators of the value of a privilege statute. The privilege statute was amended in 2002 to change the term "newsmen" to "journalist" and otherwise to make the statute gender-neutral, but there have been no substantive amendments since its adoption in 1978.

### **B. State constitutional provision**

Oklahoma does not have an express constitutional shield provision. Okla. Const. Art. 22, § 22 says in part that "Every person may freely speak, write, or publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press." The Oklahoma Supreme Court has said generally that Oklahoma's "protection of free speech is *far more broadly worded* than the First Amendment's restriction on governmental interference with speech." *Gaylord Entertainment v. Thompson*, 1999 OK 128, ¶ 13 n.23, 958 P.2d 128, 138 n.23 (emphasis by court). However, the Oklahoma Supreme Court has not decided whether the state constitutional provision affords protection to journalists, and Art. 22, § 22 was not mentioned in *Taylor v. Miskovsky*. Presumably, if the First Amendment shields a reporter, as recognized in *Taylor*, then the state constitutional provision would do so also.

### **C. Federal constitutional provision**

The Oklahoma Supreme Court recognized a qualified First Amendment privilege, based on *Branzburg*, in *Taylor v. Miskovsky*.

### **D. Other sources**

There are no other state-law sources of a reporter's privilege, such as court rules, state bar guidelines, or administrative procedures.

## **III. Scope of protection**

### **A. Generally**

Oklahoma has a broad privilege statute that seems to be fairly well understood and enforced without much hesitation by the trial courts. The dearth of appellate authority suggests that the statute has been correctly interpreted and applied by the lower courts on those occasions where judicial action to quash a subpoena has been required.

### **B. Absolute or qualified privilege**

The privilege under the statute is qualified. The privilege may be overcome by a clear and convincing showing that the identity of the source or the content of unpublished information is relevant to a significant issues in the action and cannot be obtained by alternative means. In *Taylor v. Miskovsky*, the court treated the statute as embracing the three-prong test outlined in *Garland v. Torre*, 259 F.2d 545 (2nd Cir.), *cert. denied*, 358 U.S. 910 (1958): The person seeking information from a journalist must demonstrate that the information is relevant to a

significant issue in the case, goes to the heart of the claim or defense of the person seeking disclosure, and is not available through alternative means.

### **C. Type of case**

#### **1. Civil**

Although on its face the privilege statute is applicable to all "state proceedings," including any proceeding before "any judicial, legislative, executive or administrative body," the privilege has most often been invoked in civil cases in which the journalist is not a party but is a prospective witness.

#### **2. Criminal**

The statutory privilege applies equally in civil or criminal judicial proceedings. Our experience has been that the source of the subpoena (the prosecutor v. the defendant) has had little impact on the court's interpretation of the statute.

#### **3. Grand jury**

The statute, by its express terms, does not differentiate grand jury from other judicial proceedings. There is no case law interpreting the statute in a grand jury context.

### **D. Information and/or identity of source**

The statute protects the identity of the source of published or unpublished information. The protection is not dependent on whether the journalist made an express promise of confidentiality to the source.

### **E. Confidential and/or non-confidential information**

The statute does not differentiate between confidential and non-confidential information. All unpublished information is subject to the privilege.

### **F. Published and/or non-published material**

The statute expressly covers all unpublished information, which includes all "information not disseminated to the public by the person from whom disclosure is sought, whether or not related information has been disseminated." Unpublished information is defined to include "all notes, outtakes, photographs, tapes or other data of whatever sort not itself disseminated to the public through a medium of communication."

### **G. Reporter's personal observations**

A journalist's personal observations are not specifically mentioned in the statute, but the definition of unpublished information would seem to cover any observations not disseminated to the public. Our experience has been that courts will quash a subpoena for the eyewitness testimony of a reporter unless the party issuing the subpoena overcomes the privilege.

### **H. Media as a party**

The statute does not depend on whether the media is a party. It protects from disclosure all privileged information sought from a party or a non-party.

### **I. Defamation actions**

By the express terms of the statute, the privilege does not apply in a defamation action (whether or not the defendant is a member of the media) in circumstances in which the defendant relies for its defense on the source or content of the information claimed to be privileged. There are no reported cases interpreting the last paragraph of the privilege statute. Presumably, the defendant must either disclose the source of the published information or the content of related unpublished information if contending that it acted on a reasonable belief that the published information was true. For example, a defendant could not contend that it had a reasonable source for the allegedly defamatory information and yet refuse to disclose the identity of the source. However, it is not always clear whether a defendant is "assert[ing] a defense based on the content or source of such information." We are aware of at least one case in federal court (applying Oklahoma law) in which the defendants obtained summary judg-

ment in a defamation case without disclosing the identity of the confidential sources. In that case, the defendants were able to establish that the statements about which the plaintiff complained were either substantially true or protected expression of opinion. Those defenses were presented without relying on the identity of the confidential sources. There are no reported cases defining what sanction can be imposed for a refusal to disclose the source or content where the court has determined the information is not privileged.

## **IV. Who is covered**

The privilege statute is limited to a "journalist," a term which the statute defines. Governmental entities or persons employed by them who are "engaged in governmental information activities" are excluded from the term "journalist."

### **A. Statutory and case law definitions**

#### **1. Traditional news gatherers**

##### **a. Reporter**

The statute does not define "reporter" but includes reporters among those protected by the privilege if the reporter is "regularly engaged" in newsgathering. Other persons mentioned in the statute are photographers, editors, commentators, journalists, correspondents, announcers, "or any other individual regularly engaged in obtaining, writing, reviewing, editing, or otherwise preparing news." The term "regularly engaged" is not defined but presumably covers part-time as well as full time news gatherers.

##### **b. Editor**

Editors are covered by the statutory privilege.

##### **c. News**

The statute does not define what is "news," but the privilege is limited to those who gather and prepare it for dissemination to the public. *See* ¶ IV(A)(1)(e) below.

##### **d. Photo journalist**

Photojournalists are covered by the statutory privilege.

##### **e. News organization / medium**

The statute is limited to those persons "regularly engaged" in gathering and preparing news "for any newspaper, periodical, press association, newspaper syndicate, wire service, radio or television station, or other news service." None of these terms is defined in the statute. The statute does not specifically mention the Internet, although it seems improbable that any person or entity "regularly engaged" in providing information services online would not fall within the term "news service."

#### **2. Others, including non-traditional news gatherers**

There is no case law to define how broadly the term "journalist" will be interpreted. Presumably even non-traditional news gatherers such as bloggers will be included if they are "regularly engaged" in some aspect of news preparation and do so for a "news service."

### **B. Whose privilege is it?**

The privilege appears to belong to the "journalist." The statute says that "No journalist shall be required to disclose . . ." the source of or unpublished information. Our experience is that the "news service" by which the journalist is "regularly engaged" can also assert the privilege, although there is no case law saying so.

## **V. Procedures for issuing and contesting subpoenas**

### **A. What subpoena server must do**

### **1. Service of subpoena, time**

Okla. Stat. tit. 12, § 3230(C)(1) requires that a subpoena be served sufficiently in advance of the deposition or hearing to allow a witness the time needed to travel to the place where the testimony is to be given, plus three days of preparation. Okla. Stat. tit. 12, § 2004.1 provides that if a subpoena commands production of documents but does not require the attendance of a witness, the subpoena shall specify a date of production at least seven days after service of the subpoena. By local court rules, the federal district courts in Oklahoma have defined "reasonable notice" for a deposition to be five days.

### **2. Deposit of security**

No deposit or other form of security is required by statute.

### **3. Filing of affidavit**

The privilege statute does not require the party requesting disclosure to file an affidavit.

### **4. Judicial approval**

A subpoena in Oklahoma does not require court approval.

### **5. Service of police or other administrative subpoenas**

There are no special rules of which we are aware for administrative subpoenas. Various state agencies have subpoena power, but the agencies are subject to traditional time requirements.

## **B. How to Quash**

### **1. Contact other party first**

The law does not require that a party intending to assert a privilege contact the party seeking disclosure, but we recommend it. In many instances in which parties to litigation, especially civil cases, have issued subpoenas to media organizations or journalists, the information they seek is either not available or a copy of what was published is enough to satisfy the need of the litigants. For example, for our television station clients, a telephone call to the attorney issuing the subpoena to inform her that outtakes no longer exist and an agreement to produce a dub of what was broadcast (for a reasonable charge) are often adequate to avoid the subpoena altogether. In our experience, many of the attorneys issuing subpoenas to the media have no experience with newsgathering, and they have little understanding of how a publication or broadcast is prepared, or what documentation of it exists afterwards. A telephone call, perhaps followed with a letter of explanation, can sometimes avoid having to file a motion to quash.

### **2. Filing an objection or a notice of intent**

Oklahoma law does not require the filing of a notice of intent to file a motion to quash. If the subpoena is simply for the production of documents, there is a procedure by which a non-party can advise the party issuing the subpoena of an objection, thereby shifting the burden to the party seeking disclosure to file a motion to compel rather than leaving to the party subpoenaed the burden of filing a motion to quash. Okla. Stat. tit. 12, § 2004.1 provides that a party or attorney responsible for issuing a subpoena "shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena." Sanctions can be imposed for a breach of that obligation. Under this statute, a person receiving a subpoena for documents may, before the time for compliance or within 14 days, whichever is earlier, serve a written objection to the subpoena on the issuing party. The issuing party is thereafter prohibited from inspecting and copying the documents except pursuant to a court order. The party issuing the subpoena may file a motion to compel, but an order compelling production must protect the person from significant expense in complying with the order. The response to a motion to compel may, of course, include the assertion of privilege. Section 2004.1 also allows a party asserting a privilege (*e.g.*, if the subpoena is for the testimony of the journalist) to file a motion to quash without waiting for a motion to compel to be filed.

### **3. File a motion to quash**

#### **a. Which court?**

Oklahoma procedure contemplates that a motion to quash will be filed in the same court in which the action is pending if the subpoena is issued in connection with a case filed in Oklahoma.

### **b. Motion to compel**

See ¶ V(B)(2) above.

### **c. Timing**

Under Oklahoma procedure, the filing of a motion to quash suspends any duty of compliance until the motion is heard. We nevertheless encourage clients to file a motion as soon as it becomes apparent that less formal options are no longer available.

### **d. Language**

We usually quote the pertinent parts of the statute in a motion in case the court has not had significant experience with the privilege statute. We also usually combine both statutory and constitutional grounds for quashing the subpoena.

### **e. Additional material**

We have not traditionally attached other material to the motion, but there is no procedural prohibition from doing so in an appropriate case.

## **4. In camera review**

### **a. Necessity**

The Oklahoma privilege statute does not speak to in camera review. It may be appropriate to suggest such review in the motion to quash if relevance rather than unavailability from alternative sources is the primary issue the court will have to deal with in deciding the motion. That is, if it is clear that the information sought is not available from alternative sources, and the success of the motion to quash depends on the court's perception of the relevance or lack of relevance of the information, in camera review may help persuade the court that the information sought is of limited or marginal relevance.

### **b. Consequences of consent**

Consent to in camera review has no effect under the statute on the right to review by an appellate court, other than perhaps the impact on the good will of the court, from whom a stay pending the filing of a writ application (*see* ¶ VIII below) will be sought in the first instance.

### **c. Consequences of refusing**

Refusal to consent to in camera review has no effect under the statute on the right to review by an appellate court, other than perhaps the impact on the good will of the court, from whom a stay pending the filing of a writ application (*see* ¶ VIII below) will be sought in the first instance.

## **5. Briefing schedule**

Under ordinary circumstances, a motion cannot be set for hearing earlier than 23 days after the motion is filed. In the usual course, a party has 15 days from the date a motion is filed (18 days if the papers are served by mail) within which to respond to a motion. Many judges have a local rule requiring briefs to be filed and delivered to the court at least five days before the matter is to be heard. However, all courts have the power to order expedited briefing and hearing if necessary.

## **6. Amicus briefs**

Courts at all levels have been known to accept amicus briefs. We do not routinely ask for amicus assistance, but would consider doing so in the extraordinary case. If an amicus brief were appropriate, we would naturally consider The Reporters Committee for Freedom of the Press, Radio-Television News Directors Association, The Oklahoma Press Association, the Oklahoma Association of Broadcasters, and other media.

## **VI. Substantive law on contesting subpoenas**

### **A. Burden, standard of proof**

The party seeking disclosure of privileged information must prove clearly and convincingly that the information sought is highly relevant and cannot be obtained by alternate means.

### **B. Elements**

As interpreted in *Taylor v. Miskovsky*, the privilege statute contains three elements: (1) the information sought must be relevant, (2) it must go to the heart of the claim or defense of the party seeking the information, and (3) alternative means to obtain the information must have been exhausted.

#### **1. Relevance of material to case at bar**

The material sought must be highly relevant, that is, going to the heart of the case of the party seeking the information. In *Taylor v. Miskovsky*, the information sought by the plaintiff in a defamation case was from a reporter who researched and wrote articles about the plaintiff after the publication of the articles written by another reporter that were at issue in the suit. The court concluded that what the second reporter found could not be relevant to the issues in the case over the earlier articles.

#### **2. Material unavailable from other sources**

Alternative means of obtaining the information must have been exhausted. It has been our experience that trial courts treat this element as demanding. Unless the party seeking the information has unsuccessfully explored virtually every other means to obtain the information, the court will not compel its disclosure from the journalist. The most frequent circumstance we confront is the request for outtakes and the testimony of a television reporter who has observed the scene of a crime, fire, or accident that later is the subject of litigation. We frequently succeed in quashing subpoenas on the ground that there were a multitude of witnesses to the event, including police or fire officials, who are as capable as the reporter to testify about what they observed.

##### **a. How exhaustive must search be?**

No Oklahoma decision has explored the extent to which a party seeking disclosure must exhaust alternative sources, other than to parrot the statutory language in *Taylor v. Miskovsky* that the proof that the information "could not with due diligence be obtained by alternate means" must be clear and convincing.

##### **b. What proof of search does subpoenaing party need to make?**

By the express terms of the statute, the party seeking disclosure must clearly and convincingly demonstrate that it has used "due diligence" to obtain the information sought from alternative sources.

##### **c. Source is an eyewitness to a crime**

The Oklahoma courts have not addressed whether alternative means of obtaining information are not available under circumstances where the source is an eyewitness to or participant in a crime

#### **3. Balancing of interests**

The privilege statute strikes the balance by requiring the party seeking the information to meet the requirements of the statute clearly and convincingly. In *Taylor v. Miskovsky*, the court said the Oklahoma legislature was "within" First Amendment limits (described in *Branzburg*) in crafting the privilege statute.

#### **4. Subpoena not overbroad or unduly burdensome**

Okla. Stat. tit. 12, § 2004.1(C)(1) requires a party or attorney issuing a subpoena to "take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena." A court can impose sanctions for a breach of this duty. If a court enforces a subpoena, the order "shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded." Likewise, § 2004(C)(3)(a)(2) allows a court to quash a subpoena on the ground that it "subjects a person to undue burden."

#### **5. Threat to human life**

This issue has not been addressed by the Oklahoma courts.

## **6. Material is not cumulative**

This issue has not been addressed by the Oklahoma courts, but presumably, if the material sought would be cumulative, then the party seeking the information could not demonstrate that the information could not be obtained with due diligence by alternate means.

## **7. Civil/criminal rules of procedure**

See ¶¶ V(B)(2) and VI(B)(4) above.

## **8. Other elements**

*Taylor v. Miskovsky*, the only Oklahoma case applying the statute, did not identify any elements beyond the language of the statute.

## **C. Waiver or limits to testimony**

As a general proposition, any right may be waived, but there are no reported Oklahoma cases discussing the circumstances under which the journalist's privilege would be deemed waived, short of an express waiver by disclosure of the privileged information. We are aware of one unreported case in Oklahoma, *Tate v. Boyd*, No. 94405 (Okla. Sup. Ct. April 24, 2000), in which a subpoena was quashed despite the contention by the party issuing the subpoena that the privilege was waived because the reporter had discussed some of her unpublished information with others.

### **1. Is the privilege waivable at all?**

There are no reported Oklahoma cases discussing this issue.

### **2. Elements of waiver**

#### **a. Disclosure of confidential source's name**

There are no Oklahoma cases discussing whether the disclosure of privileged information by a reporter to an editor or other person in the same media organization, or to the reporter's or the organization's counsel, would constitute a waiver. Our sense of the law in general about waiver of rights and privileges is that it would not, if the person to whom disclosure was made had a "need to know."

#### **b. Disclosure of non-confidential source's name**

See ¶ VI(C)(2)(a) above.

#### **c. Partial disclosure of information**

The Oklahoma statute recognizes two different aspects of privileged information: sources and unpublished information. With respect to sources, the disclosure of the identity of one source of information would presumably not constitute a waiver of the privilege with respect to other sources of that or other information, although neither the language of the statute nor existing case law directly answer the question. With respect to unpublished information, the statute expressly says that unpublished information is privileged from disclosure even if related information is disseminated to the public. See ¶ VI(C) above.

#### **d. Other elements**

There are no Oklahoma cases discussing this issue.

### **3. Agreement to partially testify act as waiver?**

There are no Oklahoma cases discussing this issue.

## **VII. What constitutes compliance?**

### **A. Newspaper articles**

Newspapers are self-authenticating under Okla. Stat. tit. 12, § 2902(6). Under the rules of evidence as generally applied, the reporter would not be required to testify as to the identification or authenticity of an article he wrote or the newspaper document itself. As a matter of experience, once media-generated materials are disclosed, a representative of the media rarely needs to testify. The identity and authenticity of the material have rarely been an issue.

### **B. Broadcast materials**

Tapes produced pursuant to subpoena have rarely raised issues of identification or authenticity. They are generally accepted by the subpoenaing party for what they are. If a person from a broadcast entity is required to testify, our experience has been that a records custodian, engineer, or other non-journalist should be designated; the reporter or news director should not testify.

### **C. Testimony vs. affidavits**

It is not clear under Oklahoma law whether an affidavit could suffice as a substitute for testimony. We have no experience to suggest that it would not, at least absent some compelling reason to question the veracity of the affidavit, but its sufficiency would likely depend on the particular facts and circumstances.

### **D. Non-compliance remedies**

Under Okla. Stat. tit. 12, § 2004.1, the failure by any person to obey a subpoena "without adequate excuse" is deemed a contempt of court from which the subpoena was issued. In addition, if the reporter or media organization is a party, the sanctions for non-compliance in discovery set out in Okla. Stat. tit. 12, § 3237 are also available.

#### **1. Civil contempt**

Disobedience of a subpoena or refusal to testify as a witness is civil contempt under Okla. Stat. tit. 12, § 392. For the refusal of a witness to attend in obedience to a subpoena, an attachment may issue for an officer to bring the witness before the court, and the recalcitrant witness may be fined up to \$50 and imprisoned in the county jail until he purges himself of the contempt by testifying. The witness may also be liable to the party injured for any damages suffered by reason of the witness' refusal to testify.

##### **a. Fines**

We are not aware of any situation in Oklahoma where a reporter has been fined for refusal to disclose privileged information.

##### **b. Jail**

There are no recent examples in Oklahoma of reporters jailed for refusal to disclose sources or unpublished information.

#### **2. Criminal contempt**

Criminal contempt is punishable by fine not exceeding \$500 or imprisonment in the county jail for up to 6 months or both. There are no recent examples in Oklahoma of reporters jailed for criminal contempt.

#### **3. Other remedies**

There are no reported Oklahoma cases in which sanctions have been imposed on the media defendant for refusal to disclose sources or unpublished information. In a defamation case, the court could probably grant default judgment, instruct the jury to presume that the reporter did not have any source he declined to identify, or refuse to permit the defendant to assert any defense based on the undisclosed information.

## **VIII. Appealing**

Although there is little authority in Oklahoma, orders resolving discovery disputes between parties and orders relating to discovery from non-parties are not appealable orders. In general, the subject of an order regarding dis-

covery, including orders granting or denying a motion to quash or motion for protective order, may challenge the order by extraordinary writ under Okla. Const. Art. 7, § 4. *See Floyd v. Ricks*, 1998 OK 9, 954 P.2d 131; *Inhofe v. Wiseman*, 1989 OK 41, 772 P.2d 389. The procedure governing writs is set out in Okla. Stat. tit. 12, §§ 1451, *et seq.*

## **A. Timing**

### **1. Interlocutory appeals**

Challenges to orders regarding subpoenas are not governed by appeal rules in Oklahoma.

### **2. Expedited appeals**

Challenges to orders regarding subpoenas are not governed by appeal rules in Oklahoma.

## **B. Procedure**

### **1. To whom is the appeal made?**

All applications for an extraordinary writ are filed with the Oklahoma Supreme Court.

### **2. Stays pending appeal**

The court which entered the order granting or denying a motion related to a subpoena has the discretion to stay the effect of the order, and our experience has been that it will usually do so. If the lower court refuses to enter a stay, a request for a stay can be included in the application for a writ. Writ applications are usually prepared and filed within a few days of the entry of the challenged order, and compliance with an order to divulge information can usually be avoided long enough to get the writ papers filed.

### **3. Nature of appeal**

The Supreme Court's exercise of writ jurisdiction is discretionary, but the assertion that the writ involves an issue of privilege, especially one with constitutional underpinnings, is usually effective in getting the court to assume jurisdiction. The Oklahoma Supreme Court has said that it will exercise jurisdiction where "valued fundamental-law rights are clearly implicated and their immediate protection from encroachment appears absolutely necessary." *Gaylord Entertainment Co. v. Thompson*, 1998 OK 30, 958 P.2d 128. In *Gaylord*, the Supreme Court granted extraordinary relief to direct a trial court to dismiss non-actionable claims, the continued prosecution of which would have had a chilling effect on the defendants' First Amendment rights of political speech. The court concluded, among other reasons for its action, that the publication at issue in the case was protected by Oklahoma's statutory fair report privilege.

### **4. Standard of review**

The legal test for extraordinary relief in Oklahoma is whether the petitioner has a clear legal right that is being affected by the respondent's exercise of excessive judicial or administrative force (a writ of prohibition) or his failure to exercise proper judicial or administrative force (a writ of mandamus), and the inadequacy of other relief (such as an appeal).

### **5. Addressing mootness questions**

The Oklahoma courts have not addressed the issue of mootness in the context of the reporter's privilege.

### **6. Relief**

In granting extraordinary relief, the Supreme Court can direct any action it deems appropriate. In a fairly recent experience, the district court denied the motion to quash filed on behalf of a television station reporter and directed the reporter to disclose the content of her unpublished communications with sources. The Supreme Court assumed jurisdiction and granted an extraordinary writ "prohibiting the respondent judge, or any other judge of the respondent district court, from enforcing a subpoena directed to the petitioner [the reporter]." The court cited the journalist's privilege statute, Okla. Stat. tit. 12, § 2506(B), as authority. Slip op., *Tate v. Boyd*, No. 94405 (Okla. Sup. Ct. April 24, 2000).

## **IX. Other issues**

### **A. Newsroom searches**

We are not aware of any newsroom search conducted in Oklahoma. Oklahoma does not have any statute similar to the federal Privacy Protection Act, 42 U.S.C. § 2000aa.

### **B. Separation orders**

We are not aware of any use of a separation order in Oklahoma.

### **C. Third-party subpoenas**

We are not aware of any circumstance in which subpoenas to third parties have been used in an Oklahoma proceeding as a way of discovering a reporter's sources. Under general principles of Oklahoma law, a reporter would presumably have the right to intervene in the proceeding to assert his or her interest in protecting the identity of sources or the content of unpublished information, although the risk of intervention and submitting to the jurisdiction of the court would have to be carefully weighed.

### **D. The source's rights and interests**

We are not aware of any instances in which sources have intervened anonymously to halt disclosure of their identities or have sued after disclosure.