REPORTER'S PRIVILEGE: OHIO

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

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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 an d 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 dissented 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 constitutional 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) 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 supporting 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.

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OHIO

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I. Introduction: History & Background

The reporter's privilege in Ohio is based primarily on statutory shield laws which protect the identity of confidential sources. In addition, however, a number of Ohio appellate and trial courts have recognized a constitutional protection for non-published/non-broadcast reporter's notes, outtakes, and other source-related materials.

II. Authority for and source of the right

A. Shield law statute

Ohio Revised Code § 2739.04 (broadcasters)

> No person engaged in the work of, or connected with, or employed by any noncommercial educational or commercial radio broadcasting station, or any noncommercial educational or commercial television broadcasting station, or network of such stations, for the purpose of gathering, procuring, compiling, editing, disseminating, publishing, or broadcasting news shall be required to disclose the source of any information procured or obtained by such person in the course of his employment, in any legal proceeding, trial, or investigation before any court, grand jury, petit jury, or any officer thereof, before the presiding officer or any tribunal, or his agent, or before any commission, department division, or bureau of this state, or before any county or municipal body, officer, or committee thereof. . . .

Ohio Revised Code § 2739.12 (newspapers)

> No person engaged in the work of, or connected with, or employed by any newspaper or any press association for the purpose of gathering, procuring, compiling, editing, disseminating, or publishing news shall be required to disclose the source of any information procured or obtained by such person in the course of his employment, in any legal proceedings, trial, or investigation before any court, grand jury, petit jury, or any officer thereof, before the presiding officer of any tribunal, or his agent, or before any commission, department, division, or bureau of this state, or before any county or municipal body, officer or committee thereof.

Legislative Intent

One court has described the legislative intent behind the shield statutes as protecting the relationship between a source, who desires to give information to a newsperson but who fears publicity or the possible retribution arising from the discovery that he is the source of the information that has been broadcast/published, and a newsperson. Such a relationship is to be fostered in order to protect the free flow of information from the source to the reporter. *See State v. Geis*, 2 Ohio App.3d 258, 441 N.E.2d 803 (1981).

B. State constitutional provision

The Ohio Constitution, Article I, Section 11 states that: ". . . no law shall be passed to restrain or abridge the liberty of speech, or of the press." While closely parallel to the language of the First Amendment to the United States Constitution, the state constitutional clause exists as an independent source of protection of free press rights. *Scott v. News-Herald*, 25 Ohio St.3d 243 (1986).

The protection afforded under Article I, Section 11 of the Ohio Constitution is as broad as that provided by the First Amendment and may, in fact, provide even greater protection. Indeed, the state and federal constitutional provisions in question do *not* contain identical language. The language of Article I, Section 11 tracks the language of the First Amendment and then, significantly, adds the word "restrain." The inclusion of the word "restrain" in the state formulation should enhance the protection afforded the press. Any other interpretation would subordinate Ohio's Constitution to no more than a mirror image of the First Amendment, dependent for its interpretation upon the federal courts' views of free press protection.

In this regard, the Supreme Court, in discussing a reporter's privilege, recognized the merit of allowing states to "fashion their own standards in light of the conditions and problems" in their own areas. *Branzburg v. Hayes*, 408

U.S. 665, 706 (1972). The *Branzburg* Court followed this with an express acknowledgement of the power of state courts to construe ". . . their own constitutions so as to recognize a newsman's privilege, either qualified or absolute." *Branzburg v. Hayes, supra,* at 706.

Accordingly, arguments have been made and some courts have considered that a constitutional privilege protecting the editorial process, newsgathering processes and procedures and reporters from compelled disclosure exists under Article I, Section 11 of the Ohio Constitution. *See e.g. Fawley v. Quirk*, 11 Med.L.Rptr. 2336 (Ohio Ct. App. 1985); *Schreiber v. Multimedia of Ohio, Inc.*, 41 Ohio App. 3d 257, 535 N.E.2d 357 (1987); *Slagle v. Coca Cola*, 12 Med.L.Rptr. 1911 (Ohio Ct. Comm. Pls. Mont. Co. 1986).

C. Federal constitutional provision

While not fully recognized by all Ohio appellate courts, some Ohio courts have expressly recognized a qualified First Amendment constitutional privilege. *See* III, Scope of Protection (below) and *see, e.g., Fawley v. Quirk, supra; Slagle v. Coca Cola, supra; State v. Geis*, 2 Ohio App. 3d 258, 441 N.E.2d 803 (1981). To date, however, the Ohio Supreme Court has declined to recognize a qualified privilege under the First Amendment. *See State ex rel. National Broadcasting Company, Inc. v. Lake County Court of Common Pleas*, 52 Ohio St. 3d 104, 556 N.E.2d 1120 (1990).

D. Other sources

At this time, there are no other recognized sources for the reporter's privilege in Ohio.

III. Scope of protection

A. Generally

The statutory protection, while "absolute" in its terms, may potentially be overridden by a criminal defendant's Sixth Amendment rights.

A newsperson's right to protect the confidentiality of his confidential sources is a qualified right. In determining whether a newsperson must divulge the name of a confidential source of information in a criminal proceeding, a court must balance the newsperson's First Amendment right against the defendant's Sixth Amendment right to a fair trial on a case-by-case basis. *In re McAuley*, 63 Ohio App.2d 5, 408 N.E.2d 97 (Ct. App. Cuyahoga Co. 1979); *State v. Geis*, 2 Ohio App.3d 258, 441 N.E.2d 803 (1981). These cases generally frame the scope of the qualified constitutional protection in terms broader than those provided by the statutory shield law protection. Often, the constitutional protection is described as a "qualified privilege protecting the editorial process, newsgathering and reporting processes and procedures, and reporters" against compelled disclosure.

B. Absolute or qualified privilege

See III.A. (above). The statutory protection, while "absolute" in its terms, may potentially be overridden by a criminal defendant's Sixth Amendment rights.

C. Type of case

1. Civil

In a defamation action by a police chief against a mayor and city, a non-party reporter was found in contempt for refusing to reveal a non-confidential news source. The court of appeals affirmed, finding that the shield law only protected confidential sources. In addition, although the court recognized a qualified privilege under the state and federal constitutions for non-confidential sources, plaintiff had made a sufficient showing that the information sought was relevant, it could not be obtained from alternative sources, and there was a compelling interest in obtaining the information. *Fawley v. Quirk*, 11 Med.L.Rptr. 2336 (Ohio Ct. App. 1985).

At least one court has held that the shield law grants an absolute privilege in civil cases. In that case, a funeral home director sued a TV station and three of its employees for defamation. After a jury found in favor of the TV station, the plaintiff appealed and argued that the trial court should have compelled the media defendants to answer questions that would have revealed their source. The appellate court held that a reporter's privilege to pro-

tect the identity of their informants is absolute. *House of Wheat v. Wright*, 1985 Ohio App. LEXIS 8875; *see also Frey v. Multimedia, Inc.*, 1994 U.S. App. LEXIS 34303 (6th Cir.).

Another court held that the privilege does not prevent a reporter from being deposed, but the reporter would be allowed to refuse to answer questions that would identify her sources. *Forest Hills Utility Co. v. City of Heath*, 37 Ohio Misc. 30, 302 N.E.2d 593 (Ohio Ct. Comm. Pl. 1973).

A state university employee who was fired for revealing a student's grade point average to a newspaper subpoenaed the reporter to testify at her pre-termination hearing. The court held that the employee was not entitled to subpoena the reporter because the reporter did not have to reveal other sources under the state shield law. *Swigart v. Kent State Univ.*, 2005 Ohio App. LEXIS 2139, 2005-Ohio-2258.

2. Criminal

A criminal defendant subpoenaed a newspaper reporter for production of notes and tapes from interviews. The court granted the reporter's motion to quash the subpoena, stating that the defendant could directly contact those persons interviewed by the reporter. The defendant failed to show that the evidence was relevant, that it was not reasonably available from alternative sources, that he could not prepare for trial adequately without the information, and that he was seeking it in good faith. *State v. Hamilton*, 12 Med.L.Rptr. 2135 (Ohio Ct. Comm. Pl. 1986).

In a murder prosecution, the defendant moved to compel a reporter to disclose the identity of an unnamed third person allegedly involved in a crime. The trial court denied the motion after in camera review of a taped conversation between the reporter and co-defendant, wherein the co-defendant named a third party involved. The court of appeals affirmed, finding the privilege existed under the shield law and the First Amendment. The court of appeals held that the defendant could only overcome the privilege by showing that the information was relevant, could not be obtained from alternative sources, and furthered a compelling need. *State v. Daniel*, 1990 WL 237188, 1990 Ohio App. LEXIS 5877 (Ohio Ct. App. December 31, 1990).

After reporters published articles describing police corruption, they attended sessions of a special grand jury that subsequently indicted various police officers. The officers moved to quash the indictments and subpoenaed the reporters to produce notes from their observance of the grand jury proceedings. The reporters moved to quash the subpoenas, claiming that confidential sources testified during the proceeding. The trial court found the reporters in contempt for refusing to testify and ordered them to submit their notes for *in camera* review. The court of appeals found that there was no need for a contempt order and reversed it because the indictments were already determined to be invalid because the grand jury was improperly selected. The trial court should have looked to all other grounds before determining whether the reporters' testimony was necessary. The court stated that the shield law requires a defendant to show necessity before testimony by a reporter may be ordered. *See In re Rutti*, 5 Med.L.Rptr.. 1513 (Ohio Ct. App. 1979).

In a murder prosecution, a newspaper reporter moved to quash the prosecution's subpoena for production of all notes from an interview with defendant for an article on the case. The court granted the motion to quash, offering protection beyond the shield law's protection of only confidential sources. The court found that a party seeking information failed to overcome a qualified privilege under the First Amendment by adequately showing entitlement to information through evidence of relevance, compelling need and lack of alternative sources. *See State v. Anaga*, 18 Med.L.Rptr. 1527 (Ohio Ct. Comm. Pl. 1991).

3. Grand jury

A reporter may be found to be in civil contempt for refusing to testify before a grand jury concerning a published interview where the subpoena was not issued for the purpose of harassment. *In re Grand Jury Witness Subpoena of Abraham*, 92 Ohio App. 3d 186, 634 N.E.2d 667 (1993).

A subpoena for a TV reporter's notes and grand jury testimony regarding her interview with a criminal suspect may be quashed if the subpoena were issued in bad faith, or to disrupt relations between the TV station and its news sources, or if it were otherwise unreasonable or oppressive. In this case, the court found that the subpoena for grand jury testimony and documentary evidence was not unreasonable or oppressive. *In Re August 28, 2002 Grand Jury*, 151 Ohio App. 3d 825, 2003-Ohio-1184, 786 N.E.2d 115.

The Ohio Supreme Court has rejected the three-part test adopted in other jurisdictions, which require satisfaction of the test before a reporter can be forced to respond to a grand jury subpoena. Instead, the Ohio Supreme Court indicated that it would examine whether the subpoena was issued for reasons other than law enforcement to disrupt a reporter's relationship with confidential sources. *State ex rel. NBC, Inc. v. Court of Common Pleas*, 52 Ohio St.3d 104, 556 N.E.2d 1120 (1990).

The state subpoenaed a newspaper reporter for grand jury testimony regarding her article publishing the name of an alleged drug dealer and quoting him as admitting he was a drug dealer. The court held that the subpoena was not issued for harassment purposes and denied the reporter's motion to quash the subpoena. *Ohio v. Jones*, 2005-Ohio-4192 (Ohio Ct. App.).

D. Information and/or identity of source

With respect to the statutory protection, the information deemed privileged is limited to the identity of the source. *Forest Hills Utility Co. v. City of Heath*, 37 Ohio Misc. 30, 302 N.E.2d 593 (Ct. Comm. Pl. Licking Co. 1973) (civil case); *State v. Geis*, 2 Ohio App. 3d 258, 441 N.E.2d 803 (1981) (criminal case). The phrase "source of any information" in Ohio's statutes does not mean anything from which information may be derived, including a newsperson's notes, tapes and records. By use of the phrase "source of any information," the legislature intended to give newspersons a testimonial privilege from disclosing only the identity of the source. *State v. Geis*, *supra*.

One court has suggested that, to be defined as a "source" under the shield law, an informant should have first-hand knowledge of the information given to the reporter. *Svoboda v. Clear Channel Communications, Inc.*, 156 Ohio App. 3d 307, 2004-Ohio-894, 805 N.E.2d 559 (2004).

E. Confidential and/or non-confidential information

The constitutional protection has been held to cover non-published/non-broadcast information (*e.g.*, reporters' notes, drafts, outtakes) even if no confidential source is involved. *See e.g., Fawley v. Quirk, 1985 Ohio App. LEXIS 6806; Ohio v. Hamilton, 12 Media L. Rep. 2135 (Ohio Ct. Comm. Pl. 1986); Slagle v. Coca-Cola, Inc., 30 Ohio Misc.2d 34, 507 N.E.2d 794 (Ohio Ct. Comm. Pl. 1986).*

F. Published and/or non-published material

See III.E.

G. Reporter's personal observations

No specific cases found. However, in a wrongful death action, a newspaper and photographer moved to quash subpoenas to produce unpublished photographs taken of an accident scene. The court granted the motion stating that the qualified privilege applies to unpublished news photographs and offers more protection in civil cases. *Slagle v. Coca Cola, Inc.*, 30 Ohio Misc. 2d 34, 507 N.E.2d 794 (Ct. Comm. Pl. 1986).

H. Media as a party

See III.I.

I. Defamation actions

In a libel action, the court denied plaintiff's motion to compel disclosure of a newspaper reporter's documents that would reveal confidential sources because plaintiff failed to show that the information was relevant and material. *Weiss v. Thomson Newspapers Inc.*, 8 Med.L.Rptr. 1258 (Ohio Ct. Comm. Pl. 1981).

Funeral home directors brought a defamation suit against a television station for broadcasting a story that reporters claimed was based on information from confidential sources. The court of appeals affirmed the trial court's ruling that reporters could refuse to answer questions that would tend to reveal sources. While plaintiffs claimed that the information was crucial for proving actual malice, the court recognized the privilege under the First Amendment and an absolute privilege in civil litigation under the shield law to protect confidential sources. *House of Wheat v. Wright*, 1985 WL 717381, 1985 Ohio App. LEXIS 8875.

In a libel action brought by a mayor against a newspaper, a non-party publisher and editors from a different newspaper asserted protection under the shield law during depositions. The court ordered them to answer the

questions even though the information sought was gathered in their professional news capacities because plaintiff asserted in good faith that the information would lead to admissible evidence on the issue of defendant newspaper's knowledge of falsity of the published statements. *Stokes v. Loraine Journal Co.*, 26 Ohio Misc. 219, 266 N.E.2d 857 (Ct. Comm. Pl. 1970).

The plaintiff moved to compel disclosure of outtakes and reporters' notes in a defamation action against a news station for broadcasting the arrest of plaintiff for drunk driving after which plaintiff was never charged. After *in camera* review of the material, the trial court granted plaintiff's motion to compel disclosure. The court of appeals declined to rule on the constitutional issues, finding that the determination of whether a qualified privilege existed depended upon a balancing of interest lying within the discretion of the trial court. Since no transcript existed of the in camera review, the court refused to find an abuse of discretion in the trial court's order to compel production of the material. *Schreiber v. Multimedia of Ohio, Inc.*, 41 Ohio App. 3d 257, 535 N.E.2d 357 (1987).

IV. Who is covered

A. Statutory and case law definitions

1. Traditional news gatherers

The language of the shield statutes is very broad. Any "person engaged in the work of, or connected with, or employed by" any broadcaster or newspaper is covered. The newsgatherer must be acting in the course and scope of employment for the privilege to apply. *Svoboda v. Clear Channel Communications, Inc.*, 156 Ohio App.3d 307, 2004-Ohio-894, 805 N.E.2d 559.

2. Others, including non-traditional news gatherers

Dunn & Bradstreet, Inc. was required to disclose confidential sources because its bi-monthly report on the financial status of individuals and businesses was a periodical which did not fit within the "newspaper or any press association" language of Ohio's statutory shield law. *Deltec, Inc. v. Dunn & Bradstreet, Inc.*, 187 F.Supp. 768 (N.D. Ohio 1960).

B. Whose privilege is it?

The privilege has been held to belong to the reporter. *State v. Ventura*, 101 Ohio Misc. 2d 15, 720 N.E.2d 1024 (Ct. Comm. Pl. 1999). The privilege belongs to the reporter even if the source seeks the reporter's testimony only to learn information about himself. *Ventura v. Cincinnati Enquirer*, 396 F.3d 784 (6th Cir. 2005).

The subject of a reporter's news story does not have standing to assert the privilege. *City of Akron v. Cripple*, 2003 Ohio App. LEXIS 3497, 2003-Ohio-3920.

V. Procedures for issuing and contesting subpoenas

A. What subpoena server must do

Rule 45(B), Ohio Rules of Civil Procedure:

> A subpoena may be served by a sheriff, bailiff, coroner, clerk of court, constable, or a deputy of any, by an attorney at law, or by any other person designated by order of the court who is not a party and is not less than eighteen years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy of the subpoena to the person, by reading it to him or her in person, or by leaving it at the person's usual place of residence, and by tendering to the person upon demand the fees for one day's attendance and the mileage allowed by law. The person serving the subpoena shall file a return of the subpoena with the clerk. If the witness being subpoenaed resides outside the county in which the court is located, the fees for one day's attendance and mileage shall be tendered without demand. The return may be forwarded through the postal service or otherwise.

Rule 17(D), Ohio Rules of Criminal Procedure:

> A subpoena may be served by a sheriff, bailiff, coroner, clerk of court, constable, marshal, or a deputy of any, by a municipal or township policeman, by an attorney at law or by any person designated by order of the court who is not a party and is not less than eighteen years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person or by reading it to him in person or by leaving it at his usual place of residence, and by tendering to him upon demand the fees for one day's attendance and the mileage allowed by law. The person serving the subpoena shall file a return thereof with the clerk. If the witness being subpoenaed resides outside the county in which the court is located, the fees for one day's attendance and mileage shall be tendered without demand. The return may be forwarded through the postal service, or otherwise.

1. Service of subpoena, time

No specific requirements.

2. Deposit of security

No specific requirements, other than payment of attendance fee and mileage. See Section V.A.

3. Filing of affidavit

No specific requirements.

4. Judicial approval

No specific requirements.

5. Service of police or other administrative subpoenas

See Section V.A.; no other specific requirements.

B. How to Quash

1. Contact other party first

Neither case law, the Civil Rules, nor the Criminal Rules requires the reporter to contact the subpoenaing party before filing a motion to quash. However, contacting the subpoenaing party's attorney may be worthwhile. The party issuing the subpoena may be unaware of the Shield Law and the reporter's privilege and may voluntarily withdraw rather than face a motion to quash.

2. Filing an objection or a notice of intent

Rule 45(C)(2)(b), Ohio Rules of Civil Procedure:

> Subject to division (D)(2) of this rule, a person commanded to produce under divisions (A)(1)(b)(ii), (iii), (iv), or (v) of this rule may, within fourteen days after service of the subpoena or before the time specified for compliance if such time is less than fourteen days after service, serve upon the party or attorney designated in the subpoena written objections to production. If objection is made, the party serving the subpoena shall not be entitled to production except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena, upon notice to the person commanded to produce, may move at any time for an order to compel the production. An order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the production commanded.

Rule 17 of the Ohio Rules of Criminal Procedure does not provide for the filing of an objection or notice of intent.

3. File a motion to quash

Rule 45(C)(3), Ohio Rules of Civil Procedure:

> On a timely motion, the court from which the subpoena was issued shall quash or modify the subpoena, or order appearance or production only under specified conditions, if the subpoena does any of the following:
>
> (a)Fails to allow reasonable time to comply;

(b)Requires disclosure of privileged or otherwise protected matter and no exception or waiver applies;

(c)Requires disclosure of a fact known or opinion held by an expert not retained or specially employed by any party in anticipation of litigation or preparation for trial as described by Civ.R. 26(B)(4), if the fact or opinion does not describe specific events or occurrences in dispute and results from study by that expert that was not made at the request of any party;

(d)Subjects a person to undue burden

Rule 17(C), Ohio Rules of Criminal Procedure:

A subpoena may also command the person to whom it is directed to produce the books, papers, documents or other objects designated there; but the court, upon motion made promptly and in any event made at or before the time specified in the subpoena for compliance therewith, may quash or modify the subpoena if compliance would be unreasonable or oppressive. The court may direct that the books, papers, documents or other objects designated in the subpoena be produced before the court at a time prior to the trial or prior to the time they are offered in evidence, and may, upon their production, permit them or portions thereof to be inspected by the parties or their attorneys.

a. Which court?

The motion to quash should be filed in the same court from which the subpoena was issued.

b. Motion to compel

Rule 45(C)(2)(b) of the Ohio Rules of Civil Procedure allows the subpoenaing party to file a motion to compel. The Criminal Rules do not have a similar provision. The media party should not wait for the subpoenaing party to file a motion to compel before filing a motion to quash.

c. Timing

The media party should file a motion to quash before the "return" date listed on the subpoena, meaning the date by which testimony or documentary evidence is commanded to be produced.

d. Language

There is no stock language or preferred text that should be included in a motion, although citation to the Civil Rules or Criminal Rules is advisable.

e. Additional material

There are no additional materials that must be attached to a motion to quash. However, if news articles published in print or online demonstrate that the subpoenaing party can obtain information from sources other than the reporter who was subpoenaed, it is advisable to attach those news articles to the motion to quash.

4. In camera review

a. Necessity

At least one Ohio court has held that before ruling on a motion to quash a subpoena, a trial court must make an *in camera* inspection to determine if material is protected by the shield law. *State v. Geis*, 2 Ohio App. 3d 258, 441 N.E.2d 803 (Ohio Ct. Comm. Pl. 1981).

b. Consequences of consent

There is no statutory or case law addressing this issue.

c. Consequences of refusing

There is no statutory or case law addressing this issue.

5. Briefing schedule

Briefing schedules are set by local rules and differ in each jurisdiction.

6. Amicus briefs

Amicus briefs are typically not filed at the trial court level but are allowed at the appellate level.

VI. Substantive law on contesting subpoenas

A. Burden, standard of proof

See VI.B. below.

B. Elements

In order to overcome a privilege, a party must show that the information was relevant, could not be obtained from alternative sources, and furthered a compelling need. *State v. Daniel*, 1990 WL 237188, 1990 Ohio App. LEXIS 5877 (Ohio Ct. App. December 31, 1990).

Before a defendant in a criminal proceeding is entitled to either a newsperson's confidential information or confidential source, the defendant must first demonstrate to the court that either the newsperson or the confidential source has relevant evidence regarding the defendant's guilt or innocence. The defendant must show that he has exhausted all available means of obtaining the confidential information requested of the newsperson. Further, the defendant must make an effort to examine the newsperson concerning his non-confidential information and must request an in camera inspection by the court of the newsperson's confidential information. If, after these steps are taken, there is direct evidence and reasonable inferences flowing therefrom that there is a reasonable probability that the newsperson or the confidential source will provide relevant evidence of the defendant's guilt or innocence, the defendant is entitled to either the newsperson's confidential information or the name of his confidential source. *In re McAuley*, 63 Ohio App.2d 5, 408 N.E.2d 97 (Ct. App. Cuyahoga Co. 1979)

1. Relevance of material to case at bar

See VI.B.

C. Waiver or limits to testimony

Where the source's identity has been revealed, the privilege conferred by the shield statute is waived only to the extent of the information publicly disclosed. *See State v. Geis, supra*.

1. Is the privilege waivable at all?

Where the source's identity has been revealed, the privilege conferred by the shield statute is waived only to the extent of the information publicly disclosed. *See State v. Geis, supra*.

VII. What constitutes compliance?

A. Newspaper articles

B. Broadcast materials

C. Testimony vs. affidavits

D. Non-compliance remedies

Rule 45(E), Ohio Rules of Civil Procedure:

> Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. A subpoenaed person or that person's attorney who

> frivolously resists discovery under this rule may be required by the court to pay the reasonable expenses, including reasonable attorney's fees, of the party seeking the discovery. The court from which a subpoena was issued may impose upon a party or attorney in breach of the duty imposed by division (C)(1) of this rule an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney's fees.

Rule 17(G), Ohio Rules of Criminal Procedure:

> Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court or officer issuing the subpoena.

VIII. Appealing

A. Timing

An appeal shall be taken by filing a notice of appeal with the clerk of the trial court within thirty days of the entry of judgment or order appealed. Rules 3 and 4 of the Ohio Rules of Appellate Procedure.

1. Interlocutory appeals

An order denying a motion to quash a subpoena issued to a non-party IS a final appealable order. *Future Communications, Inc. v. Hightower*, 2002 Ohio App. LEXIS 2241 (Franklin) ("Appellee argues that appellant can only appeal from an order finding him in contempt. We disagree. As noted above, under the applicable statute, any order granting or denying a provisional remedy is a final appealable order if the statutory requirements are met. Furthermore, one should not have to incur the penalties of contempt in order to pursue an appeal.").

2. Expedited appeals

B. Procedure

1. To whom is the appeal made?

The appeal is made to the appropriate district court of appeals.

2. Stays pending appeal

Rule 7(A), Ohio Rules of Appellate Procedure:

> Application for a stay of the judgment or order of a trial court pending appeal, or for the determination of the amount of and the approval of a supersedeas bond, must ordinarily be made in the first instance in the trial court. A motion for such relief or for an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal may be made to the court of appeals or to a judge thereof, but, except in cases of injunction pending appeal, the motion shall show that application to the trial court for the relief sought is not practicable, or that the trial court has, by journal entry, denied an application or failed to afford the relief which the applicant requested. The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the motion shall be supported by affidavits or other sworn statements or copies thereof. With the motion shall be filed such parts of the record as are relevant and as are reasonably available at the time the motion is filed. Reasonable notice of the motion and the intention to apply to the court shall be given by the movant to all parties. The motion shall be filed with the clerk of the court of appeals and normally will be considered by at least *two* judges of the court, but in exceptional cases where the attendance of two judges of the court would be impracticable due to the requirements of time, the application may be made to and considered by a single judge of the court on reasonable notice to the adverse party, provided, however, that when an injunction is appealed from it shall be suspended only by order of at least two of the judges of the court of appeals, on reasonable notice to the adverse party.

3. Nature of appeal

4. Standard of review

The standard for review is the abuse of discretion standard. *Petro v. North Coast Villas Ltd.*, 136 Ohio App. 3d 96 (2000); *Future Communications, supra*; *Bonewitz v. Red Ferris Chevrolet, Inc.*, 2001 Ohio App. LEXIS 4162 (2001); *BFG Employees Credit Union, Inc. v. Kopco & Co.*, 2002 Ohio App. LEXIS 2212 (2002).

5. Addressing mootness questions

6. Relief

IX. Other issues

A. Newsroom searches

B. Separation orders

C. Third-party subpoenas

D. The source's rights and interests