REPORTER'S PRIVILEGE: RHODE ISLAND

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.

REPORTER'S PRIVILEGE COMPENDIUM

RHODE ISLAND

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I. Introduction: History & Background

It has been said that the Rhode Island Shield Law is a "suit of journalistic armor," effective so long as the silver bullets of the statute's few exceptions do not apply. It was originally passed in the early 1970's amidst mounting national concerns for safeguarding journalistic privilege and freedom of the press.

Rhode Island's Shield Law is codified in Rhode Island General Laws § 9-19.1-1 *et seq.*, and is also known as the "Newsman's Privilege Act." It first became effective in 1971. Rhode Island is the only state in New England that has a Shield Law. In passing the Act, the Rhode Island General Assembly "plainly intended to respond to the legitimate needs of a free and dynamic press by according comprehensive safeguards to journalists and allied professionals against the compelled disclosure of confidential information and sources." *Fischer v. McGowan,* 585 F.Supp. 978, 984 (D.R.I. 1984). In essence, the Newsman's Privilege Act protects the disclosure of confidential information obtained by a person in his or her capacity as a news gatherer. R.I. Gen. Laws § 9-19.1-2. The protection does not apply if the information is already public, if the information is defamatory and the defendant is relying on the source of the information as a defense, or if the information should have been secret because of grand jury proceedings.

II. Authority for and source of the right

A. Shield law statute

The Rhode Island Shield Law, known as the "Newsman's Privilege Act", is found in Rhode Island General Laws § 9-19.1-1 through § 9-19.1-3. It was enacted in 1971 and subsequently amended in 1997.

The statute provides:

> Except as provided in § 9-19.1-3, no person shall be required by any court, grand jury, agency, department, or commission of the state to reveal confidential association, to disclose any confidential information, or to disclose the source of any confidential information received or obtained by him or her in his or her capacity as a reporter, editor, commentator, journalist, writer, correspondent, news photographer, or other person directly engaged in the gathering or presentation of news for any accredited newspaper, periodical, press association, newspaper syndicate, wire service, or radio or television station.

R.I. Gen. Laws § 9-19.1-2. The Act further explains that:

> (a) The privilege conferred by § 9-19.1-2 shall not apply to any information which has at any time been published, broadcast, or otherwise made public by the person claiming the privilege.
>
> (b) The privilege conferred by § 9-19.1-2 shall not apply:
>
> > (1) To the source of any allegedly defamatory information in any case where the defendant, in a civil action for defamation, asserts a defense based on the source of the information; or
> >
> > (2) To the source of any information concerning the details of any grand jury or other proceeding which was required to be secret under the laws of the state.
>
> (c) In any case where a person claims a privilege conferred by this statute, the person seeking the information or the source of the information may apply to the superior court for an order divesting the privilege. If the court, after hearing the parties, shall find that there is substantial evidence that disclosure of the information or of the source of the information is necessary to permit a criminal prosecution for the commission of a specific felony, or to prevent a threat to human life, and that the information or the source of the information is not available from other prospective witnesses, the court may make such order as may be proper under the circumstance. Any such order shall be appealable under the provisions of chapter 24 of title 9.

R.I. Gen. Laws § 9-19.1-3. For the purposes of these sections, a newspaper is defined as "one that is issued at regular intervals and ha[s] a paid circulation." R.I. Gen. Laws § 9-19.1-1.

B. State constitutional provision

Rhode Island's Shield Law, or the Newsman's Privilege Act, is statutory. *See* R.I. Gen. Laws §§ 9-19.1-1 through 9-19.1-3.

In *Outlet Communications, Inc. v. State*, 588 A.2d 1050 (R.I. 1991), a television station filed a motion to quash a grand jury subpoena seeking the unaired portion of a filmed interview with a person wanted by state authorities in connection with an ongoing grand jury investigation. The Superior Court refused to accept the television station's claim that it enjoyed a state constitutional privilege against disclosure of the materials in question under article I, section 20, of the Rhode Island Constitution. *Id.* at 1052.

C. Federal constitutional provision

Rhode Island's Shield Law, or the Newsman's Privilege Act, is statutory. *See* R.I. Gen. Laws §§ 9-19.1-1 through 9-19.1-3.

In *Outlet Communications, Inc. v. State*, 588 A.2d 1050 (R.I. 1991), a television station filed a motion to quash a grand jury subpoena seeking the unaired portion of a filmed interview with a person wanted by state authorities in connection with an ongoing grand jury investigation. The Superior Court refused to accept the television station's claim that it enjoyed a constitutional privilege against disclosure of the materials in question under the U.S. Constitution. *Id.* at 1052.

Likewise, in *Capuano v. Outlet Co.*, 579 A.2d 469 (R.I. 1990), the Rhode Island Supreme Court stated that its reading of *Branzburg v. Hayes*, 408 U.S. 65, 92 S.Ct. 2646, 33 L.Ed.2d 626 (1972), together with *Herbert v. Lando*, 441 U.S. 153, 99 S.Ct 1653, 60 L.Ed.2d 115 (1979), lead "to the conclusion that the Supreme Court of the United States has rejected the proposition that there is a First Amendment privilege accorded to newspersons to refuse to disclose information, confidential or otherwise, which is necessary to the determination of a litigated case." 579 A.2d at 474. *Capuano* further found that there was no First Amendment privilege, qualified or otherwise, allowing a media defendant or newsperson to refuse to divulge confidential sources and the information from confidential sources in a defamation action when this information is both relevant and essential to plaintiffs in sustaining their heavy burden of proof. *Id.*

D. Other sources

There are no other sources for the privilege.

III. Scope of protection

A. Generally

A member of the news media has a privilege against disclosing the source of any confidential information. R. I. Gen. Laws § 9-19.1-2. However, there are some specific qualifications to this privilege. *See generally* R. I. Gen. Laws § 9-19.1-3. For example, the privilege is inapplicable if the information is already public, if the information is defamatory and the defendant is relying on the information as part of a defense, or if the information should remain secret because of grand jury proceedings. *Id.*

B. Absolute or qualified privilege

The privilege is qualified. *See* R. I. Gen. Laws § 9-19.1-3. The privilege does not apply if the information is already public, if the information is defamatory and the defendant is relying on the information as part of a defense, or if the information should remain secret because of grand jury proceedings. *Id.*

C. Type of case

1. Civil

Rhode Island General Laws § 9-19.1-1 *et seq.*, known as the Newsman's Privilege Act or the Rhode Island Shield Law, does not differentiate between subpoenas issued in civil or criminal cases. Rather, the privilege mandates that "no person" shall be required by "any court, grand jury, agency, department, or commission of the state" to

disclose confidential information or to reveal confidential sources under most circumstances. R. I. Gen. Laws §§ 9-19.1-1 through 9-19.1-3.

2. Criminal

Rhode Island General Laws § 9-19.1-1 *et seq.*, known as the Newsman's Privilege Act or the Rhode Island Shield Law, does not differentiate between subpoenas issued in civil or criminal cases. Rather, the privilege mandates that "no person" shall be required by "any court, grand jury, agency, department, or commission of the state" to disclose confidential information or to reveal confidential sources under most circumstances. R.I. Gen. Laws §§ 9-19.1-1 through 9-19.1-3.

3. Grand jury

The privilege is explicitly applicable to grand jury subpoenas. R.I. Gen. Laws § 9-19.1-2. Accordingly, a grand jury subpoena would presumably be treated no differently than any other subpoena.

D. Information and/or identity of source

The plain language of the statute applies to protect a person from: "reveal[ing] confidential association, . . . disclos[ing] any confidential information, or disclos[ing] the source of any confidential information received or obtained." R.I. Gen. Laws § 9-19.1-2. Accordingly, the statute protects both the identity of a source and information implicitly identifying the source of information.

E. Confidential and/or non-confidential information

The privilege does not apply to protect information that is not confidential, but the statute does not define the term "confidential." The Rhode Island Supreme Court has determined that the confidential information covered by the shield law includes information "given either in secret or in confidence to the news entity that claims the privilege." *Outlet Communications, Inc. v. State*, 588 A.2d 1050, 1052 (R.I. 1991). In *Outlet Communications*, a television station filed a motion to quash a grand jury subpoena for the unaired portion of an interview on a public sidewalk with a person wanted by authorities in connection with an ongoing grand jury investigation. In affirming the Superior Court's refusal to quash the subpoena, the Rhode Island Supreme Court stated that the circumstances surrounding the acquisition of this information — i.e., the filming of the interview on a public sidewalk — rendered the information "anything but secret or confidential." *Id.*

F. Published and/or non-published material

The privilege specifically does not apply to "any information which has at any time been published, broadcast, or otherwise made public by the person claiming the privilege." R.I. Gen. Laws § 9-19.1-3(a). The material must be confidential. *See also, e.g., Outlet Communications, Inc. v. State*, 588 A.2d 1050 (R.I. 1991).

G. Reporter's personal observations

The statute is silent and there are no cases on point that directly address a reporter's personal observations.

H. Media as a party

The Act does not differentiate between cases where the media is a party and where it is not. In *Capuano v. Outlet Co.*, 579 A.2d 469 (R.I. 1990), the television station argued that the party against whom disclosure is ordered must be a party defendant. The court disagreed, but did not specifically rule on the issue.

I. Defamation actions

The privilege is qualified with respect to defamation cases, in that it does not apply to the "source of any allegedly defamatory information in any case where the defendant, in a civil action for defamation, asserts a defense based on the source of the information." R.I. Gen. Laws § 9-19.1-3(b)(1).

The Rhode Island Supreme Court discussed the qualification of this privilege with respect to defamation cases in *Giuliano v. Providence Journal Co.*, 704 A.2d 220 (R.I. 1997) and *Lett v. Providence Journal Co.*, 703 A.2d 1125 (R.I. 1997). These defamation cases were instituted separately after the newspaper published articles about the two plaintiffs. The Superior Court ordered the newspaper to reveal the identity of several undisclosed confidential

sources for the articles, and the newspaper appealed. In two nearly identical decisions, the Supreme Court remanded the *Giuliano* and *Lett* cases for further proceedings on the newspaper's use of these confidential sources. The Court was unable to determine, from the record on appeal, whether the newspaper was asserting the defense of a good faith belief in the truthfulness and accuracy of the information in the articles and whether such belief was based in part upon information from these confidential sources. The two cases were remanded for an evidentiary hearing on these issues and further proceedings.

Similarly, in *Capuano v. Outlet Co.,* 579 A.2d 469 (R.I. 1990), the owners of waste collection and disposal companies brought an action against a television station that issued news reports stating that plaintiffs were connected with or members of organized crime. In answers to interrogatories, the television station pleaded a defense of good faith reliance "based on the confidential sources," yet it refused to disclose the identity of the confidential sources on which its defense of good faith reliance was based. Thus, the Court found that the television station brought itself within the precise terms of the exception of the Newsman's Privilege Act. The Court held that when a plaintiff is required to show by clear and convincing evidence that the defendant acted with actual malice, the plaintiffs must have the opportunity to examine the confidential sources on which the defendant relies. *Id.* at 476-477. The court cited with approval the conclusion of the Rhode Island District Court in *Fischer v. McGowan,* 585 F.Supp. 978 (D.R.I. 1984), that "where a defendant pleads a defense of good faith and further testifies that the [defamatory] article was based upon a reliable [confidential] source, the statutory privilege will be deemed to have been waived." *Id., citing Fischer, supra,* 585 F.Supp. at 988.

IV. Who is covered

The Rhode Island Shield Law, or the Newsman's Privilege Act, broadly applies to confidential information "received or obtained [by an individual] in his or her capacity as a reporter, editor, commentator, journalist, writer, correspondent, news photographer, or other person directly engaged in the gathering or presentation of news for any accredited newspaper, periodical, press association, newspaper syndicate, wire service, or radio or television station." R.I. Gen. Laws § 9-19.1-2.

A. Statutory and case law definitions

1. Traditional news gatherers

a. Reporter

The Rhode Island Shield Law applies to "reporters" in that "no person shall be required by any court, grand jury, agency, department or commission of the state to reveal confidential association, or to disclose the source of any confidential information received or obtained by him or her in his or her capacity as a reporter." R.I. Gen. Laws § 9-19.1-2.

b. Editor

The Rhode Island Shield Law applies to "editors" in that "no person shall be required by any court, grand jury, agency, department or commission of the state to reveal confidential association, or to disclose the source of any confidential information received or obtained by him or her in his or her capacity as . . . editor." R.I. Gen. Laws § 9-19.1-2.

c. News

The term "news" is not defined by the Rhode Island Shield Law. The only specific term defined in the Newsman's Privilege Act is "newspaper" or "periodical" to mean one that is issued at regular intervals and has a paid circulation. R.I. Gen. Laws § 9-19.1-1. However, the Rhode Island Shield Law or Newsman's Privilege Act applies to any "person directly engaged in the gathering or presentation of news for any accredited newspaper, periodical, press association, newspaper syndicate, wire service, or radio or television station." R.I. Gen. Laws § 9-19.1-2.

d. Photo journalist

The term "photo journalist" is not specifically mentioned in the Rhode Island Shield Law. However, the Rhode Island Shield Law applies to "news photographers" in that "no person shall be required by any court, grand jury,

agency, department, or commission of the state to reveal confidential association, or to disclose the source of any confidential information received or obtained by him or her in his or her capacity as a . . . news photographer." R.I. Gen. Laws § 9-19.1-2.

e. News organization / medium

The statute specifically applies to "any person" who receives any confidential information in his or her capacity as a "reporter, editor, commentator, journalist, writer, correspondent, news photographer, or other person directly engaged in the gathering or presentation of news for any accredited newspaper, periodical, press association, newspaper syndicate, wire service, or radio or television station." R. I. Gen. Laws § 9-19.1-2. The Rhode Island Shield Law defines "newspaper" or "periodical" to mean one that is issued at regular intervals and has a paid circulation. R.I. Gen. Laws § 9-19.1-1.

2. Others, including non-traditional news gatherers

The statute specifically applies to "any person" who receives any confidential information in his or her capacity as a "reporter, editor, commentator, journalist, writer, correspondent, news photographer, or other person directly engaged in the gathering or presentation of news for any accredited newspaper, periodical, press association, newspaper syndicate, wire service, or radio or television station." R.I. Gen. Laws § 9-19.1-2. The Rhode Island Shield Law defines "newspaper" or "periodical" to mean one that is issued at regular intervals and has a paid circulation. R.I. Gen. Laws § 9-19.1-1.

B. Whose privilege is it?

According to the express terms of the statute, the privilege belongs to the "person" who obtained the confidential information. R.I. Gen. Laws § 9-19.1-2.

V. Procedures for issuing and contesting subpoenas

A. What subpoena server must do

1. Service of subpoena, time

The service of a subpoena in a civil matter is governed by Rhode Island Superior Court Rules of Civil Procedure, Rule 45. It may be served in a manner that allows a party "reasonable time" to comply. The Rule also provides that it:

> may be served by the sheriff, by the sheriff's deputy, by a constable, or by any other person who is not a party and is not less than 18 years of age." Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and, if the person's attendance is commanded, by tendering to that person the fees for one day's attendance and the mileage allowed by law. A subpoena may be served at any place within the state.

R.I. Superior Court Rules of Civil Procedure, Rule 45.

Likewise, in criminal cases, service of subpoena is governed by Rule 17 of the Rhode Island Superior Court or District Court Rules of Criminal Procedure, which has identical language. R. I. Rules of Criminal Procedure, Rule 17. The Rule provides:

> A subpoena may be served by the sheriff, by the sheriff's deputy, by a constable, or by any other who is not a party and who is not less than 18 years of age. Service of a subpoena shall be made by delivering a copy thereof to the person named and by tendering to him the fee for one day's attendance and the mileage allowed by law. When the subpoena is issued in behalf of the State or an officer or agency thereof, fees and mileage need not be tendered.

R.I. Rules of Criminal Procedure, Rule 17.

2. Deposit of security

There is no statutory or case law addressing this issue.

3. Filing of affidavit

There is no statutory or case law addressing this issue.

4. Judicial approval

Judicial approval is not needed.

5. Service of police or other administrative subpoenas

There is no statutory or case law addressing this issue.

B. How to Quash

Quashing a subpoena issued in civil cases is governed by Rhode Island Superior Court Rules of Civil Procedure, Rule 45(c)(3)(A). It provides that:

> on timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:
>
> (i) Fails to allow reasonable time for compliance;
>
> (ii) Requires disclosure of privileged or other protected matter and no exception or waiver applies, or
>
> (iii) Subjects a person to undue burden.

Rhode Island Rules of Civil Procedure, Rule 45(3)(A).

In criminal cases, the Rhode Island Supreme Court articulated the standard for evaluating the issuance of subpoenas under Rule 17(c) in *State v. DiPrete,* 698 A.2d 223, 225 (R.I. 1997) ("Because the need for a subpoena often turns on the determination of issues of fact, enforcement of a pretrial subpoena is left within the discretion of the trial court").

Pursuant to Rule 17(c), the court upon motions made may quash or modify the subpoena. Rule 17(c), R. I. Superior Court Rules of Criminal Procedure.

1. Contact other party first

Although there is no specific requirement, it is always recommended that attempts be made to contact the party issuing the subpoena prior to filing a Motion to Quash. Often times, the request can be narrowed and courts appreciate all good faith efforts to confer with opposing counsel prior to filing motions.

2. Filing an objection or a notice of intent

It is recommended that a person or entity file a Motion to Quash the Subpoena or a Motion for a Protective Order and not merely object to the subpoena. There are no provisions in Rhode Island law for a "notice of intent."

3. File a motion to quash

a. Which court?

The motion to quash should be filed in the court in which the subpoena was issued. *See* R.I. Superior Court Rules of Civil Procedure, Rule 45(c)(3)(A). Likewise, Rule 17(c) of the Rhode Island Rules of Criminal Procedure also allows the court to modify or quash a subpoena. *See* R.I. Superior Court Rules of Criminal Procedure 17(c).

b. Motion to compel

The Rhode Island Shield Law allows the following:

> In any case where a person claims a privilege conferred by this statute, the person seeking the information or the source of the information may apply to the superior court for an order divesting the privilege. If the court, after hearing the parties, shall find that there is substantial evidence that disclosure of the information or of the source of the information is necessary to permit a criminal prosecution for the commission of a specific felony, or to prevent a threat to human life, and that the information or the source of the information is not available from other prospective witnesses, the court may make such order as may be proper under the circumstance. Any such order shall be appealable under the provisions of chapter 24 of title 9.

R.I. Gen. Laws § 9-19.1-3(c).

However, in most instances, when a subpoena is issued, a Motion to Quash or a Motion for a Protective Order should be filed prior to the subpoenaing party's Motion to Compel.

c. Timing

A Motion to Quash or a Motion for a Protective Order should be filed as soon as practicable, but in no event should it be filed later than the return date on the subpoena.

d. Language

While there is no specific language requirement for a Motion to Quash, the party so filing should be prepared to submit a legal memoranda detailing both legal and factual grounds for the Motion.

e. Additional material

No additional material need be attached to the motion.

4. In camera review

a. Necessity

There are no requirements that an in camera review of materials occur prior to a court's deciding on a Motion to Quash.

b. Consequences of consent

Because a stay pending an appeal is not automatic in the event of an adverse ruling, the reporter or publisher should attempt to negotiate the stay prior to consenting to an in camera review.

c. Consequences of refusing

A reporter or publisher could be subject to contempt, fines, sanctions or having their case dismissed.

5. Briefing schedule

A memorandum of law detailing both legal and factual grounds of the privilege should be filed contemporaneously with the Motion to Quash, which is generally filed ten days before the hearing. However, if the subpoena is issued for an appearance at trial it is likely that a hearing would be had almost immediately. In all cases, a Motion to Quash with an accompanying brief should be filed prior to the return date of the subpoena.

6. Amicus briefs

Briefs of amicus curiae may be filed with written consent of all parties, or upon leave of the Supreme Court on motion which identifies the interest of the applicant and the reasons why brief is desirable. R.I. Supreme Court Rule of Appellate Procedure 16(f).

The Reporters Committee for Freedom of the Press may file amicus briefs in cases involving significant media law issues before a state's highest court.

VI. Substantive law on contesting subpoenas

A. Burden, standard of proof

The Rhode Island Shield Law provides that a party seeking to divest the privilege must show "that there is substantial evidence that disclosure of the information or of the source of the information is necessary to permit a criminal prosecution for the commission of a specific felony, or to prevent a threat to human life, and that the information or the source of the information is not available from other prospective witnesses." R.I. Gen. Laws § 9-19.1-3.

B. Elements

1. Relevance of material to case at bar

The Rhode Island Shield Law provides that a party seeking to divest the privilege must show "that there is substantial evidence that disclosure of the information or of the source of the information is necessary to permit a criminal prosecution for the commission of a specific felony, or to prevent a threat to human life, and that the information or the source of the information is not available from other prospective witnesses." R.I. Gen. Laws § 9-19.1-3.

2. Material unavailable from other sources

The Rhode Island Shield Law provides that a party seeking to divest the privilege must show "that there is substantial evidence that disclosure of the information or of the source of the information is necessary to permit a criminal prosecution for the commission of a specific felony, or to prevent a threat to human life, and that the information or the source of the information is not available from other prospective witnesses." R.I. Gen. Laws § 9-19.1-3.

a. How exhaustive must search be?

Although there are no specific statutes or case law on point, it is presumed that all searches are made in good faith.

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

Although there are no specific statutes or case law on point, it is presumed that all searches are made in good faith.

c. Source is an eyewitness to a crime

There is no statutory or case law addressing this issue.

3. Balancing of interests

The Rhode Island Shield Law provides that a party seeking to divest the privilege must show "that there is substantial evidence that disclosure of the information or of the source of the information is necessary to permit a criminal prosecution for the commission of a specific felony, or to prevent a threat to human life, and that the information or the source of the information is not available from other prospective witnesses." Courts may make whatever order may be proper under the circumstance." R.I. Gen. Laws § 9-19.1-3.

4. Subpoena not overbroad or unduly burdensome

A Motion to Quash may be made on the grounds that the subpoena is too broad and unduly burdensome.

5. Threat to human life

Under the Rhode Island Shield Law, one circumstance which will warrant divesting of the privilege is where there is substantial evidence that disclosure will "prevent a threat to human life."

6. Material is not cumulative

The Rhode Island Shield Law provides that a party seeking to divest the privilege must show "that there is substantial evidence that disclosure of the information or of the source of the information is necessary to permit a criminal prosecution for the commission of a specific felony, or to prevent a threat to human life, and that the information or the source of the information is not available from other prospective witnesses." R.I. Gen. Laws § 9-19.1-3.

7. Civil/criminal rules of procedure

Civil and criminal rules of procedure apply to contest subpoenas.

8. Other elements

The Rhode Island Shield Law provides that a party seeking to divest the privilege must show "that there is substantial evidence that disclosure of the information or of the source of the information is necessary to permit a

criminal prosecution for the commission of a specific felony, or to prevent a threat to human life, and that the information or the source of the information is not available from other prospective witnesses." Rhode Island General Laws § 9-19.1-3.

C. Waiver or limits to testimony

The privilege does not apply to information which has at any time been published, broadcast, or otherwise made public by the person claiming the privilege. Rhode Island General Laws § 9-19.1-3(a).

1. Is the privilege waivable at all?

The issue of waiver is not specifically addressed in the statute, and there are no Rhode Island Supreme Court cases on waiver of the privilege. However, the United States District Court for the District of Rhode Island determined that partial disclosure of confidential sources and/or information does not constitute a waiver of the privilege under the Rhode Island Shield Law. In *Fischer v. McGowan*, 585 F. Supp. 978 (D.R.I. 1984), plaintiffs sought disclosure of certain unnamed sources of an allegedly libelous article in an Australian newspaper regarding the financial troubles of an America's Cup yacht. The author of the article, who had not been named as a defendant, claimed privilege and moved to quash. Drawing on decisions from other jurisdictions, the court found that the reporter had not waived his privileges under the shield law by disclosing some of his sources or by providing a generic description of the undisclosed sources.

2. Elements of waiver

a. Disclosure of confidential source's name

There are no statutory provisions or case law on point. However, in *Fischer v. McGowan*, 585 F. Supp. 978 (D.R.I. 1984), plaintiffs sought to compel disclosure of certain unnamed sources of an allegedly libelous article in an Australian newspaper about the financial troubles of an America's Cup yacht. The author of the article, who had not been named as a defendant, claimed privilege and moved to quash. Drawing on decisions from other jurisdictions, the court found that the reporter had not waived his privileges under the shield law by disclosing some of his sources or by providing a generic description of the undisclosed sources.

b. Disclosure of non-confidential source's name

In *Fischer v. McGowan*, 585 F. Supp. 978 (D.R.I. 1984), plaintiffs sought to compel disclosure of certain unnamed sources of an allegedly libelous article in an Australian newspaper about the financial troubles of an America's Cup yacht. The author of the article, who had not been named as a defendant, claimed privilege and moved to quash. Drawing on decisions from other jurisdictions, the court found that the reporter had not waived his privileges under the shield law by disclosing some of his sources or by providing a generic description of the undisclosed sources.

c. Partial disclosure of information

In *Fischer v. McGowan*, 585 F. Supp. 978 (D.R.I. 1984), plaintiffs sought to compel disclosure of certain unnamed sources of an allegedly libelous article in an Australian newspaper about the financial troubles of the America's Cup yacht. The author of the article, who had not been named as a defendant, claimed privilege and moved to quash. Drawing on decisions from other jurisdictions, the court found that the reporter had not waived his privileges under the shield law by disclosing some of his sources or by providing a generic description of the undisclosed sources.

d. Other elements

None.

3. Agreement to partially testify act as waiver?

There are no cases or statutes on point. However, in *Fischer v. McGowan*, 585 F. Supp. 978 (D.R.I. 1984), plaintiffs sought to compel disclosure of certain unnamed sources of an allegedly libelous article in an Australian newspaper about the financial troubles of an America's Cup yacht. The author of the article, who had not been named as a defendant, claimed privilege and moved to quash. Drawing on decisions from other jurisdictions, the

court found that the reporter had not waived his privileges under the shield law by disclosing some of his sources or by providing a generic description of the undisclosed sources.

VII. What constitutes compliance?

A. Newspaper articles

Pursuant to Rhode Island Rules of Evidence, Rule 902(6), printed materials purporting to be newspapers or periodicals are self-authenticating.

B. Broadcast materials

Since there is no statutory provision or case law addressing this issue, the terms of the subpoena would apply.

C. Testimony vs. affidavits

While a sworn affidavit may take the place of in-court testimony, particularly to merely confirm that an article was true and accurate as published, a subpoena which requires in court testimony should be complied with unless there is prior written confirmation from the attorney that an affidavit would be sufficient.

D. Non-compliance remedies

1. Civil contempt

Pursuant to Rule 45(e) of the Rhode Island Rules of Civil Procedure, any person who fails to obey a subpoena served upon that person may be deemed in contempt of the court in which the action its pending. Civil contempt is established when it is proved by clear and convincing evidence that a lawful decree was violated. *Durfee v. Ocean State Steel, Inc.,* 636 A.2d 698, 704 (R.I. 1994).

a. Fines

Fines are not capped and are available against those persons in contempt of a civil order. The purpose of civil contempt sanctions is to coerce contemptor to comply with court's order and to compensate the complying party for its losses. *Durfee v. Ocean State Steel, Inc.,* 636 A.2d 698, 704 (R.I. 1994).

b. Jail

Findings of contempt are within the sound discretion of the trial judge. *Durfee v. Ocean State Steel, Inc.,* 636 A.2d 698, 704 (R.I. 1994).

2. Criminal contempt

Criminal contempt punishes the contemptor for an act insulting or belittling the authority and dignity of the court. *Durfee v. Ocean State Steel, Inc.,* 636 A.2d 698, 704 (R.I. 1994). Rule 17(g) of the R.I. Superior Court Rules of Criminal Procedure provides that "failure by any person without adequate excuse to obey a subpoena served upon him may be deemed in contempt of the court in which the action is pending." R.I. Superior Court Rules of Criminal Procedure, Rule 17(g).

3. Other remedies

There is no further statutory or case law addressing this.

VIII. Appealing

A. Timing

Appeals must be filed within twenty (20) days of final judgment. R. I. Supreme Court Rules of Appellate Procedure 16(L).

1. Interlocutory appeals

The Supreme Court of Rhode Island will take appeals as of right only from final judgments. *Jennings v. Nationwide Ins. Co.*, 669 A.2d 534, 535 (R.I. 1996). The appropriate route to obtain review of an interlocutory order is by petition for certiorari in accordance with Rule 13 of the Supreme Court Rules of Appellate Procedure. Rule 13 of the Supreme Court Rules of Civil Procedure would govern an appeal from any interlocutory decision.

2. Expedited appeals

Expedited appeals need to be made by motion.

B. Procedure

1. To whom is the appeal made?

An appeal of a Superior Court decision is made directly to the Rhode Island Supreme Court.

2. Stays pending appeal

Pursuant to Rule 8 of the Rhode Island Supreme Court Rules of Appellate Procedure, application for a stay of enforcement pending appeal must be made in the first instance in the trial court. After a notice of appeal is filed, a Motion for a Stay Pending Appeal may be filed in the Supreme Court, or to a justice thereof. The motion "shall show that application to the trial court for relief sought is not practicable or that application has been made to the trial court and denied, with the reasons given by it for denial, or that the action of the trial court did not afford the relief to which the moving party considers himself or herself to be entitled." Rule 8, R. I. Supreme Court Rules of Appellate Procedure. 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 application shall be filed such parts of the record as are relevant. Reasonable notice of the application shall be given to all parties." *Id.*

3. Nature of appeal

Because an appeal of this nature is likely not from a final judgment, it would be considered interlocutory under Rule 13 of the Rhode Island Supreme Court Rules of Civil Procedure.

4. Standard of review

Because an appeal of this nature is likely not from a final judgment, it would be considered interlocutory under Rule 13 of the Rhode Island Supreme Court Rules of Civil Procedure.

5. Addressing mootness questions

There is no statutory or case law addressing this issue.

6. Relief

The relief requested would generally be dependant upon what was being appealed. However, the Rhode Island Supreme Court is likely to order the trial judge to reconsider issues at stake.

IX. Other issues

A. Newsroom searches

There is no statutory or case law addressing this issue.

B. Separation orders

In *United States v. Cianci*, 378 F.3d 71 (1st Cir. 2004), a well-known radio talk show host became involved in high profile case involving criminal charges brought against the City of Providence's mayor. Although not technically a "news reporter," the radio talk show host appeared regularly at press conferences and court proceedings involving the on-going controversial case against the City's mayor and others allegedly involved in corruption.

In the fall of 2001 the radio talk show host was subpoenaed by a special prosecutor to testify at a deposition involving a video tape that was leaked to the media during the pendency of the federal criminal investigation of the

Mayor. The radio talk show host argued that the federal court has recognized a qualified journalist's privilege. The special prosecutor argued that the radio talk show host was not a "journalist." The United States District Court for the District of Rhode Island entered an order indicating that the radio talk show host would have to appear at the deposition, but that he could raise the privilege if he felt that the information sought by certain questions was based on confidential sources.

Subsequently, and while the radio talk show host was "covering" the criminal trial of mayor, the defense listed him as a possible witness. Due to a sequestration order for all potential witnesses, the radio talk show host initially was prohibited from attending the trial. Ultimately, an agreement with defense counsel was reached whereby the radio talk show host was permitted to be present for the testimony of witnesses who were testifying about matters that were not relevant to the radio talk show host's potential testimony. Thus, he was able to attend most of the trial.

C. Third-party subpoenas

There is no statutory or case law addressing this issue.

D. The source's rights and interests

There is no statutory or case law addressing this issue.