

REPORTER'S PRIVILEGE: TENNESSEE

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 and helped shape the law in their states and federal circuits, this guide is meant to help both journalists who want to know more about the reporter's privilege and lawyers who need to know the ins and outs of getting a subpoena quashed.

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

Above the law?

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

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

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

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

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

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

The hows & whys of the reporter's privilege

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

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

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

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

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

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

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

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

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

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

The sources of the reporter's privilege

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

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

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

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

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

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

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

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

The Reporter's Privilege Compendium: Questions and Answers

What is a subpoena?

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

Do I have to respond to a subpoena?

In a word, yes.

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

What are my options?

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

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

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

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

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

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

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

This is a complicated question.

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

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

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

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

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

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

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

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

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

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

Does federal or state law apply to my case?

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

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

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

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

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

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

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

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

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

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

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

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

Do the news media have any protection against search warrants?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

REPORTER'S PRIVILEGE COMPENDIUM

TENNESSEE

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I. Introduction: History & Background

In 1974, in the wake of the U.S. Supreme Court decision in *Branzburg v. Hayes*, 408 U.S. 665 (1972), Tennessee adopted its current reporter's shield law. The statute protects journalists' sources and information, gathered for publication or broadcast, whether obtained confidentially or not, and whether published or not. See Tenn. Code Ann. § 24-1-208. Tennessee's broad shield law has generally been interpreted by Tennessee courts to favor protection for journalists. Tennessee courts have not addressed whether a privilege is also available by way of the state or federal constitutions.

II. Authority for and source of the right

Tennessee has a shield law that protects journalists' sources and other information gathered for publication or broadcast, whether obtained confidentially or not, and whether published or not. See Tenn. Code Ann. § 24-1-208. The shield law was enacted in 1974, in the wake of the 1972 U.S. Supreme Court decision in *Branzburg v. Hayes*. Cases under the statute have focused on the shield law's broad protection and have not addressed whether a privilege is also available by way of the state or federal constitutions.

A. Shield law statute

Tennessee's shield law was enacted in 1974, in the wake of the 1972 U.S. Supreme Court decision in *Branzburg v. Hayes*.

The Tennessee shield law provides:

§ 24-1-208. Persons gathering information for publication or broadcast – Disclosure.

(a) A person engaged in gathering information for publication or broadcast connected with or employed by the news media or press, or who is independently engaged in gathering information for publication or broadcast, shall not be required by a court, a grand jury, the general assembly, or any administrative body, to disclose before the general assembly or any Tennessee court, grand jury, agency, department, or commission any information or the source of any information procured for publication or broadcast.

(b) Subsection (a) shall not apply with respect 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 such information.

(c)

(1) Any person seeking information or the source thereof protected under this section may apply for an order divesting such protection. Such application shall be made to the judge of the court having jurisdiction over the hearing, action or other proceeding in which the information sought is pending.

(2) The application shall be granted only if the court after hearing the parties determines that the person seeking the information has shown by clear and convincing evidence that:

(A) There is probable cause to believe that the person from whom the information is sought has information which is clearly relevant to a specific probable violation of law;

(B) The person has demonstrated that the information sought cannot reasonably be obtained by alternative means; and

(C) The person has demonstrated a compelling and overriding public interest of the people of the state of Tennessee in the information.

(3)

(A) Any order of the trial court may be appealed to the court of appeals in the same manner as other civil cases. The court of appeals shall make an independent determination of the applicability of the standards in this subsection to the facts in the record and shall not accord a presumption of correctness to the trial court's findings.

(B) The execution of or any proceeding to enforce a judgment divesting the protection of this section shall be stayed pending appeal upon the timely filing of a notice of appeal in accordance with Rule 3 of the Tennessee Rules of Appellate Procedure, and the appeal shall be expedited upon the docket of the court of appeals upon the application of either party.

(C) Any order of the court of appeals may be appealed to the supreme court of Tennessee as provided by law.

Tenn. Code Ann. § 24-1-208.

B. State constitutional provision

The Tennessee Constitution does not contain an express shield law provision. Section 19 of the Tennessee Constitution, called the "Press Clause," provides:

Freedom of speech and press. - That the printing presses shall be free to every person to examine the proceedings of the Legislature; or of any branch or officer of the government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions, is one of the invaluable rights of man, and every citizen may freely speak, write, and print on any subject, being responsible for the abuse of that liberty

Tennessee courts have focused on the shield law statute, Tenn. Code Ann. § 24-1-208, rather than this constitutional provision, in their discussion of the reporter's privilege.

C. Federal constitutional provision

Tennessee decisions have not mentioned the U.S. Constitution in their discussion of the reporter's privilege.

D. Other sources

Tennessee courts have not recognized any other sources of law for a reporter's privilege.

III. Scope of protection

A. Generally

The Tennessee shield law provides broad, though qualified, protection of "any information or the source of any information procured for publication or broadcast" by a journalist, and has been construed to cover journalists' sources, as well as all information gathered, whether the information is confidential or not, and whether the information is published or not. Tenn. Code Ann. § 24-1-208(a). The Tennessee Supreme Court has noted that "[t]he Legislature did not qualify 'any information' or the 'source of any information.' The non-specific adjective 'any' means 'all.'" *Austin v. Memphis Publishing Co.*, 655 S.W.2d 146 (Tenn. 1983); *see also State v. Kendrick*, 178 S.W.3d 734, 738 (Tenn. Crim. App. 2005).

B. Absolute or qualified privilege

The privilege afforded by the Tennessee shield law is qualified. The privilege can be overcome by a showing, by clear and convincing evidence, that: (A) there is probable cause that the information sought is clearly relevant to a specific probable violation of law; (B) the information sought cannot be obtained by alternative means; and (C) there is a compelling and overriding public interest in the information. Tenn. Code Ann. § 24-1-208(c)(2). All three of these elements must be proven "by clear and convincing evidence" by the party seeking to obtain testimony from the journalist. *Id.*

C. Type of case

1. Civil

The Tennessee shield law applies in all civil cases. *Austin v. Memphis Publishing Co.*, 655 S.W.2d 146 (Tenn. 1983).

2. Criminal

The Tennessee shield law applies in all criminal cases. *See State ex rel. Gerbitz v. Curriden*, 738 S.W.2d 192 (Tenn. 1987); *Austin v. Memphis Publishing Co.*, 655 S.W.2d 146 (Tenn. 1983) (rejecting contention that Tenn. Code Ann. § 24-1-208 is limited to civil cases); *State v. Franklin*, No. 01C01-9510-CR-00348, 1997 WL 83772 (Tenn. Crim. App. 1997); *State v. Shaffer*, 17 Med. L. Rptr. 3347 (Tenn. Ct. App. 1990); *see also State v. Lane*, 1991 WL 34649 (Tenn. Cir. Ct. 1991).

3. Grand jury

The Tennessee shield law expressly covers grand jury subpoenas. Tenn. Code Ann. § 24-1-208(a); *see also State ex rel. Gerbitz v. Curriden*, 738 S.W.2d 192 (Tenn. 1987).

D. Information and/or identity of source

The Tennessee shield law specifically protects "any information or the source of any information procured for publication or broadcast." Tenn. Code Ann. § 24-1-208(a); *see Moman v. M.M. Corp.*, No. 02A01-9608-CV00182, 1997 WL 167210, at *2 (Tenn. Ct. App. Apr. 10, 1997).

E. Confidential and/or non-confidential information

The Tennessee shield law protects both confidential and non-confidential information. *Austin v. Memphis Publishing Co.*, 655 S.W.2d 146 (Tenn. 1983); *see also Haney v. Copeland*, 291 B.R. 740, 756 (Bankr. E.D. Tenn. 2003); *State v. Kendrick*, 178 S.W.3d 734, 737 (Tenn. Crim. App. 2005); *State v. Franklin*, No. 01C01-9510-CR-00348, 1997 WL 83772, at *7 (Tenn. Crim. App. 1997).

F. Published and/or non-published material

The Tennessee shield law protects both published and unpublished information, so long as the information was "procured for publication or broadcast," Tenn. Code Ann. § 24-1-208(a); *State v. Shaffer*, 17 Med. L. Rptr. 1489 (Tenn. Ct. App. 1990).

G. Reporter's personal observations

There is no Tennessee statutory or case law on this issue.

H. Media as a party

The Tennessee shield law does not differentiate between cases where the media or the particular journalist subpoenaed is a party and cases where they are not. But see the following section on defamation cases.

I. Defamation actions

The Tennessee shield law contains an exception for defamation cases. Subsection (b) provides that the privilege "shall not apply with respect 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 such information." Tenn. Code Ann. § 24-1-208(b); *see Moman v. M.M. Corp.*, No. 02A01-9608-CV00182, 1997 WL 167210, at *2 (Tenn. Ct. App. 1997).

IV. Who is covered

The Tennessee shield law applies to any "person engaged in gathering information for publication or broadcast connected with or employed by the news media or press, or who is independently engaged in gathering information for publication or broadcast." Tenn. Code Ann. § 24-1-208(a). This protection is broad and appears to cover most types of newsgatherers. There is no case law further defining who is covered by the shield law, but it has generally been given a broad application by Tennessee courts.

A. Statutory and case law definitions

1. Traditional news gatherers

a. Reporter

The Tennessee shield law applies to any "person engaged in gathering information for publication or broadcast connected with or employed by the news media or press, or who is independently engaged in gathering information for publication or broadcast." Tenn. Code Ann. § 24-1-208(a). The statute does not mention the term "reporter," but the statute is clearly meant to cover a broad range of people working in journalism.

b. Editor

The Tennessee shield law applies to any "person engaged in gathering information for publication or broadcast connected with or employed by the news media or press, or who is independently engaged in gathering information for publication or broadcast." Tenn. Code Ann. § 24-1-208(a). The statute does not mention the term "editor," but the statute is clearly meant to cover a broad range of people working in journalism.

c. News

The Tennessee shield law applies to any "person engaged in gathering information for publication or broadcast connected with or employed by the news media or press, or who is independently engaged in gathering information for publication or broadcast." Tenn. Code Ann. § 24-1-208(a). The statute uses, but does not define, the terms, "news," "news media," and "press." The context of the statute strongly supports a broad interpretation of these terms, but there is no case law further defining who is covered by the shield law.

d. Photo journalist

The Tennessee shield law applies to any "person engaged in gathering information for publication or broadcast connected with or employed by the news media or press, or who is independently engaged in gathering information for publication or broadcast." Tenn. Code Ann. § 24-1-208(a). Neither the statute nor case law applying the statute expressly addresses whether photojournalists are covered. Nevertheless, the protection afforded by the shield law is broad and appears to apply to most types of newsgatherers.

e. News organization / medium

The Tennessee shield law applies to any "person engaged in gathering information for publication or broadcast connected with or employed by the news media or press, or who is independently engaged in gathering information for publication or broadcast." Tenn. Code Ann. § 24-1-208(a). Neither the statute nor case law applying the statute expressly defines "news organization" or "media," but courts have generally considered that organizations that otherwise fall within the coverage of the statute fit within the meaning of "person."

2. Others, including non-traditional news gatherers

The Tennessee shield law applies to any "person engaged in gathering information for publication or broadcast connected with or employed by the news media or press, or who is independently engaged in gathering information for publication or broadcast." Tenn. Code Ann. § 24-1-208(a). This protection is broad, but it is unclear whether, or to what extent, "non-traditional" newsgatherers would be covered.

B. Whose privilege is it?

In reported cases, the privilege has consistently been asserted by the newsgatherer. It is unclear whether others may assert the privilege.

V. Procedures for issuing and contesting subpoenas

A. What subpoena server must do

1. Service of subpoena, time

There are no specific service requirements applying to news media subpoenas.

2. Deposit of security

The deposit of security is not required.

3. Filing of affidavit

Affidavits are not required.

4. Judicial approval

Judicial approval is not required, but subpoenas must generally be issued by a court clerk.

5. Service of police or other administrative subpoenas

Various local administrative bodies have subpoena power, and procedures for issuing these subpoenas vary according to the rules of the body. Police departments generally do not have subpoena power under Tennessee law.

B. How to Quash

1. Contact other party first

As in most other states, it is advisable that a media party who is subpoenaed attempt to contact the subpoenaing party before trying to quash the subpoena by formal motion. Counsel for the subpoenaing party may not be aware of the shield law or may be willing to withdraw the subpoena voluntarily, upon learning that a subpoena will be opposed. As a practical matter, subpoenaing counsel are frequently convinced to withdraw or abandon a subpoena upon understanding the breadth of the coverage of the statute and the provision of the statute providing for a stay of enforcement of a trial court order for a reporter to testify merely upon the filing of a notice of appeal. *See* Tenn. Code Ann. § 24-1-208(c)(3)(B).

2. Filing an objection or a notice of intent

The Tennessee shield law provides that the subpoenaing party must initiate an action to divest the media party of the privilege. Tenn. Code Ann. § 24-1-208(c). Thus, the media party is not required to file a motion to quash, but it may do so.

3. File a motion to quash

a. Which court?

The motion to quash should be filed in the court or before the administrative body that issues the subpoena.

b. Motion to compel

The media party may file a motion to quash the subpoena or may wait for the subpoenaing party to apply to the court for an order divesting the media party of the privilege. Tenn. Code Ann. § 24-1-208(c).

c. Timing

There is no set timing for the motion to quash the subpoena.

d. Language

The motion to quash the subpoena should cite and use the language of the shield law. Generally, the best practice would be to support the motion to quash with a simple affidavit of the subpoenaed journalist that invokes the provisions of the statute or affirms that the facts stated in the motion to quash are true.

e. Additional material

There is no need for other material to be attached to the motion to quash the subpoena.

4. In camera review

a. Necessity

The Tennessee Court of Appeals has held that the shield law statute does not allow for *in camera* review. *State v. Shaffer*, 17 Med. L. Rptr. 1489 (Tenn. Ct. App. 1990). The court said that the trial judge, who had ordered *in camera* review of a television reporter's interview outtakes, had exceeded his authority in making such an order.

Because the shield law statute provides for an evidentiary hearing on the elements of the privilege, and because it makes no mention of *in camera* review, the court found that *in camera* review was improper. *Id.*

b. Consequences of consent

The Tennessee Court of Appeals has held that the shield law does not permit *in camera* review. *State v. Shaffer*, 17 Med. L. Rptr. 1489 (Tenn. Ct. App. 1990). Thus, the issue of consenting to review should not come up.

c. Consequences of refusing

The Tennessee Court of Appeals has held that the shield law statute does not allow for *in camera* review. *State v. Shaffer*, 17 Med. L. Rptr. 1489 (Tenn. Ct. App. 1990). Thus, the issue of refusing review should not come up. Nevertheless, journalists should be aware that they may be held in contempt for violating a court order, whether or not that order is proper.

5. Briefing schedule

Any briefing schedule would be set by the court.

6. Amicus briefs

Tennessee Rule of Appellate Procedure 31 outlines the procedures for filing amicus curiae briefs in the appellate courts. There is no established procedure for amicus briefs in the trial courts.

VI. Substantive law on contesting subpoenas

A. Burden, standard of proof

The shield law provides that the party seeking to enforce a subpoena directed to a reporter must show by clear and convincing evidence three elements: (A) there is probable cause that the information sought by the subpoena is clearly relevant to a specific probable violation of law; (B) the information sought cannot be obtained by alternative means; and (C) there is a compelling and overriding public interest in the information. Tenn. Code § 24-1-208(c)(2). *See Haney v. Copeland*, 291 B.R. 740, 756 (Bankr. E.D. Tenn. 2003) (stating that a party's application for divestiture will be denied if all three requirements of subsection (c)(2) are not proven by clear and convincing evidence); *Moore v. Domino's Pizza, L.L.C.*, 199 F.R.D. 598 (W.D. Tenn. 2000) (stating that each of the three factors set forth in section 24-1-208(c) must be established by clear and convincing evidence to divest a news reporter of the privilege); *State ex rel. Gerbitz v. Curriden*, 738 S.W.2d 192 (Tenn. 1987); *State v. Kendrick*, 178 S.W.3d 734, 737 (Tenn. Crim. App. 2005); *State v. Shaffer*, 17 Med. L. Rptr. 3347 (Tenn. Ct. App. 1990) (stating that, unless and until each element set forth in subsection (c)(2) is proven by clear and convincing evidence, the court will not enter an order divesting the privilege).

B. Elements

The legislature has enacted a three-pronged test in Tenn. Code Ann § 24-1-208(c) that must be satisfied before a court will compel a reporter to reveal information protected by the privilege. *See State ex rel. Gerbitz v. Curriden*, 1986 WL 15576 (Tenn. Ct. App. Nov. 14, 1986). In order to enforce a subpoena directed to a journalist, the subpoenaing party must show that: (A) there is probable cause to believe that the person from whom the information is sought has information that is clearly relevant to a specific probable violation of law; (B) the information sought cannot reasonably be obtained by alternative means; and (C) there is a compelling and overriding public interest of the people of the state of Tennessee in the information. Tenn. Code Ann. § 24-1-208(c).

1. Relevance of material to case at bar

There is no case law discussing the relevancy requirement of the shield law in any detail. The statute requires that the subpoenaing party allege and prove, by clear and convincing evidence, not only that the journalist whose testimony is desired has information relevant to issues in the case, but also that, as one of three elements required to be proven to divest the privilege, that there is probable cause to believe that the person from whom the information is sought has information that is clearly relevant to a specific probable violation of law. *See Benson v. McConkey*, 11 Med. L. Rptr. 1711 (Tenn. Ct. App. 1985).

2. Material unavailable from other sources

The subpoenaing party must prove, by clear and convincing evidence, that the information sought cannot reasonably be obtained by alternative means. Tenn. Code Ann. § 24-1-208(c).

In one federal case arising under Tennessee law, the court denied a defendant's demand for an opportunity to depose a news reporter because the subpoenaing party had not proven that the information sought could not be obtained elsewhere. *Moore v. Domino's Pizza, L.L.C.*, 199 F.R.D. 598 (W.D. Tenn. 2000). The district court noted that no attempt had been made to depose the plaintiffs, who had the information defendants sought from the reporter. In addition, court records indicated that other sources of the same information, besides plaintiffs, might be available. Thus, the privilege could not be overcome. *Id.* at 600-601.

In another case, the Tennessee Supreme Court held that a prosecutor had failed to prove by clear and convincing evidence that alternative means had not been tested before he subpoenaed a radio newscaster to give "general information" before a grand jury investigating a murder. *State ex rel. Gerbitz v. Curriden*, 738 S.W.2d 192 (Tenn. 1987). The prosecutor had given "no explanation of what information was sought from [the reporter] or what other efforts, if any, the Attorney General or other law enforcement agencies had made to determine the identity of the criminal offense, the offender himself, or the site of the offense." *Id.* at 193. In addition, the court noted, "[n]o investigation or inquiry by [county] officials with officials from surrounding counties appears to have been made, nor has any check of prison or parole records been shown." *Id.* Thus, because alternative methods of obtaining information had not been tried, the reporter was protected by the privilege. *Id.*

Another Tennessee case has held that, when the source of a news report admits the statements attributed to them in all material respects, the plaintiff will likely "fail[] to show that there is probable cause to believe that the subpoenaed reporter has information which is relevant and which cannot be obtained by alternative means." *See Dingman v. Harvell*, 814 S.W.2d 362 (Tenn. Ct. App. 1991).

a. How exhaustive must search be?

It is not clear from Tennessee case law how exhaustive the search for alternative sources of information must be. However, the subpoenaing party clearly must attempt to depose or question all obvious alternative sources before a court will divest the reporter's privilege. *See Moore v. Domino's Pizza, L.L.C.*, 199 F.R.D. 598 (W.D. Tenn. 2000); *State ex rel. Gerbitz v. Curriden*, 738 S.W.2d 192 (Tenn. 1987).

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

The subpoenaing party must prove, by clear and convincing evidence, that alternative sources are unavailable. Tenn. Code Ann. § 24-1-208(c)(2)(B); *see Moore v. Domino's Pizza, L.L.C.*, 199 F.R.D. 598 (W.D. Tenn. 2000); *State ex rel. Gerbitz v. Curriden*, 738 S.W.2d 192 (Tenn. 1987).

c. Source is an eyewitness to a crime

The shield law specifically requires that the subpoenaing party prove, by clear and convincing evidence, that there is probable cause to believe that the subpoenaed journalist has information which is clearly relevant to a specific probable violation of law. Tenn. Code Ann. § 24-1-208(c)(2)(A). In one case, a radio broadcaster was not required to divulge the identity of a caller who stated that he was responsible for killing a person and had not been apprehended and charged with the crime because the plaintiff had not demonstrated by clear and convincing evidence that the information sought could not reasonably be obtained from other sources. *State ex rel. Gerbitz v. Curriden*, 738 S.W.2d 192 (Tenn. 1987).

3. Balancing of interests

The shield law specifically requires that the subpoenaing party prove, by clear and convincing evidence, that there is a compelling and overriding public interest in the testimony of the journalist. Tenn. Code § 24-1-208(c)(2)(C). There is no Tennessee case law separately construing this element.

4. Subpoena not overbroad or unduly burdensome

No specific provision of the shield law prohibits a subpoena from being overbroad or unduly burdensome, but compliance with its express requirements would likely, in most cases, lead a court to limit subpoenas that were

otherwise overly broad or unduly burdensome. Further, the requirements of the Tennessee Rules of Civil Procedure and the Tennessee Rules of Criminal Procedure may provide some additional protection in their general limitations on all subpoenas. *See* Tennessee Rule of Civil Procedure 45.07 (authorizing a court to limit or quash a subpoena that is "unreasonable or oppressive"); Tennessee Rule of Criminal Procedure 17(d) (similar restriction on subpoenas for documents and things).

5. Threat to human life

There is no statutory or case law specifically on this issue.

6. Material is not cumulative

Tennessee Rules of Evidence 403 precludes the "needless presentation of cumulative evidence," even where that evidence may be relevant. The subsection of the shield law that requires the subpoenaing party to prove, by clear and convincing evidence, that the testimony sought be "clearly relevant," Tenn. Code Ann § 24-1-208(c)(2)(A), may support an argument that evidence that would be cumulative, and thus could be excluded under Tennessee Rule of Evidence 403, should not be compelled from a journalist. There is no case law specifically on this issue.

7. Civil/criminal rules of procedure

Tennessee Rule of Civil Procedure 45 outlines the requirements for service of and compliance with civil subpoenas. Tennessee Rule of Civil Procedure 45.07 provides that "the Court, upon motion made promptly and in any event at or before the time specified in the subpoena for compliance therewith, may . . . quash or modify the subpoena if it is unreasonable and oppressive." As to subpoenas calling for the production of documents or things, Tennessee Rule of Criminal Procedure 17(d)(2) provides that, "[o]n motion promptly and in any event by the time specified in the subpoena for compliance therewith, the court may quash or modify the subpoena if compliance would be unreasonably or oppressive."

8. Other elements

Courts have not listed other elements that must be met before the privilege can be overcome.

C. Waiver or limits to testimony

There is no statutory or case law on this issue.

1. Is the privilege waivable at all?

There is statutory or case law on this issue, but it is generally understood by Tennessee lawyers that a journalist may waive the protection of the privilege and testify.

2. Elements of waiver

There is no statutory or case law on this issue.

a. Disclosure of confidential source's name

There is no statutory or case law on this issue.

b. Disclosure of non-confidential source's name

There is no statutory or case law on this issue.

c. Partial disclosure of information

There is no statutory or case law on this issue.

d. Other elements

There is no statutory or case law on this issue.

3. Agreement to partially testify act as waiver?

There is no statutory or case law on this issue.

VII. What constitutes compliance?

A. Newspaper articles

There is no statutory or case law on this issue. Newspapers and periodicals are generally self-authenticating in court. Tennessee Rule of Evidence 902(6).

B. Broadcast materials

There is no statutory or case law on this issue. Broadcast materials are not included in Tennessee's list of types of evidence that are self-authenticating in court. *See* Tennessee Rules of Evidence 902.

C. Testimony vs. affidavits

There is no statutory or case law on this issue. By agreement of the parties to the matter in which the subpoena is issued, and with court approval, however, an affidavit from a journalist may avoid the need for the journalist to testify.

D. Non-compliance remedies

1. Civil contempt

Tennessee law generally authorizes courts to punish willful and knowing refusal to obey an order to testify in response to a subpoena by civil contempt. *See* Tenn. Code Ann. §§ 29-9-101 - 29-9-108.

a. Fines

Tennessee law generally authorizes courts to punish civil contempt by fines not exceeding \$50. *See* Tenn. Code Ann. § 29-9-103.

b. Jail

Tennessee law generally authorizes courts to punish civil contempt by imprisonment not exceeding ten days. *See* Tenn. Code Ann. § 29-9-103. If the person held in contempt has refused to perform an act mandated by the court and the person has the ability to comply with the order at the time of the contempt hearing, the court may imprison the person until the act is performed. *See* Tenn. Code Ann. § 29-9-104; *Ahern v. Ahern*, 15 S.W.3d 73, 79 (Tenn. 2000).

2. Criminal contempt

Tennessee law generally authorizes courts to punish criminal contempt. *See* Tenn. Code Ann. §§ 29-9-101 - 29-9-108. As punishment for criminal contempt, Tennessee courts are generally limited to imposing a fine of \$50 and imprisonment of up to 10 days. *See* Tenn. Code Ann. § 29-9-103.

3. Other remedies

There is no statutory or case law concerning other remedies available for a journalist's refusal to obey a court order to testify.

VIII. Appealing

A. Timing

1. Interlocutory appeals

Interlocutory appeals are generally permitted of decisions under the shield law. The statute provides: "Any order of the trial court may be appealed to the court of appeals in the same manner as other civil cases. The court of appeals shall make an independent determination of the applicability of the standards . . . to the facts in the record and shall not accord a presumption of correctness to the trial court's findings." Tenn. Code Ann. § 24-1-208(c)(3)(A). Significantly, the statute also provides that "[t]he execution of or any proceeding to enforce a

judgment divesting the protection of this section shall be stayed pending appeal . . . and the appeal shall be expedited upon the docket of the court of appeals upon the application of either party." Tenn. Code Ann. § 24-1-208(c)(3)(B).

2. Expedited appeals

Appeals of decisions under the shield law are expedited. The statute provides: "The execution of or any proceeding to enforce a judgment divesting the protection of this section shall be stayed pending appeal . . . and the appeal shall be expedited upon the docket of the court of appeals upon the application of either party." Tenn. Code Ann. § 24-1-208(c)(3)(B).

B. Procedure

1. To whom is the appeal made?

The appeal is made to the court of appeals that would normally hear an appeal from the trial court in which the action is pending – either the Tennessee Court of Appeals for civil cases, or the Tennessee Court of Criminal Appeals for criminal cases. In addition, the shield law provides: "Any order of the court of appeals may be appealed to the supreme court of Tennessee as provided by law." Tenn. Code Ann. § 24-1-208(c)(3)(C). Most appeals to the Tennessee Supreme Court are discretionary, and must be granted on application to that court.

2. Stays pending appeal

An automatic stay of the obligation of a journalist to testify arises if a court divests the journalist of the privilege as soon as a notice of appeal is filed. The statute provides: "The execution of or any proceeding to enforce a judgment divesting the protection of this section shall be stayed pending appeal . . . and the appeal shall be expedited upon the docket of the court of appeals upon the application of either party." Tenn. Code Ann. § 24-1-208(c)(3)(B).

3. Nature of appeal

The appeal is an ordinary appeal, except that the appeals court performs *de novo* review with respect to the three shield law factors, and except that the appeal is expedited. See Tenn. Code Ann. § 24-1-208(c)(3)(A).

4. Standard of review

The shield law provides: "The court of appeals shall make an independent determination of the applicability of the standards . . . to the facts in the record and shall not accord a presumption of correctness to the trial court's findings." Tenn. Code Ann. § 24-1-208(c)(3)(A).

5. Addressing mootness questions

Tennessee courts have not addressed whether issues arising under the shield law are moot if the trial or grand jury session in which a reporter was subpoenaed has concluded. As a general matter, Tennessee recognizes exceptions to the mootness rule for "issues of great public interest and importance to the administration of justice" and "issues capable of repetition yet evading review." *Jones v. State*, 1998 WL 855439, at *2 (Tenn. Crim. App. 1998).

6. Relief

The appellate court has full authority to affirm, reverse, or modify an order of the trial court under the shield law.

IX. Other issues

A. Newsroom searches

There is no statutory or case law on the topic of newsroom searches.

B. Separation orders

There is no statutory or case law on the topic of separation orders.

C. Third-party subpoenas

There is no statutory or case law on the topic of third-party subpoenas.

D. The source's rights and interests

There is no statutory or case law on the topic of the source's rights and interests.