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### **Source Confidentiality Based on Reporter's Privilege**

Reporter's privilege begins in the First Amendment to the United States Constitution and can also be found in statutory laws. It offers protection to journalists as they use confidential sources within their stories and articles. The Reporters Committee for Freedom of the Press push for recognition of reporter's privilege in state courts, state constitutions, and common laws. For example, New York is a state that protects both confidential and nonconfidential material within their state constitution. In some states like Washington, the state supreme courts recognize reporter's privilege in both civil and criminal cases based on the common law. In the last category, states like New Mexico completely create their own rules. Breaking the promise of confidentiality could result in the reporter facing a potential civil liability. In *Cohen v. Cowles* (1991), the United States Supreme Court decided that the First Amendment does not offer protection journalists from suit for breaching a promise of confidentiality to a source. This decision allows protection of the public and those sources.

Shield laws allow for journalists to keep their sources private while they receive confidential information. In the United States, forty-nine out of the fifty states have some type of shield law intact. For example, California's shield law is included in the state constitution. Although, it does not apply when the journalist is favoring or associated with the litigation itself. One of the many variations include the types of media outlets that are protected by the state. For instance, Alabama newspapers, radio, and television stations are protected by Shield laws while magazines are not. Other states protect everything that has a monetary gain, subsequently bloggers and student journalists would not be included. The Minnesota Free Flow of Information Act states that in cases where libel actions are required, the source may need to be identified. Even in cases where actual malice may have occurred, the source will not be revealed

unless the information cannot be obtained through another manner. Two members of the United States House of Representatives introduced a bill in 2017 that built on the many attempts within the past twelve years. Democrat Jamie Raskin and Republican Jim Jordan proposed “The Free Flow of Information Act of 2017.” Essentially, this bill would have provided a level of protection for journalists and their sources at the federal level. The bipartisan federal shield law would ensure that journalists can do their jobs effectively without fearing the consequences. Currently, this bill or one alike has yet to be passed in the United States and there is no variation of the shield law at the federal level. This brings into question whether the American people and the democracy are suffering because the press is unable to suitably complete their jobs without living in fear of intimidation or imprisonment.

Valarie Plame, a former CIA member, became caught in the middle of a scandal that began with her husband. Joseph C. Wilson IV, a former United States ambassador, was the anonymous source of some false information regarding uranium in Niger to the Washington Post back in 2003. This information was quoted in former President Bush’s State of the Union Address in 2003. Valarie Plame’s name was leaked when it was found out that she was the one who suggested her husband for the trip because of his “good relations with Niger.” Prior to the true identity of the man who leaked Plame’s name, the Democrats accused the White House of attempting to get revenge on her husband. Some of the messier underlying accusations include Scooter Libby, who was convicted of perjury and lying to the FBI during investigation. Valarie Plame accused Libby of disclosing her name, but he was not charged for that at the closing of his investigation. In a video that can be found on the Washington Post website, Plame claims that she worked as an undercover operative in Iran, Iraq, Syria, Pakistan, and North Korea. However, this was not the case because during that time period she was under diplomatic cover in Greece.

Plame was the operations chief at Joint Task Force on Iraq of the Counterproliferation Division of the CIA at the time when her name was publicly revealed by Robert Novak in 2003. Later on, it was revealed that Richard Armitage told a colleague that he was the one who talked to Novak about Wilson's wife who worked for the CIA on weapons of mass destruction and she was the one who suggested him for the mission in Niger.

Whistleblowers are sources that reveal information that is considered a violation to any law, rule, or regulation. This information can also be an endangerment to public health or safety. Leaking information is the unauthorized release of sensitive materials that can sometimes be valuable to the public. If classified information is leaked, the source can be charged for a committing a crime. Before disclosing sensitive information, one should be aware of the consequences or what is at stake for the whistleblower and reporter. Also, reviewing and understanding the laws prior to disclosing information is extremely important. A truly anonymous source is a person who shares information through phone calls or in written formats while refusing to identify themselves. It is important to understand that true anonymous sources are rarely used to avoid false information. The anonymous or confidential sources that most journalists use are reliable sources that can be identified but the name is kept out of the published article. A journalist should look for trustful sources who are able to stand behind their information and credibility. To avoid false information, the reporter should be working to understand how confident the source feels to stand behind their disclosed information. If possible, work towards finding the original source for a stronger storyline.

Many journalists feel obligated to protect their sources even if that means jail time is a possibility. An attorney for the government or private litigants can request subpoenas. These are requests to reveal the sources of confidential information. Some criminal defendants believe that

the Sixth Amendment right to a fair trial outweighs the freedoms of the First Amendment. The defendants want to know the sources and correct information regarding the trial to allow for an equal and fair opportunity for justice. In 1972, *Branzburg v. Hayes* argued over whether the First Amendment should offer protections of a journalist who actually witnessed criminal activity. In the end, it was decided that the First Amendment does not offer protection to a journalist who witnessed criminal activity. In some cases, the courts require that a journalist should show proof of promised confidentiality. Although criminal cases make it necessary for subpoenas, it does create a space for the sources to be fearful of government interference. Forced disclosure of unpublished sources result in individuals refusing to talk to reporters. Furthermore, it greatly effects the free flow of information and the public's ability and right to knowledge.

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