

4-17-2013

# Research exercise: Journalists' Rights under State Shield Laws

Follow this and additional works at: [https://ecommons.udayton.edu/stander\\_posters](https://ecommons.udayton.edu/stander_posters)

---

## Recommended Citation

"Research exercise: Journalists' Rights under State Shield Laws" (2013). *Stander Symposium Posters*. 342.  
[https://ecommons.udayton.edu/stander\\_posters/342](https://ecommons.udayton.edu/stander_posters/342)

This Book is brought to you for free and open access by the Stander Symposium at eCommons. It has been accepted for inclusion in Stander Symposium Posters by an authorized administrator of eCommons. For more information, please contact [frice1@udayton.edu](mailto:frice1@udayton.edu), [mschlange1@udayton.edu](mailto:mschlange1@udayton.edu).



# Shield Laws and Reporter's Privilege

Evan Shaub and Megan Garrison

Dr. Annette Taylor

## Thesis

A federal shield law for all journalists would be the most effective way to protect independent journalists using new media, such as social media, blogs and student newspapers.

## Definitions

In 1848 the first American reporter was incarcerated for not revealing his source. Between 1984 and 2006, 22 American journalists were incarcerated for refusing to reveal their source. In 2005 the U.S. ranked sixth among countries jailing journalists. The United States made this list for jailing journalists for not revealing sources.

## A New Medium

The current lack of a federal shield law often times can restrict people from writing their opinions, and when people's thoughts are stifled in a country then the democratic process is stifled. But there's a line that has to be walked because journalists are still, in fact, private citizens. The state of California was the first to hear a case about whether bloggers were journalists in *O'Grady v. Superior Court*<sup>14</sup>. In the case, O'Grady posted some articles online on a website he runs about Apple Computer. Apple then alleged that O'Grady's posts contained trade secrets "published without Apple's knowledge". The court found that O'Grady was allowed to keep his sources confidential because O'Grady exercised "a kind of degree of editorial control similar to traditional standards of newspapers and magazines." This reiterates the fact that in any democracy it is necessary for there to be a media presence to serve as a check for the government.

**Journalism:** the gathering, preparing, collecting, photographing, recording, writing, editing, reporting, or publishing of news or information that concerns local, national, or international events or other matters of public interest for dissemination to the public.

**Journalist:** a person who writes for newspapers or magazines or prepares news to be broadcast on radio or television.

**Citizen Journalists:** a public citizen playing an active role in the process of collecting, reporting, analyzing, and disseminating news and information.

**Bloggers:** a person who writes entries, adds in material and maintains a blog.

**Student Journalists:** students enrolled in a university or college that is studying journalism and practicing journalism.

**Shield Laws:** legislation designed to protect reporters' privilege, or the right of news reporters to refuse to testify as to information and/or sources of information obtained during the news gathering and dissemination process.

**Reporter's Privilege:** a reporter's protection under constitutional or statutory law, from being compelled to testify about confidential information or sources.

## References

<sup>1</sup> *Branzburg v. Hayes*, 408 U.S. 665 (1972), Accessed April 5, 2013. <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=408&invol=665>.

<sup>2</sup> *Cohen v. Cowles Media Co.*, 501 U.S. 663 (1991), Accessed April 5, 2013. <http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=us&vol=501&invol=663>.

<sup>3</sup> Student Press Law Center, "Legal Protections for Journalists' Sources and Information." Last modified 2000. Accessed April 5, 2013.

<sup>4</sup> Society of Professional Journalists, "Struggling to Report: The Fight for a Federal Shield Law." Last modified 2011. Accessed April 5, 2013. <http://www.spj.org/shieldlaw.asp>.

## Cases

**Branzburg v. Hayes (1972)** - This case deals with whether the first amendment right of freedom of speech and the press allows for newsmen to avoid testifying in court when required. It does not.

**Cohen v. Cowles Media Co. (1991)** - This case deals with whether a plaintiff is prohibited by the first amendment from recovering damages after a newspaper breaches a confidentiality agreement. They are not.

**United States v. Caldwell (1972)** - This case dealt with whether Caldwell was protected from testifying in court by the first amendment. He was not. Caldwell was a New York Times writer covering the Black Panthers and was asked to testify on their secret meetings.

## Federal Shield Law

The Free Flow of Information Act of 2011 is the most recent bill in the battle to attain a federal shield law. The bill was proposed in its original form in 2007 by senators Dick Lugar (R-IN) and Chris Dodd (D-CT) and passed in the House of Representatives in 2007. A new version of the bill, S.B. 448 was then proposed in 2009 and passed in the House again, but stalled in the senate.

If the state of Wyoming decides to conform, all 50 states will have some varying form of a shield law. Often times journalists are faced with legal problems that they can not battle with their own finances and then they are forced to either settle in court or reveal their confidential sources.