

A Comparative Study of Reporter's Privilege

Clare Gallagher and Jada Woods

Advisor: Dr. Annette Taylor

How do Ohio and New Jersey courts define reporter's privilege under state shield laws and how much protection do they have?

A supreme court case in Ohio, *Ventura v. The Cincinnati Enquirer*, 2005 Ohio 396, a confidential source claimed that the Cincinnati Enquirer disclosed his identity to a grand jury. However the defendants and the newspaper could not held liable because a fired reporter disclosed his identity.

In the supreme court case, *Renna v. Union County Alliance*, 407 N.J. Super. 230 (2013), a blogger filed a motion to quash the grand jury subpoena served upon her. The subpoena was found to be seeking privileged information protected by the newsperson's privilege and the subpoena was quashed.

The supreme court recognizes the claim to allow states to form their own standards of the conditions and problems of using confidential sources in their area. The Ohio state and New Jersey state shield law provide absolute protection in most cases, so the court generally can't force a reporter to reveal the identity of their sources. The Ohio shield law protects the people that work for newspapers, press associations, traditional radio and television. The shield laws aim to protect the identity and privacy of a source. However, it does not protect any other information obtained during the news gathering process. The New Jersey state privilege protects the source and the reporter. Sources may want to stay confidential because they fear publicity or possible discovery that they're the source. Both the New Jersey and Ohio state constitutions contain strong freedom of the press section. New Jersey courts have not based any finding of privilege on the First Amendment. However, Ohio has expressed some recognized qualified First Amendment constitutional privilege.

CONFIDENTIAL

What do Georgia and District of Columbia courts do differently to protect journalists' confidential sources and information?



Grunseth v. Marriott Corp, 868 F. Supp. 333 (D.D.C. 1994).

This case determined that reporters in the District of Columbia have absolute protection against disclosing the identities of both confidential and non-confidential sources regardless whether a story was published or not.

In re Paul, 270 Ga. 680 (Ga. 1999).

This major case determined that the language in the Georgia shield law does not differentiate between the source's identity and information collected from the source. The court also found that to renounce a reporter's privilege, the party seeking the information must show that a reporter waived his or her privilege or the information sought meets a three-part test. Under the test the party must show the information is relevant, necessary for the state's case, and cannot be reasonably attained by other means.

Prentice v. McPhilemy, 27 Med. L. Rptr. 2377 (D.C. Super. Ct. May 5, 1999).

This District of Columbia case specified that only those employed as journalists have the right to refuse to disclose sources and other information.

Georgia and the District of Columbia shield laws protect people who are engaging in collecting and circulating of news for the public from having to reveal confidential information and sources. Both shield laws protect against the disclosure of non-confidential as well as confidential sources and information. Also, both laws apply equally to civil and criminal cases. In Georgia, the protection of confidential information and sources may be waived when a person publishes confidential information or voluntarily testifies. Georgia shield law suggests the privilege might not apply to online publishing and electronic media while the shield law in the District does.

Research reveals that Georgia and the District of Columbia have similar shield laws, but Georgia's privilege is qualified and has a balancing test while the District's is absolute. Both Georgia and the District have strong freedom of the press laws. Georgia courts have not based any findings of reporter privilege on the First Amendment, yet, the District recognizes some constitutional rights of the First Amendment.