

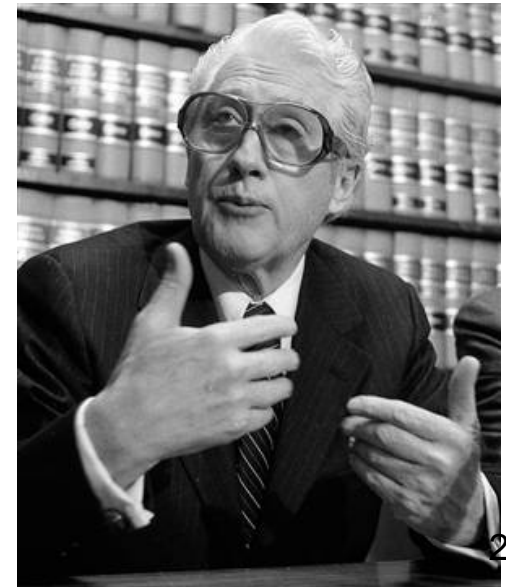
Anonymous Sources



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McCormick Foundation Civic Program
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Who are anonymous sources?

- Whistleblowers
- Officials trying to protect themselves or manipulate the media to their own ends.
Washington D.C. notorious for using anonymous sources



“Why can’t reporters wean themselves from their overreliance on anonymous sources? The last time I wrapped my mind around this subject, I portrayed Washington reporters as victims: The surplus of journalists and the relative scarcity of knowledgeable sources allow the sources to pick the rules of engagement.

If a reporter insists that a source put the information on the record, the source can always say, ‘Screw you’ and shop it to a publication that will agree to anonymity. If what the source has to say is true and newsworthy, he’ll find a market. The advantage held by knowledgeable anonymice reduces the likelihood that Washington journalists will ever decrease the number of anonymous sources, let alone eliminate them.”

*—Jack Shafer, Ratting Out the Anonymice
Slate.com, 2004*

Quoting sources

On the Record: Quotes can be attributed back to a named source.

Tiers of anonymity:

- **On Background:** Quotes can be attributed back to a vague unnamed source such as “a senior White House official,” “a source close to the police detective.”
- **On Deep Background:** Anything used in an interview is usable by the reporter but it can’t be attributed back to a source by name or title.
- **Off the record:** Conversations that cannot be attributed back to a source. Some newspapers have a policy that prohibit off the record conversations. It doesn’t mean the source always speaks off the record. Some reporters go off the record to get background for other stories in the future.
- **Anonymous:** Sources request complete anonymity and want it that way for purposes of storytelling. Some journalists place anonymous sources on the same level as off the record information.

Why is anonymity a bad thing?

- Hurts credibility with the public
- Provides no transparency to the reader.
Doesn't allow readers to judge the reliability of the source in question.
- Could be used as a tool to manipulate the media by officials
- Allows people to speak without taking any responsibility for their quotes

Solution: Ban anonymity and off the record conversations

Pros:

- Credibility and transparency not an issue for readers
- Lower chances of manipulation by high level sources

Cons:

- Whistleblowers take their story somewhere else or don't tell it at all
- Could hurt the watchdog role of the organization; some OTR conversations can be good leads for other stories.

Solution: Create policies that allow reporters to have off the record conversations and use anonymous source on a limited basis.

Pros:

- Enhances watchdog role; whistleblowers know they will be protected by news organization
- Creates leads on other stories

Cons:

- Rampant misuse leads to loss in credibility
- Potential manipulation by sources

The Newsroom: What do reporters and editors ask themselves before granting anonymity?

- Why does this source want to remain anonymous?
- Does this source have verifiable, first hand knowledge of this situation?
- How often do I use this source and does it color my perception of his/her information?
- What is this source's motive for providing this information? What do they gain or lose? Does someone they associate with benefit from this?
- Are they personally attacking someone?
- How crucial is this story to the public? Is it just the scoop or does it serve the public in some way?
- Will this story stand up to public scrutiny?

- Can the story stand on its own without using this source? (sources such as other people, documents?)
- Can the story hold until I have enough information to prove it with or without the source?
- Is there someone else who can give me this information?
- What are the consequences personally and for my organization for granting anonymity?
- Does this source truly need anonymous protection?
- Does the source understand the risks he/she is taking by giving you this information?
- Is it the paper's policy that you have to tell an editor or someone else their name?
- What happens if you get called to court? Are you willing to go to prison to protect this source? What fines will your organization face?
- Documents: Is this document credible? Can I verify its authenticity?

What do readers think of anonymous sources?

A 2005 survey by Pew Research Center for the People & the Press of 1,464 Americans found that:

- 52% of respondents said the use of anonymous sources is too risky because it can lead to inaccurate reports
- 44% said it is OK because it can yield important news that they otherwise wouldn't get
- 76% felt that reporters should sometimes be allowed to keep their sources confidential if that is the only way to get information
- 19% said reporters should always reveal their sources.

What do readers think of anonymous sources?

A 2005 Associated Press Managing Editors survey asked 1,611 readers how anonymous sources affect their trust in a news story. Here are the results:

- 44 % said they were less likely to believe the story
- 42 % said it makes no difference
- 11 % said they were more likely to believe it

The Waiver

- Some sources will sign personal waivers that are submitted to the court to release a reporter from their confidentiality agreement, which has caused many journalists to testify in court.
- Some journalists refuse to allow their sources to sign these waivers.
- The journalism industry is divided on whether waivers in anonymous source cases are acceptable.
- Lewis “Scooter” Libby signed a voluntary waiver which allowed NYT’s Judith Miller to be released after spending 85 days in jail. Miller testified before a grand jury.

“The general public hasn’t got a prayer of distinguishing what’s coerced and what’s not,” Leggett said. The public sees that she “capitulated; she gave up. Their perception is what counts.”

“A journalist should not got back to the sources. A promise is a promise. And in the future, if sources think a promise is a quasi-promise, they’re not going to come forward. The more compromised the privilege becomes, the less people are going to come forward.”

*-Vanessa Leggett, from Waivering in the
American Journalism Review, 2006*

Branzburg v. Hayes (1972)

The U.S. Supreme Court rules that freedom of press **doesn't** include a constitutional privilege that protects reporters from testifying in court about the identity of news sources or information received in confidentiality.

Justice Lewis F. Powell Jr., noted that if testimony by a journalist “implicates confidential source relationships without a legitimate need of law enforcement, he will have access to the court on a motion to quash, and an appropriate protective order may be entered.”

Branzburg v. Hayes (1972)

In his dissenting opinion, Justice Potter Stewart outlined three criteria the government should use before compelling a journalist to testify:

- Show probable cause that the information is relevant to the specific alleged legal violation
- The information cannot be obtained through another means that causes less intrusion into First Amendment rights
- Demonstrates “a compelling and overriding interest in the information.”

Branzburg v. Hayes Impact

Justice Stewart's elements became the basis for shield laws adopted by many states.

- 49 states have some sort of shield law or protection in judicial decisions for journalists. The protections vary from state to state.

Illinois shield law summary

“The Illinois shield law provides a qualified privilege, which means that a court may force you to reveal information in some circumstances. In order to compel disclosure of information that otherwise would be protected by the shield, a court or other legal body must find that ‘all other available sources of information have been exhausted’ and that ‘disclosure of the information sought is essential to the protection of the public interest involved.’”

– Citizen Media Law Project

A federal shield law?

Most recent legislation: Federal Free Flow of Information Act of 2009.
(H.R. 985, SR 448)

Summary: Law would prohibit a federal entity from compelling a “covered person” to testify or produce documents unless the court determines that:

- other sources have been exhausted
- testimony or the document is critical to the case
- disclosing the source’s identity is necessary
- public interest in disclosing the information or document outweighs the public interest in gathering or disseminating the news or information. Court must also consider the extent of harm to national security under this condition.

Summary section of H.R. 985, S.R. 448 THOMAS search, Library of Congress; Reporters Committee for Freedom of the Press

A federal shield law?

The House and Senate both define a “covered person” differently.

The House: a covered person “regularly gathers, photographs, records, writes, edits, reports, or publishes information concerning matters of public interest for dissemination to the public **for a substantial portion of the person's livelihood or substantial financial gain**, including a supervisor, employer, parent, subsidiary, or affiliate of such a person.” Excludes from that definition foreign powers and their agents and certain terrorist organizations and individuals.

The Senate: a covered person is **any journalist** who engages in “the regular 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.”

Status: S.R. 448 passed committee in Dec. 2009 but never received a full Senate hearing. It was also never reconciled with the House bill which passed earlier in the year.

Federal shield law implications:

- Journalists would be defined by the law. Is a blogger or someone who files a CNN I-report a “journalist”? Who will be protected?
- Could clear up inconsistencies between state and federal law

Student journalists, a convicted felon and the state of Illinois

Students journalists investigating a murder case as part of a class in Northwestern University's Medill Innocence Project were subpoenaed by the Cook County state's attorney for their grades, notes, class syllabus, interviews and other materials in April 2009.

Northwestern and professor David Protess have been fighting the subpoena in court claiming that students and their work product are protected by the Illinois shield law. They are also arguing that students' grades are protected by the Federal Educational Rights and Privacy Act (FERPA).

Student journalists, a convicted felon and the state of Illinois

The state has argued that students were acting as investigators and not reporters when they gathered information on the Anthony McKinney case. The students' purpose was to collect information and evidence for exoneration, not for reporting the news. Their findings didn't generate a news report and none of the students subpoenaed wrote a story about the case.

Eighteen news organizations and professional associations submitted a friend of the court brief supporting the students' claim.

The outcome of the case could set precedent for how journalists are defined by the law.

Four criteria for confidential sources

- A story that uses confidential sources should be of overwhelming public concern.
- Before using an unnamed source, you must be convinced there is no other way to get essential information on the record.
- The unnamed source must have verifiable and firsthand knowledge of the story. Admit to the public if you are unsure if the information is true.
- You should be willing to reveal to the public why the source cannot be named and what, if any promises the news organization made in order to get the information.

Bob Steele and Al Tompkins, Poynter Institute

Group exercise

Be the reporter/editor
What would you do?

Group exercise

It's Friday night at the Taste of Chicago and hundreds of people are out walking around enjoying the festival. J.R. is a volunteer security person for the event checking bags and backpacks at the entrance.

While on his break, J.R. sees a suspicious looking bag near a trash can behind Petrillo Music Shell. He reports this to a group of police officers who feels there is enough of a threat to clear the area.

As they begin to evacuate people, there is a huge explosion. About 50 people were injured and two people killed in the attack.

The police chief says that without J.R.'s quick actions there may have been more fatalities and injuries.

Group exercise

Your news organization and others report that the police chief and FBI say J.R. is a hero. Three days later, a CPD officer tells you off the record that the FBI is investigating J.R. as a suspect in the bombing. It's possible, he said, that J.R. planted the bomb to discover it, get people out of the way and emerge a hero. Your source says you can't use this information without his permission, unless you can get an independent source to verify it.

The next day another source gives you similar information on background. A fellow reporter who covers the FBI says he has received the information from another source (on background) that J.R. is the FBI's main suspect.

What would you do?

Do you report that J.R. is the FBI's main suspect based on "law enforcement officials"?

Do you hold the story until there is more information?

What they did

Richard Jewell, the 1996 Atlanta
Olympic Park Bombing, and the
media

Group exercise 2

Be the reporter/editor
What would you do?

Group exercise 2

You hear from a friend of a friend that the Illinois Veteran's Administration hospital in Chicago is understaffed and that soldiers in the outpatient ward are being neglected. She refuses to go on the record. You're pretty sure your source is on the right track but you know that if you call hospital officials that they'll deny it and try to cover up the problems immediately.

What would you do?

What did they do

The Washington Post, Walter Reed Army
Medical Center scandal

Presentation sources

Poynter Institute; Committee for Concerned Journalists; First Amendment Center; Associated Press Managing Editors; Editor & Publisher; American Journalism Review; Reporters Committee for Freedom of the Press; Slate.com; the Post-Exchange; *Anonymous Sources: Pathways and Pitfalls*; THOMAS.gov; the Washington Post

Questions?