

Access, Anonymity, and Privacy

Rodrigo Zamith

University of Massachusetts Amherst

Laws and Journalistic Activities

- Journalists in the U.S. benefit from laws that promote and presume transparency in government
- Supreme Court decisions have also protected journalists when they distribute sensitive and ill-got documents
- However, journalists in the U.S. do not receive special protections; they are treated like any other citizen
- Journalists must also be aware of different laws that govern the recording of exchanges (e.g., interviews)

Access to Information and Places

- Journalists **do not have special access or rights** to government files or to public property
 - They receive the same access as other members of the public
 - However, the courts have generally promoted open access to information and places
- Important information access laws for journalists:
 - Freedom of Information Act
 - Government in the Sunshine Act
 - State open records and open meetings laws

Gov. Agencies vs. Private Companies



Source

Publishing Confidential Information

- Journalists typically allowed to publish confidential information and leaked information **about matters that are in the public interest.**
- **Bartnicki v. Vopper (2001):**
 - As long as someone did not violate the law in obtaining information, they may generally publish it **if it involves a “matter of public concern”**
 - Decision affirmed under **United States v. Stevens (2010)**

Anonymity and Sourcing

- Journalists can be legally compelled to reveal their anonymous sources
 - They may be held in contempt of court or face charges of obstruction of justice for failing to do so
- *Branzburg v. Hayes* (1972):
 - First Amendment's protection of press freedom does not give journalists special privileges in court
- This is not a hypothetical; journalists in the U.S. have been imprisoned for protecting their sources
 - Journalists must be judicious with their promises of anonymity

Privacy and Recordings

- Journalists may photograph, film, or record audio in public spaces **as long as they don't get in the way**
 - Includes recording public officials and law enforcement officers
- However, what is a 'public space' can get tricky
 - Not all government property is a public space
 - Key issue: Is there an **expectation of privacy**?
 - If so, recording often not allowed without permission

Recordings and Consent

- In some jurisdictions, journalists may record private exchanges **only if all parties consent to the recording**
 - Massachusetts is one such state ('two-party consent' state)
 - It is a crime to secretly record people in 'two-party consent' states
- Many jurisdictions only require one party to consent (i.e., enough for the journalist alone to consent)
 - Nevertheless, it is good **ethical** practice to request permission before recording
 - When interviewing across state lines (e.g., phone, internet), assume consent is required from all parties

Key Takeaways

- Journalists do not have special access to government documents or to public spaces
- The Freedom of Information Act and the Government in the Sunshine Act govern journalists' access to public records and meetings at the federal level
- Journalists can be forced by the courts to reveal their sources
- In some states, including Massachusetts, interviewees must consent to having an interview recorded