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The Legality and Importance of Source Protection

Legal and ethical conflicts have always been promiscuous in journalism; moral and legal standards have shifted throughout the years, and with it, the limitations and expectations of journalism and the media. Within the field of communication, it is important to understand the laws that are in place that protect both journalists and their sources from legal persecution. The First Amendment of the U.S. Constitution entails the right to speak and the right to be heard, permanently linking freedom of speech and freedom of the press. This essay will include analysis and insight regarding the roles that confidential sources play in today’s media, and will identify numerous cases centered on source protection. It will also stress the importance for journalists and the sources to maintain trustful and professional relationships.

In her article “Covert Disclosures,” Kathryn Flynn focuses on the role that unofficial and confidential sources play in the production of news and investigative journalism. Journalists are often dependent on their sources, many of which have the authorization and access to disclose information to the press. However, Flynn establishes that many sources are willing to release information to the media with public interest in mind that may lack the title or authorization to do so. These sources are defined as leakers, who often agree to disclose meaningful information under the promise of anonymity. Flynn claims that an unauthorized leaker is different from a whistleblower, but can be placed under similar circumstances if an inquiry takes place which would result in the revelation of his or her identity. This would in turn place him or her at risk of corporate punishment. Journalists and unauthorized leakers must have a sound and trusting relationship: leakers lack the legitimacy that can be attributed to an official source, so a journalist must crosscheck their information thoroughly. The anonymity of unofficial sources directs the attention of the media towards the issue or corruption being addressed rather than the source itself, unlike incidents involving whistleblowers. Using unauthorized information leakers is thus more effective, since the reporter is able to focus solely on the accuracy of the information provided to them.

The disclosure of confidential information and sources has always been a controversial issue in the courtroom. In “Who’s Who” by Latara Appleby, numerous instances in which personal and confidential information were compromised are brought to light. The first example Appleby provides is the case in which Jana Winter, a Fox News reporter, was subpoenaed to testify over her confidential sources in the state of Colorado. During coverage of the Aurora Theater shooting in 2012, Winters cited anonymous law enforcement officers who had claimed that James Holmes had sent a notebook full of violent images to his psychiatrist. Since she is based in New York, where there are laws that protect reporters’ rights to protect confidential sources, Winters is appealing the court’s decision to require testimony in Colorado. The article provides another example of an ongoing appeal, in which Joe Hosey, a journalist for patch.com, was required to provide information concerning a source in a story over a double homicide in Illinois. Hosey is being fined for contempt of court, having refused to comply with the judge’s ruling. Former FBI agent Donald Sachtleben is also listed, who has pled guilty to revealing confidential information about a Yemen-based bombing attempt of an American plane to the associated press. The article also includes the cases of reporters James Rosen and James Risen. Rosen, a Fox News correspondent who had reported on North Korea in 2009, was labeled as a violator of the Espionage Act. The Justice Department gained access to his email account using a loophole in the Privacy Protection Act. Risen, a New York Times reporter, was subpoenaed to testify over a source for a book written about the CIA. While the laws in place to limit and protect source confidentiality in journalism are well intentioned, this periodical reveals some of the many flaws and inconsistencies that exist and are abused. Laws that aid reporters can potentially lead to the disclosure of information that may jeopardize national defense, while at the same time, laws that restrict source confidentiality trespass on freedoms of speech and the press.

In her article “Whistleblowers to Journalists: Protect Your Data,” Amy Zhang discusses the growing need for journalists to preserve the identities of their anonymous sources. She does so by reviewing a National Press Club event over leaks and national security, while providing tips from both experienced journalists and sources. Former NSA Senior Executive Thomas Drake emphasizes the importance of encryption and security safeguarding. Julian Sanchez, an expert on civil liberties, states that whistleblowers should seek reporters with security or technology background, so that he or she would have the capabilities to protect his or her sources. Babak Pasdar, a whistleblower responsible for the discovery of an information leak between Verizon and the US government, emphasizes the importance for a reporter to have an understanding of the electronic communications system to ensure a more efficient interviewing process. An insane amount of pressure can be placed upon journalists to break source confidentiality, so it is equally important for journalists and sources alike to ensure secure and trusting relationships.

Under the First Amendment to the U.S. Constitution, American citizens have the right to speak and be heard by anyone willing to listen. Members of the press must be accountable for what they write, so it is crucial for reporters to thoroughly investigate information obtained by sources. There are many laws that protect the rights for journalism professionals to maintain the confidentiality of anonymous sources. By doing so, journalists improve the integrity of the media and ensure the safety of the sources that are so vital to the press.

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