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### Do Torricelli and KMBC-TV deserve Reporter's Privilege?

This case involves a KMBC-TV reporter, Maria Torricelli, who has information on a source pertaining to past and potential acts of violence. Torricelli used this source in a news story, but promised her source that she would not reveal their identity. Both Torricelli and KMBC-TV are refusing to cooperate with authorities.

The most precedent case for this situation would be *Branzburg v. Hayes*. This case involved Branzburg, a newspaper reporter, who wrote two articles concerning drug use in Kentucky. In these articles he used unidentified marijuana users as well as an unidentified set of hands holding drugs, but his sources asked not to be identified. Law enforcement saw the article and got involved, he was subpoenaed by the grand jury and ordered to name his sources. A case similar to *Branzburg v. Hayes* is *United States v. Caldwell*. In this case, reporter, Earl Caldwell, and a TV reporter, Paul Pappas, interviewed members of The Black Panthers. Law enforcement was interested in possible crime violations by The Black Panthers, which was a revolutionary party with the ideology of black nationalism, socialism, and armed self-defense. The reporters were subpoenaed and called to testify for what they had witnessed or learned about the organization. After all three of these reporters between the two cases were subpoenaed, they refused to testify and cited their privilege under the Press Clause under the First Amendment. All

three reporters were held in contempt and the court ruled against them citing that this gives reporter's a privilege that other citizens do not get to use.

The Press Clause is a part of the First Amendment that protects the publication of opinions and information, and also applies to a wide variety of media. This has been used in other media related cases such as *Near v. Minnesota* and *New York Times v. United States*. There is also Reporter's Privilege, which is a limited First Amendment right that some courts have given to journalists in protecting their confidential sources from discovery. Nine of the circuit courts have held that this privilege exists. Recently, 2010, the fourth circuit court denied the reporter's privilege in the case *United States v. Sterling*, they cited the ruling under *Branzburg v. Hayes*. Reporter's privilege has also been used in the case *Von Bulow v. Von Bulow*, which was a paralegal appealing her contempt ruling, which the appeals court upheld.

*Garland v. Torre* was one of the first cases that established a reporter's privilege in 1959. In this case the TV columnist, Marie Torre, refused to name the source that told her that Judy Garland thought of herself to be "terribly fat". Garland was suing for libel and was successful in sending Torre to jail. Torre lost her appeal, but her appeal did recognize a degree of constitutional protection for those gathering the news. The judge who presided on this case, Potter Stewart, was later raised to the Supreme Court in which he reiterated his reasoning on the dissenting opinion in *Branzburg v. Hayes*. As stated earlier, *Branzburg v. Hayes* is one of the biggest cases in the United States for reporter's privilege, which made this first case important. Marie Torre also later went on to use hers and the *Branzburg v. Hayes* case to keep other reporter's out of jail.

The case of *Zerilli v. Smith* is a case in which the court concluded that reporter's privilege did exist, and required two factors to prove their privilege. The two factors are: (1) that

the information sought was crucial to a litigant's case and (2) that the information could not be acquired from any other source. This case involved a mob leader, Zerilli, who demanded that a reporter for the Detroit News reveal who named him as the mob leader. It was ruled that Zerilli did not look at alternative sources of information.

Another test that was developed to decide whether a journalist should get reporter's privilege is the von Bulow analysis, which was established in the 1972 case *von Bulow v. Auersperg*. Under the von Bulow analysis, anyone could be considered a reporter who had the intention of using the information they gathered to publicly disseminate information. There are limitations within the von Bulow analysis as well though. One being that to be considered a reporter you must have the intention to share with the entire public, not a restricted group of people. This makes private lobbyists, fiction writers, advertisers, or those gathering information for internal reports or personal information not eligible for the reporter's privilege. Many courts have since adopted the von Bulow analysis or something similar.

*Baker v. F&F Investment* was a civil case in Chicago involving real-estate "block busting". The reporter in the case did not want to give up his information and used other names to obtain the information. In this case the reporter was granted reporter's privilege based on the First Amendment. This case established that reporter's privilege is needed in order to have a free press. Having free press for reporters is important because if they do not feel protected they will not feel a need to risk it for the story. *Carey v. Hume* was a civil case in which *Branzburg v. Hayes* was not allowed to be a binding precedent. In this case Carey wanted Hume to name sources in the United Miners Union, disclosure by the journalist was used as a last resort in this case.

Another precedent case is *Chevron Corporation v. Berlinger* which shocked the media industry across the nation. This case was held in the Second Circuit and concluded that a documentary film maker did not qualify for reporter's privilege. Berlinger was asked to make a documentary about a class action lawsuit from the view of his clients. Berlinger spent 3 years making the documentary, and after its conclusion the class action defendants subpoenaed everything. Berlinger tried to use reporter's privilege in order to not give up his work to the defendants, but was not granted the privilege by the courts.

There have also been cases where the reporter's professional status/situation is taken into consideration when reporter's privilege is wanting to be used. *Obsidian Finance v. Cox* was an Oregon case in which it was ruled that an investigative blogger is not a reporter. *TooMuchMedia v. Hale* was another case in which a reporter posted on an online message board which is not considered to be covered under reporter's privilege. Under reporter's privilege only traditional forms of media must be used in order to be considered. There was also the case of *Johns-Byrne Co. v. TechnoBuffalo* which evaluated whether journalistic methods rather than employment status. The website TechnoBuffalo was considered a news site because they reported news and therefore were given reporters privilege.

State laws are different all across the country, but most have a shield law for reporters. Missouri is one of those few states that does not have a shield statute for reporters. Missouri Constitution Article 1, Section 8 is similar to the First Amendment and provides a bases for the beginning of an argument for reporter's privilege. No Missouri case has approached in detail the application of this clause to the Missouri Constitution. Therefore, I do not believe that this case would hold up very well in court. I think that Torricelli and KMBC-TV would be held in contempt if they continued to refuse to name their sources.

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