

Confidentiality

Sources and Information

Expressed Promises

- “Off the Record”
 - Can’t use any of the information
- “Without Attribution”
 - Can use information without a name
- “On Background”
 - Can use information with source “position”
- “Deep Background”
 - The interview “never took place”
- Promissory Estoppel

Why would you give confidentiality?

- Trust
- Prevent harm
- Professional relationships

Problems with confidentiality

- Conflicting loyalties
- Legally protected sources
 - Doctors
 - Lawyers
 - Priests
- When to reveal sources
 - When it is in the public's best interest
 - Avoid going to jail

Branzburg v. Hayes (1972)

- In federal courts, a reporter may not avoid testifying in a criminal grand jury
 - No “reporter’s privilege” based on the First Amendment
 - Only case the U.S. Supreme Court has considered “reporter’s privilege”
- Some limited protection
 - The First, Second, Third, Fifth, Eighth, Ninth, Tenth, Eleventh, and D.C. Circuits have all held that a qualified reporter’s privilege exists
 - The Fourth Circuit has upheld Branzburg
 - 40 states and the District of Columbia have enacted shield laws protecting anonymous sources
- Justice Byron White
 - The government must “convincingly show a substantial relation between the information sought and a subject of overriding and compelling state interest.”
- Justice Lewis F. Powell
 - Information sought was crucial to a litigant’s case
 - Information could not be acquired from any other source

What to consider when giving confidentiality

- Jail
- Motive of source
- Other ways to get the information