

## Doc U: The Doc Reporter – Navigating the Intersection of Journalism and Documentary

### What is a Journalist?

- According to Webster's New World, a journalist is a person who "gather[s] information for, or producing, a newspaper."
- Courts answer the question more inclusively. They ask whether the person claiming the privilege
  - is engaged in investigating reporting;
  - is gathering news;
  - possesses the intent at the inception of the news gathering process to disseminate the news to the public.
  - The last is far and away the most important question.

### The Journalist Privilege

- Varies slightly state by state, so no one answer fits every state. There is no federal statute, BUT it is constitutionally based.
- Protects Unpublished Sources and Work Product from third parties—even if they subpoena
- NEVER ABSOLUTE COMPLETE PROTECTION OF YOUR OUTTAKES

### UNPUBLISHED, Confidential Sources

- Protected, Courts Require:
  - A clear and specific showing that the information in the Footage is
    - Highly material and relevant
    - Necessary or critical to the maintenance of the claim
    - Not obtainable from other available sources

### UNPUBLISHED, Non-confidential Sources

- Protected, Courts Require:
  - Likely relevance to a significant issue
  - Not reasonably obtainable from other available sources

When someone wants to subpoena the outtakes from a documentarian, they have to convince the court that the filmmaker is not a journalist. The most common tactic is to dig up some facts that make the filmmaker look like a publicist. A publicist is "a person whose business is any information or action that brings a person, cause to public notice."

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