

News & Insights

Seattle ruling may make journalists' jobs even tougher

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Media Attorney Jon Epstein – **A Seattle ruling** requiring photojournalists to turn over unpublished material from recent protests is troubling because it may hamper newsgathering by causing journalists to be perceived as an arm of law enforcement, aiding attempts to gather evidence.

Oklahoma (like most other states, including Washington) has a shield law that protects “unpublished information” from disclosure to third parties. The “journalist’s privilege” provided by both federal and state constitutions as well as by statute can usually be overcome only if the party issuing the subpoena can clearly and convincingly show that the information it seeks is critical to its case. That party must also demonstrate that it has explored and exhausted all other sources of evidence, and that it cannot prove the relevant issue with any other evidence. The privilege is a recognition that the compelled production of a reporter’s resource materials can constitute a significant intrusion into the news-gathering and editorial process. The privilege is the result of the long-standing policy to preserve the right of the press to avoid being made part of a controversy merely as a result of its performing its constitutionally protected duties in reporting news.

The Seattle ruling may make journalists’ jobs even tougher (and possibly more dangerous) if the public (especially protesters) view them as an arm of law enforcement.

Attorneys

- Jon A. Epstein