Sample Respondent Commentary from Survey Database

2007 Media Subpoena Survey

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Question: “If you believe that the frequency with which subpoenas are issued to news organizations is either somewhat greater or significantly greater compared to five years ago, to what do you attribute this increase?”

Media organizations are worried about finances and take a hard look at any legal costs.

Retaining a lawyer to fight a subpoena is expensive, and many news outlets are under increasing financial pressures. I think prosecutors know that, and figure they have deeper pockets than privately owned news outlets.

Smaller papers cannot absorb the costs of contempt citations.

Courts have continually chipped away at the concept of limited reporters’ privilege under common law

Courts are issuing subpoenas more quickly that are overly broad, with short return times

Recent court decisions

Judiciary climate change

A weakening of newspapers’ legal rights in courts.

Homeland security laws; Government becoming more aggressive after 9/11.

The government has become a bully after 9/11 and with its secrecy tactics it has the press in a fetal position.

The government and other organizations now feel threatened by the media and use their power against it.

The war on terror.

Does the government remember the freedom of the press? Frustrating.

More lawsuits and frivolous lawsuits

The increasingly litigious society

more and more lawsuits filed every day

Increased litigation brings with it increased subpoenas

Lawsuits on the increase.
The society in which we live is more sue-happy. More lawsuits are being filed, wanting video of products, car accidents, information on stories we have run.

Increase in the number of court cases and an increase in the number of ambulance-chasing attorneys.

Local attorneys seemed to believe that our TV station was the public library, and would subpoena anything and everything.

High-priced attorneys have become lazier and greedier. They expect their clients to pay for research that they now subpoena the media for, as opposed to doing the legwork themselves.

Lazy attorneys hoping to gather information easily

lazy lawyers who want journalists to handle investigations of accidents

Laziness or ignorance by some attorneys seeking quick and easy information

Lawyers who want what amounts to free research by issuing a subpoena rather than going to the library or paying the paper a research fee for commonly available reporting, such as car wrecks or some other type of civil lawsuit

More and better investigating by reporters than by police officers themselves

Prosecutors who want to bolster their cases at the expense of news organizations, particularly as it relates to video and photos

Attorneys are much more aggressive now. They subpoena the media first rather than trying to get information readily available elsewhere.

Attorneys see us as an arm of their organization. Aggressive reporting brings with it a higher profile in the community. Therefore, attorneys recognize the TV station as a place to get video or sourcing for their clients.

Use of the media as an investigative tool, letting news personnel do the legwork for the legal system

District Attorney’s offices rely on the use of video of chases and other crimes to prosecute their cases because it is easy

Law firms don’t do the homework and often request material we don’t hold. There’s a lack of respect for what the media are supposed to do.

Courts allow broad “fishing” subpoenas in civil cases

Subpoenas now seem to seek an expansive amount—a broad range of raw tape. In the end, the attorneys are on big fishing expeditions

If an attorney takes on a civil case (such as a car accident), he may subpoena my station for all material that aired, over any length of time, regarding that accident, just to “fish” for evidence for the client. My
feelings on this matter would be different if they KNEW we had material that may help their clients and confined their subpoena to that matter only.

There is a tendency by more attorneys these days to attempt to collect whatever news material they can, looking for any type of information they feel may help their client. I find most of my subpoenas are fishing expeditions by lawyers working on accident and criminal cases, checking to see what material we have.

More aggressive attorneys

We seem to hear more rumblings from prosecutors, cops that would indicate they are more willing to take us on over matters that previously would have been non-issues.

I believe there is a trend among attorneys to substitute unpublished reporting for their own research. Because courts have shown less respect for newsgathering, attorneys are emboldened to try to extract more information from us through the courts.

Prosecutors are emboldened because of our lack of popularity. The media is not held in as high of regard anymore

The media has behaved irresponsibly.

The media has complied too willingly, and now private and public lawyers carefully monitor the media for leads, sources, and investigative material.

There is an increased willingness of attorneys to attempt to use reporters as investigative tools or witnesses, and a growing willingness by the courts to allow this.

**Question: “If you changed your policy or practice [on the use of confidential sources], [what other] factors led you to do so?”**

We use fewer anonymous sources because such reporting undermines the newspaper’s credibility

Viewers are skeptical of confidential sources, so we shy away from them

It was decided that the use of confidential sources was being abused, and in many cases, the information presented could be acquired from other sources

A company-wide tightening of rules to protect our credibility, in the face of reporter fabrication of stories at many (other) newspapers. Also, it is always a reporter’s obligation to be skillful enough to ultimately get information on the record

An effort to enhance the credibility of our reporting

It is just good journalism
Confidential-source reporting tends to be viewed as “suspect” these days by readers.

Media scandals involving unnamed sources allowed us to revisit our policy.

High profile national cases in which reporters made up sources and greater awareness of the credibility issues that are sometimes raised by using confidential sources.

Desire for more accountability, credibility

Ethical considerations

Reader distrust of information provided by an unidentified source, because of high-profile cases with coverage

The media’s need for more transparency, and the scandal caused by our shortcomings.

The sensitivity of readers, who don’t like it because they cannot judge if the information is true.

We generally do not like anonymous sources. We believe they tend to decrease credibility and increase lazy reporting. If we use them—and it is rare—the top editors must know who the source is, and more than one editor has to agree anonymity is warranted.

We generally do not use them, not so much because of the threat of subpoena but because we aren’t satisfied with confidential sources in providing quality reporting to readers.

While the fear of subpoenas plays into it, it is as much as anything a newsroom decision, with concerns about credibility with readers mattering a lot.

Our policy on confidential sources got a close look after some of the big cases of made-up sources, and there was a big spurt of activity right after those cases, with everybody clamping down on things.

Stations are using fewer confidential sources but not because of any legal reasons; they see that it is the hallmark of lazy journalism, and the industry has gotten away from it because we’ve come to realize that it represents a lack of discipline to let reporters constantly be taking things “off the record.”

We now require a triangulation of sources confirming the confidential material, and the reporter must reveal the source to me. But none of this came about because we were worried about subpoenas. It is because we are worried about made-up sources, and saw people either losing their Pulitzers because they fabricated sources or finding themselves in trouble because they cited anonymous sources who really had an ax to grind.

Readers’ obvious growing belief that “unnamed sources” may be fictitious. The highly publicized dishonesty of other reporters led to this.

Awareness that readers often discount information from confidential sources

skepticism by our readers of the accuracy and/or motives of anonymous sources

It appears there are more people wanting to be sources that are less trustworthy and more risky to deal with.
It is a journalistic reason, not a legal one.

It has much more to do with trust of the media and its sources.

Using these sources puts us in a precarious position, because readers cannot judge for themselves if our story is true. We now use them only if we have no other choice.

The readers simply will not tolerate it anymore.

These decisions are driven by journalistic fairness. We are no longer willing to give people the chance to take shots at each other anonymously, so we use confidential sources only when truly necessary.

**Question:** “Please describe generally how much time and resources were expended on subpoenas with which you complied.”

Generally speaking, it takes one person 2 hours of research and 3 hours of tracking down archived video, along with 2 hours of editing

About 8 hours. We had to search for notes and photos, and consulted with attorney.

The equivalent of one day worth of internal meetings with the newspaper’s top three executives

Our librarian does receives routine attorney inquiries and subpoenas.

In the few cases over the years in which reporters were subpoenaed in an effort to make them reveal confidential sources, the amount of time and money spent to defend them was enormous

I don’t know exact figures, but it was considerable legal expense. The biggest cost is the psychological cost to our reporting staff—the uneasy sense that they may have to testify can’t be measured, but does real harm to our operation.

For one case, I can spend four or five hours waiting for calls, taking calls, missing daily editorial meetings so that I wouldn’t miss important calls from attorneys. It is increasingly frustrating.

Its 8 to 10 hours each subpoena, doing research searches and copying of story and photo archives.

I don’t know how much time. Our lawyer handles the majority of the work.

Each one required about 11 hours worth of research

five hours each, three people

On average, the typical subpoena consumes 10 hours of time

The bulk of the time on this is spent by our attorneys.

At least $10,000 to get the reporter removed from the list as a witness.
There was an explosion that happened close to our station and we got there before anybody else, including the fire crews or police. But then they subpoenaed everything, including the raw video a lot of times, and were basically tying up most of the manpower of our very small staff.

On the average, about three hours of a senior editor’s time, about three hours of staff time, and five to 10 hours of our general counsel’s time

Typically, it consumes a good part of a day of the two top editors’ time.

Most subpoenas are handled in a routine manner. We have an attorney who does our subpoena work.

Gathering the information that is requested could be done by an employee of the attorney at the public library, but it runs into about 2 hours of work on each if all goes well.

It takes over our operation when we have to fight one of these. Our reporters are involved, our editors are involved, and our management is involved. We turn our focus to this and find it eating up so much time that would otherwise be spent on the news.

We need about half an hour to make a dub and prepare it for mailing

Probably a total of 12 hours’ time on our one subpoena. And significant legal costs.

A routine subpoena takes about two days—managing editor’s time and library staff time for research.

It’s very expensive. One thousand dollars for a simple motion to quash.

The average subpoena takes two days to compile. Searching archives, viewing tapes, conversations with legal department, tape dubbing and administrative paperwork are the norm. The process can involve three or more people.

The real cost isn’t dollars. It’s the time and aggravation that a shield law should be stronger so that we can go about the business of gathering the news.

It takes all of 10-15 minutes to satisfy most of these requests for dubs

I would estimate at least 20 hours

There’s a drain of time and energy to bring the legal counsel up to speed on the coverage.

Routine stuff takes about four people, including a lawyer, librarian, editor(s) and clerk, a total of 20 hours to handle.

Our parent company has attorneys that handle our subpoenas. They negotiate with the lawyers who issued the subpoenas and instruct us what to provide.

Each one takes 5 to 25 hours staff time on average

I would guess each takes up a combined 20 to 40 hours of editors’, reporters’ and attorneys’ time.
We generally let our attorney spend all the time. We occasionally spent 10 to 15 minutes in discussion with him.

We’re a smaller paper and our bill, in the end, was close to $50,000. Maybe it seems not that much. That is a huge amount when you consider, by way of comparison, that our full newsroom operating budget for the year is less than a million dollars.

About 20 hours of staff time
about 30 hours of my time; a few hours of attorney time
probably 30-40 hours

We racked up more than $10,000 in legal bills from local counsel handling subpoenas (this is in addition to the “free” time from corporate counsel).

It takes us about 30 minutes to dub video that has been aired and comply with the average subpoena.

About two hours of staff time per request.

Stations like ours typically have small, very busy staffs and don’t have a good mechanism for dealing with dub requests from the public. Subpoenas can be a huge distraction from the daily task of gathering and presenting the news.

Aside from a 5-minute discussion with the attorney, it is not an issue.

We spend about two hours on most subpoenas

50 hours, conferring with attorneys and making dubs of on-air stories

A couple of hours of work. My assistant prepares dubs of broadcast material.

Probably spent two hours

A “simple” subpoena fight can take 40-plus hours of attorney and staff time and cost thousands

Three people for a few hours
took a few hours to straighten out
probably two hours the reporter spent with a lawyer

2-3 hours

Three reporters, lawyer, editor all reviewed the case. With court time, most likely a total of 60 hours.

I spent a few hours complying.

A week’s worth of working time

Routine ones are 2-3 hours.
We have large attorney bills.

I have six “ordinary” subpoenas on my desk right now. We won’t be fighting them, and we might not even be able to comply with them because we recycle our field tapes. But we can’t ignore them. And that is time I won’t be spending on the news.

The average length of time spent was approximately three hours

The one subpoena that we received took two weeks of editor time to handle. These things eat up immeasurable financial resources, too.

This subpoena took up nearly two full weeks of staff time.

One to five hours per subpoena

several hours

Reporter was required to wait at the courthouse during business hours for a couple of days during the case but was never put on the stand.

Corporate legal counsel handles all correspondence.

minimal time spent

four hours average per subpoena for searching, dubbing, etc.

All matters are turned over to attorneys, with little to no discussion within the newsroom.

The subpoenas were given to our lawyers. I estimate a total of five hours of a lawyer’s time to prepare the reporter to testify and accompany him to the hearing

I would estimate a total of two weeks’ worth of working time, all told, to compile everything for one subpoena.

It is just a few hours by our library staff pulling some articles.

 Mostly involves in-house counsel

1-5 hours

In this case, the reporter didn’t know anything or have information of value, but she had to go to the court and testify as such.

On average, we spend anywhere from four to eight hours dealing with each subpoena.

Dozens of hours involving two reporters and one editor. Hours consulting with legal counsel and corporate counsel.

Our reporter did not come to work in the office for two days.
We rely upon counsel at our corporate headquarters; we spend time on conference calls with the lawyers, but we are able to deflect most of these inquiries to the legal team.

It was a half-dozen-plus hours spent conferring with attorney.

It probably takes in the neighborhood of six manhours to comply with the most basic subpoena—from consulting with legal counsel, to locating the file video, to transcribing it into the desired format.

100 hours

Each one took two full days at least to process; a total of one person’s 160 hours plus lawyers’ and editors’ time.

Just the process of replying and the back and forth between attorneys cost us thousands of dollars in legal fees.

**Question:** “Has the threat or use of subpoenas against your organization affected your policy on retention of notes, drafts, or other unpublished/unbroadcast material? Please provide details here.”

**Newspaper respondents:**

We toss our notes after completion of story.

We do not retain notes as we have in the past.

We changed our practice to require reporters to destroy notes within two weeks of publication. We delete all unused photographs.

We save fewer notes and fewer photographs.

We recently lost a motion to quash and are in the process of changing our policy so notes are not retained beyond story publication.

We now keep notes for only 30 days.

We do not keep reporter notes or photos from breaking news situations that were not published.

Must always prepare for the eventual lawsuit.

Reporters told to throw away notes in 2-3 weeks; previously was a few months.

Our policy is for reporters to destroy notes within one week of publication of their story. We also destroy all unpublished photos from news events that might trigger subpoenas, such as from crime scenes and accident scenes.

We have encouraged reporters to destroy notes periodically.
We don’t archive unpublished news photos.

We required destruction of all notes within 30 days of publication or decision not to publish.

Reporters throw out notes as soon as they are no longer useful to the story.

We are less likely to retain notes and other material. Some reporters have been known to make electronic copies of notes and drafts and take them home on memory sticks so our news organization won’t have custody of the material. Also, we suggest that any sensitive material that is sent electronically be copied to our legal team, both to keep the lawyers posted on our activities and to protect material from disclosure under the attorney-client privilege.

We are more rigorous about reminding reporters to act consistently in the destruction of notes, and to do so more frequently.

I don’t keep notes beyond stories/corrections because the threat is there.

Our policy is to destroy notes, electronic and written, after 90 days maximum.

We encourage reporters not to take notes on computers, so they are not preserved, and have them dispose of them after a period of time.

We encourage reporters not to keep notes past publication—destroy once the story is about two weeks old.

Keeping notes from all stories merely invites lawyers to go on fishing expeditions through our records. Might as well get rid of them.

We do not keep notes for more than a few days after publication. Then if someone asks for them, the answer is that they do not exist.

We keep no notes. Reporters are told to destroy them immediately after they use them, so that if we are subpoenaed, we can look them in the eye and say we don’t have it. We still worry about subpoenas of what is on our computer hard drives.

We continue to educate young reporters to dispose of notes after publication of a story.

We encourage reporters to not keep notes. Published story should stand as record of notes.

Reporters have been instructed to destroy old notes after a story has run and not to have superfluous material in notebooks.

Notes are the property of the newspaper. They are turned in monthly. We keep for one year unless other notice

We suggest reporters destroy notes after six months

Email is now covered under the two-week notebook destruction policy
**Broadcaster respondents:**

Our organization does not maintain raw, unedited materials or notes

We recycle our raw video 72 hours after a story airs.

We no longer keep notes or unbroadcast material longer than one week.

We do not archive unbroadcast material.

We have disposed of notes quickly, as well as extra tapes.

We do not keep raw videotape longer than a week.

We no longer keep raw video or notes beyond one day

Video cards are rotated on a weekly basis, keeping raw material for only one week

We aggressively recycle our “field” tapes within 24 hours.

We do not keep raw video or reporter notes

We caution reporters/editors not to discard notes, etc.

We don’t keep outtakes beyond 24 hours.

We tape over raw video almost immediately.

We don’t keep a tape for very long, and a strong factor in that is to be rid of the tape in the event of a subpoena.

All newscasts are now recorded on DVD and kept indefinitely.

I now require reporters to destroy their notes and all raw footage is immediately recorded over.

We are much more attentive to recycling raw tape and not saving notes.

We have shortened the length of time we retain raw video.

We keep general assignment video for only one week.

We do not keep raw field tapes for over one week.

Increased urging reporters to save their notes, based on cases in the past.

We only save tape for about 10 days and then erase it, before it could be requested. This started as a money-saving effort long ago when we reused the tape, but when our attorneys heard about it, they said to keep doing it for legal reasons.

We’ve always kept everything forever. We have drawers full of old notes.

We promptly recycle unused footage.
We reuse tape because it is economical to do it, but a byproduct is that old footage isn’t available for long.

We do not keep notes. Field tapes are recycled after one week.

We do not save raw video for more than 48 hours.

**Question: “Please add any comments, anecdotes, or other relevant information you may wish to add to this survey.”**

We are pretty sure that the subpoena we got was purely to get the reporter off the story.

All were withdrawn after I talked to the issuing party and told him or her that [this state] has a shield law—which most don’t know.

You can’t overestimate what the cost to our business is of these things. Most of the papers of our size, I think, seek to have every subpoena quashed and really fight for this, but I’ll hear editors from smaller and weekly papers in our area say, “I just handed it over. What else could I do? I don’t have ten or fifteen thousand dollars to fight these.” But when we do that, we really lose our independence and become the agents of government.

We fight them all by referring them to our First Amendment counsel.

We have only one reporter here, and he got subpoenaed in one of the biggest stories to hit town in a long while. So there was no one left to cover the story once he couldn’t do it.

A judge issued a subpoena for back issues and gave us two hours to produce several-year-old issues. And, of course, it was the busiest day of the week.

We exposed a local businessman who had been doing shady deals and he dragged out the subpoena process and deliberately ran up our costs.

I tell our reporters that we can print whatever we want and no one can subpoena us. The Supreme Court has made this very clear. We are free to do what we want, and they can’t stop us.

We got a subpoena asking for “all material” related to these cases, which were a series of very high-profile crimes. I worked on that one every day for several months, gathering what we needed.

If my state has a shield law, it is so rarely invoked that I don’t ever remember reading about it.

News organizations now are worried about being nibbled to death in depositions and spending all of their time dealing with subpoenas rather than with the work of newsgathering. So they have now just decided to go for the low-hanging fruit, rather than continue with good, investigative journalism. I hear people in the business say all the time now that they just can’t do it anymore, because they can’t afford to have that kind of time spent on subpoenas. What’s at stake is the integrity and independence of the press.

A lot of [this state’s] attorneys are not versed in the law and send subpoenas that are forbidden by state statute. You still have to defend against these, even though they get thrown out by a judge.
More nuisances than actual problems; we send on to our corporate attorney.

When we get subpoenas, it indicates a general disrespect in the bar for the key element of independence that is so essential for the functioning of our free press.

[Our state] has a shield law, but the judge in this case wouldn’t recognize it unless the reporter actually came to court and invoked it himself. So our reporter had to travel three hours to the courthouse, get on the stand and seek the privilege, and then travel three hours back. We did this twice for two separate co-defendants in a criminal matter about which we had written just a little crime blurb of a story. We were without our police-and-courts reporter for all that time.

Our policy is that we do not guarantee confidentiality. We say that we will try to provide it, unless ordered by a court to “fess up.” There might be a circumstance in which we would refuse to comply with a court order, but we are a small company and could not afford a protracted legal action.

A lot of us resent being made agents of discovery for lazy lawyers.

Where we once might have had the luxury of doing some real digging for important stories, the trade-off today is too great. I don’t have the staff to do that kind of work, and especially can’t risk tying up somebody’s time in a prolonged subpoena battle.

We have a solid shield law so there’s no reason we should be getting subpoenas, but the prosecutor here still sends them to us, because he’s not a fan of us and is hoping to make the newspaper bleed a few dollars.

Particularly aggravating to me are plaintiff lawyers who go on “fishing expeditions” by asking for all manner of reporting notes, etc.

I worry about our independence if we are becoming arms of government investigation teams.

In the past, if there was a subpoena, we’d just call the city attorney and say we didn’t think it was a good idea and tell them we had a privilege, and they’d be persuaded, or they’d say, “Oh well, I thought I’d give it a try,” and then back down. It doesn’t play out that way anymore. I think lawyers see reporters being successfully subpoenaed in cases across the country and it just encourages more.

The Taricani case happened here in Rhode Island. He went to jail, and sources see that. More and more, people are not willing to put themselves in that boat. Sources say, “Even if you promise me, I will be found out. Even if you promise us confidentiality, you’ll be forced to tell. Maybe I shouldn’t talk.”

If I get a subpoena and we don’t have it in our archives here, I just go down to the library myself to get it. [This is necessary because it is too expensive to challenge the subpoenas and the news organization is struggling financially.] I should not have to do the footwork of the attorneys like that.

[Local attorneys] are now so bold that they send us subpoenas that are not even about one specific thing. They will say things like ‘Provide all materials relevant to a particular client’ [or other sweeping phrases.] We’ve had them subpoena us and demand that every single bit of information we had on a certain story or a certain person be preserved for anticipated future legal action. But then we follow that order and the case never even happens, so it is a complete waste of manpower and materials.