## Murder CP

#### Counterplan Text: Reporters ought to have the right to protect the identities of confidential sources, except when the source reveals they have committed a homicide that another person is being tried for in a court of law.

#### It competes, protecting the identity of criminals falls under the jurisdiction of shield laws.

Paul W. Boyden, Utah attorney with 40+ years of experience and Executive Director of the Statewide Association of Prosecutors, Comment on Rule 509, 2007, <https://www.utcourts.gov/utc/rules-comment/2007/12/06/rules-of-evidence-6/> ///AHS PB

It is not at all far fetched to predict a scenario where, during the trial of an individual for a serious crime such as a homicide, a confidential source tells a reporter that he, rather than the defendant, committed the crime. After the account is published, the defendant would be unable to use the hearsay account in his defense, and without this balancing test would be unable to pierce the privilege to find the source and prove his own innocence. Likewise the prosecutor would have no way to investigate whether the source is accurate and whether he or she is prosecuting an innocent person, or whether the source is a confederate of the defendant who is simply attempting to undermine the trial. We assume from the specific language of Subsection (b) that the potential of a wrongful homicide conviction would be enough of a “substantial injury” to at least have the court balance the interests in the case. Even in the described scenario there may be remedies which would not breach the privilege. Many violent criminals have a propensity to enjoy bragging about their criminal exploits. An absolute privilege would have opened a new avenue for a criminal to describe in gruesome detail a child abduction and murder which may be printed by an irresponsible “news organization”. We assume that the mental anguish of the victim’s family and the potential public outrage from such a story would constitute sufficient “substantial injury” for the court to at least balance the interests in the specific case.

## Imminent Danger CP

#### Counterplan Text: Reporters ought to have the right to protect the identity of confidential sources except for in cases where disclosure is key to prevent immediate harm. For Example, the source testifies that they are going to commit a murder soon.

Edward L. Carter, J.D. Assistant professor of communications Brigham Young University, former journalists, and lawyer in cases defending reporters privilege, Comments on Rule 509, 2007, <https://www.utcourts.gov/utc/rules-comment/2007/12/06/rules-of-evidence-6/> ///AHS PB

The recent amendment to Rule 509, in section (b), clarifies that disclosure of confidential source information may be required if “the person seeking the information demonstrates by clear and convincing evidence that disclosure is necessary to prevent substantial injury or death.” While this situation may arise only very infrequently, I think that is a common-sense and eminently acceptable exception to the privilege. I cannot, of course, speak for all journalists, but as a journalist myself, and as a lawyer who has represented journalists claiming a reporter’s privilege, I would absolutely have no problem with such an exception being written into the rule. Most if not virtually all journalists I have ever known do not want to cause, or abet in any way, substantial injury or death. Thus it makes sense, from a utilitarian perspective, that the privilege could be overcome if such a risk is clearly and convincingly imminent.

## Grand Jury Secrecy CP

#### Counterplan Text: In the United States, reporters ought to have the right to protect the identities of confidential sources except for when the source reveals information about an ongoing Grand Jury investigation. For clarity a grand jury is a completely secret meeting where a group of citizens determines if criminal charges should be filed.

#### It competes with the aff substantively and textually, Meyer is the solvency advocate.

Meyer, Peter (2008) "BALCO, the Steroids Scandal, and What the Already Fragile Secrecy of Federal Grand Juries Means to the Debate over a Potential Federal Media Shield Law,"Indiana Law Journal: Vol. 83: Iss. 4, Article 18. Available at: <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1288&context=ilj> AHS PB

The public benefit derived from the leaks of grand jury testimony simply cannot justify granting a reporter's privilege to journalists who protect "leakers" who break the law in order to provide information. Ironically, the reason for including an exception to any reporter's privilege for confidential sources who leak grand jury testimony is rather analogous to the reason why reporters deserve some exemption from the disclosure of confidential sources in the first place. To understand this argument, though, one must first acknowledge the striking similarities between prosecutors conducting an investigation via grand juries and reporters performing investigations via confidential sources. In performing his or her task, each seeks to serve a purpose necessary to society. Prosecutors seek to fairly and effectively administer justice. Reporters seek to provide the public with the information it needs to self-govern. While scholars may argue as to which of these causes merits greater protection, the fact remains that neither can be said to be definitively more worthwhile than the other; each, in its contribution to the U.S. system of government, remains a societal necessity. Furthermore, in carrying out their tasks, both prosecutors and reporters rely on sources that will only provide information in exchange for a guarantee that their identities will remain secret. As this Note has attempted to demonstrate, grand jury witnesses often only come forward and testify openly because they have been guaranteed at least temporary privacy through Rule 6 of the Federal Rules of Criminal Procedure. 153 Likewise, confidential news sources often only come forward when a reporter promises not to disclose their identities. Finally, each side argues that the passage, or conversely, the absence, of a federal media shield law will prevent such sources from coming forward, thus chilling their investigatory efforts. Prosecutors argue that if confidential sources of grand jury leaks cannot be held criminally liable due to a reporter's privilege that protects their identity, then witnesses will temper their forthrightness as they testify for fear of the undeterred leaking of their testimony. Conversely, reporters argue that if they can be compelled to reveal the identity of confidential sources, such sources will never be willing to come forward. I agree with Justice Stewart's dissenting opinion in Branzburg v. Hayes: prosecutors should not be able to "annex the journalistic profession as an investigative arm of government" when doing so threatens the ability of the press to perform its duties by dissuading confidential sources from exposing information of public 5 interest. 1'4 Essentially, Justice Stewart was telling prosecutors that their task of fairly and effectively administering justice is crucial to this society and merits protection from impediment; however, when removing such impediment threatens the livelihood of an equally important institution-the free press-it should not be done. This sort of reasoning informs the argument that a federal media shield law protecting against the disclosure of confidential sources should contain an exception for sources who have unethically and illegally leaked grand jury testimony. While the free press is essential to a self-governing democracy, it should not be able to annex the Department of Justice as its investigative arm when doing so threatens the fair administration of justice, which, as the Supreme Court and others have noted, depends upon maintaining the secrecy of federal grand juries. When a specific practice carried out in the name of a legitimate societal necessity severely invades and impinges upon the carrying out of another legitimate societal necessity, the former practice loses its legitimacy.

#### And absent this provision the AC destroys the secrecy of such meetings.Meyer 2

Protective measures must be taken to prevent the leaking of grand jury testimony to the general public. As the threatened imprisonment of Fainaru-Wada and Williams indicates, such measures are currently in place; had Troy Ellerman not pled guilty to leaking the grand jury testimony, the media would have received a clear message that it cannot provide guarantees of confidentiality to sources who illegally frustrate the grand jury process and its guarantees of secrecy. However, if a federal media shield law akin to the Free Flow of Information Act presently being considered in the House and Senate becomes active law, reporters could freely grant such unethical sources confidentiality, thus removing disincentives to breaches in grand jury secrecy, a consequence that, as this Note asserts, will have unjustifiable detrimental effects upon the federal government's ability to administer justice.

#### Multiple Net benefits to the CP, preserving grand jury secrecy is uniquely important.

Randall D. Eliason, Law professor, writer and commentator on corporate and white collar criminal law. He is a former Assistant United States Attorney for the District of Columbia, where he served as Chief of the Public Corruption/Government Fraud section. His writings on federal criminal law have appeared in scholarly journals and legal periodicals, and he is a contributing columnist for the Washington Post. Media appearances include PBS’s Frontline, NBC Nightly News, NPR’s Morning Edition, CNN, MSNBC, HBO, and CNBC. Professor Eliason currently teaches White Collar Criminal Law at George Washington University Law School in Washington, DC. He also has taught at American University Washington College of Law and the Georgetown University Law Center. He has guest lectured on White Collar Crime at Harvard Law School and NYU Law School, taught at the Attorney General’s Advocacy Institute, and is a faculty member of the National Institute of Trial Advocacy. In Defense of the Grand Jury (Part 2): Grand Jury Secrecy, May 25, 2016, <https://sidebarsblog.com/grand-jury-secrecy-in-defense-of-the-grand-jury-part-2/>. AHS PB

Grand jury secrecy has a number of important benefits. First, it protects the privacy and reputations of those who may be investigated but ultimately not charged. Many grand jury investigations, particularly in the area of white collar crime, end with no charges being filed. The grand jury is an investigative body, and part of its role is to determine whether probable cause exists to justify criminal charges. Sometimes the answer to that question is no, and the investigation is closed down. Absent grand jury secrecy, those under investigation in such cases could be subject to months of media reports and speculation about their criminal culpability. Grand jury secrecy prevents their names from being unfairly dragged through the mud concerning a matter where ultimately no criminal charges might be filed. Of course, in some high profile cases such as those involving politicians or celebrities – or police shootings — the investigation is known about and widely reported. But grand jury secrecy prevents public disclosure of grand jury investigations from being the norm. Grand jury secrecy may also protect the integrity of the investigation itself. In some cases there may be concerns that the targets of the investigation will respond to any inquiry by destroying evidence, tampering with witnesses, fleeing the jurisdiction, or otherwise obstructing justice. If the targets of the investigation are not aware it is going on, such dangers are minimized. Similarly, there may be concerns that potential defendants will collude to “get their story straight” and present a consistent false version of events to the grand jury. If proceedings were public and witness transcripts were readily available, such efforts would be much easier. Secrecy also protects the privacy and safety of grand jury witnesses. Absent the guarantee of secrecy, some witnesses would be reluctant to come forward or to be fully forthcoming. Witnesses may fear personal or professional retaliation or even violence based on their testimony. A corporate employee may be extremely reluctant to testify against the company if he knows his boss can review the transcript. Officers in a police corruption investigation may be far less likely to provide information against their fellow officers if they know those officers have access to the testimony. Even when it is known that a certain witness has testified, grand jury secrecy helps to protect that witness. I recall many occasions, dealing with reluctant or frightened witnesses, when I was able to tell them: “Look, I know you don’t want to be here and are nervous/afraid about testifying. But all you need to do is tell the truth. Your boss/fellow officers/ colleagues will not know what you said. In fact, you can walk out of here and tell them whatever you want – tell them you didn’t say anything, or that you told some completely different story. They won’t know the difference.” The comfort and insulation that grand jury secrecy provides to frightened or reluctant witnesses is probably the greatest benefit of grand jury secrecy. If witnesses routinely had to testify instead at a public preliminary hearing after a prosecutor filed charges, getting information from reluctant or frightened witnesses would be much more difficult.

# Truth Testing CP

#### Counterplan: In the United States, reporters ought to have rights to protect the identity of confidential sources.

#### It competes textually and disproves the truth of the resolution.

Jake Nebel, phd of philosophy and director of VBI, Victory Briefs 2018 SeptOcto TA, 2018, ///AHS PB

First, the deﬁnite article “the” presupposes uniqueness—i.e.,that there is only one right to protect the identity of conﬁdential sources (or ,if there is more than one such right, that there is some most contextually salient right in the vicinity). This bears on aﬃrmatives that might specify particular conﬁdential sources (e.g., informants on some particular topic) or contexts in which their identity might be protected (e.g., in civil proceedings only). Even if (controversially) such a speciﬁc form of reporters’ privilege qualiﬁed as a right to protect the identity of conﬁdential sources, presumably so would other analogously speciﬁed forms of reporters’ privilege. But this means that, if such an aﬃrmative counts as grant[s]ing reporters a right to protect the identity of conﬁdential sources, then there would be multiple rights in the vicinity—e.g., a right against being compelled to disclose the identity of some sources or in some settings, and a right against being compelled to disclose the identity of other sources or in other settings—only one of which is defended by the aﬃrmative. And that is inconsistent with the uniqueness presupposed by the resolution’s use of “the right.” In order to be topical, these aﬃrmatives seem to require a background interpretation that is inconsistent with the truth of the resolution.

#### Thus the resolution asks textually if reporter’s ought to be given one unique right, however any particular case of utilizing the aff’s protection is its own specific right, IE it becomes a right to protect in X case or Y circumstance, if this wasn’t the case the AC would be completely meaningless because no right would actually exist to be utilized. By adding the plural rights the counterplan solves this by including every specific scenario.

# Judicial Process CP

#### Counterplan: The supreme court ought to rule the first amendment includes a reporter’s privilege to protect the identity of their sources, before the federal government passes the aff. It competes substantively with the AC advocacy

#### The net benefits are timeframe and enforcement. We make sure that rudimentary protections go in place now and that passing the AC doesn’t fail do too issues of constitutionality.

Amanda A. Konarski, Summa cum Laude from NYU and environmental lawyer, The Reporter's Privilege Is Essential to Checks and Balances Being Accessible to the American Electorate, 11 Seton Hall Cir. Rev. 258 (2014) ///AHS PB

Some scholars have proposed that Congress codify a federal shield law, which would define the protections reporters and sources would be afforded in situations that implicate national security and other national concerns. 129 In fact, Congress is considering a bill called The Free Flow of Information Act of 2013, which would protect reporters from being forced to reveal their sources.130 However, this bill has a long and arduous journey ahead of it before it successfully passes through the labyrinths of the legislative process, including congressional approval and presidential approval, before becoming law.' 3' Supreme Court intervention is needed now, before Risen's Constitutional rights as a reporter and American citizen are compromised. The Judiciary is in the best position to [can] provide immediate protection to reporters by interpreting the Freedom of Press and Freedom of Speech Clauses of the First Amendment to include a reporter's privilege. The role of the Supreme Court and the judicial branch is to interpret the Constitution, as "[i]t is emphatically the province and duty of the judicial department to say what the law is.

# Non Traditional Reporters CP

#### Counterplan: The United States federal government ought to give reporter’s the right to protect the identity of confidential sources while defining reporter as someone who engages in journalistic activity.

#### It competes the 1ac defines reporter as someone engages in journalism as a profession.

#### The net benefit is solvency, only extending the right to professionals prevents protecting a large portion of journalists and means the affs don’t solve for there impacts.

Stverak 14, Jason, [Jason Stverak is president of the Franklin Center for Government and Public Integrity]. 4-9-2014, ”The Senate’s Feel-Good Shield Law,” US News & World Report, hps://www.usnews.com/opinion/articles/2014/04/09/the-senatesmedia-shield-law-is-toothless-and-arbitrary

Sen. Chuck Schumer, D-N.Y., recently announced that the Senate has the votes to pass a bill that would codify legal protections for journalists. But in defining “journalism” as a profession, Schumer’s well-intentioned [a] bill would exclude an entire class of reporters who play a vital role in delivering news to their communities. Instead of trying to cast a tight definition of who is and isn’t a “journalist,” Congress should be protecting journalism as a whole. Last year’s flurry of federal scandals – including the National Security Agency’s domestic surveillance and the Justice Department’s investigations of reporters – cast a renewed focus on the constitutional privileges afforded to journalists and gaps in the law that allow the government to prosecute reporters who choose to protect their sources. A new media shield law could help further protect the press from government harassment, so long as Congress understands that “journalism” is an act, not a profession. As proposed, Schumer's bill would be a federal version of “shield laws” that already exist in 48 states. Significantly, those laws protect reporters from being compelled to identify their sources. In effect, the legislation would bolster First Amendment protections by preventing courts from punishing journalists who refuse to give up their sources. Although this is a worthy cause, the bill would limit these protections to those who fit the very narrow parameters of what Congress considers “the press.” These parameters focus on a reporter’s salary, employer and frequency of publication, and exclude those who don’t fit the traditional mold of a journalist. [See a collection of political cartoons on Congress.] Alarmingly, Schumer said the bill would “probably not [offer] enough protections” to cover Glenn Greenwald, the journalist for British daily the Guardian who first reported on the federal court order that required Verizon to turn over phone records to the NSA, and who also published sensitive documents leaked by Edward Snowden. (Greenwald now works for First Look Media.) This very scandal was a major motivating factor behind calls for a federal shield law, but the Senate has crafted a bill so ineffectual that it wouldn’t even protect the reporter at the center of the controversy. Moreover, the Senate’s attempts to define journalism by place of employment miss the point entirely. Journalism isn’t a job but a service, and as the practices and tools of journalism shift with time, a journalist has to be defined by what they do, not where they work. A journalist observes, researches, gathers facts and presents these facts to his fellow citizens. Because these tasks can be performed by anyone at any level of society, almost any law that seeks to protect “journalists” will either be too inclusive and thus toothless, or will overlook non-credentialed citizens who nevertheless perform an essential service. Thus, Congress would do much better to protect journalistic activities, which are much more easily and equitably defined than the journalistic profession. These activities include, but are not limited to, interviewing sources, conducting research and photography and videography with the intent of publishing a story in print or online or reporting on radio or television. [See a collection of editorial cartoons on the NSA.] By this logic, anyone performing these acts, whether a Pulitzer Prize-winning reporter or a blogger with an iPhone, should be protected under the First Amendment. Shield laws should [to] protect reporters’ rights to keep their sources confidential and allow them to serve the public without fear of government retribution, but they are only effective when everyone practicing journalism is covered. Instead, the Senate is giving us a toothless, feel-good bill that purports to address an important problem but will only create artificial divisions in the journalistic community. By protecting employees of for-profit media enterprises but not the vast array of independent, part-time and unpaid reporters, the bill would create a broader distinction in the public eye between “real” and “amateur” journalists, and set Washington on a slippery slope toward making further decisions on how the First Amendment is applied. The term “public servant” has become the vogue euphemism that career politicians and government employees use for themselves, but it more aptly applies to people working for the common good and the betterment of their community. Journalists fit under this umbrella because they are [preventing] a check on those in power, and our government should be applauding anyone who puts in the legwork to uncover the truth instead of drawing arbitrary lines to hinder them.

# Hate Speech CP

#### Counterplan: The United States ought to recognize a right for journalists to protect the identity of confidential sources in all cases except those in which the source is contributing to hate crimes.

#### Publicizing the identity of racists establishes a chilling effect against those who hate from behind the curtains and creates long term solvency.

Dvorak 18 Dvorak, Petula (Petula Dvorak is a columnist for The Washington Post's local team who writes about homeless shelters, gun control, high heels, high school choirs, the politics of parenting, jails, abortion clinics, mayors, modern families, strip clubs and gas prices, among other things. Before coming to The Post, she covered social issues, crime and courts in New Orleans, New Jersey and Los Angeles. She is a graduate of the University of Southern California and the mother of two boys), “How do you prefer your racists: Open or anonymous?”, the Washington Post, 09 August 2018 IS recut PB

Here’s your chance, closet racists, keystroke neo-Nazis and dog-whistling white supremacists. The stage is yours in the nation’s capital this weekend, and it is time to stand up for your beliefs and show your faces in public. Come, step away from your computers. Take your hoods and masks off, smile for the cameras. Of course, much of the city — and the nation, and me — would prefer the “white civil rights” rally, as the Unite the Right Rally 2 was described to the National Park Service in the permit application, just go away. When these bigots gathered with their torches and their tortured beliefs in Charlottesville last year, there was violence that led the death of Heather Heyer, a 32-year-old counterprotester. Nobody wants that again. And nobody wants to see the bloodstained ghosts of the past resurrected on our soil. Nazis? Confederates? Fascists? That was dealt with ages ago, extinguished at the cost of hundreds of thousands of American lives in armed conflicts. There is no denying the racists have been invigorated in the age of Trump. While overall crime has been slowly declining in the United States since the 1990s, hate crimes in the nation’s largest cities jumped by 12 percent in the past year. And they’ve been steadily rising over the past four years, according to official data compiled by the Center for Study of Hate and Extremism. All this fresh hate is appalling, yes. Here is what makes it especially insidious. For the most part, except for the rally in Charlottesville and a few other gatherings, the haters remain in the shadows. From the barrage of anonymous, online, n-word hatred targeting the first African American fire chief in one of Northern Virginia’s wealthiest suburbs to the racist fliers being left overnight on porches across the region, to swastikas showing up on public buildings, the racists may be emboldened, but they are certainly not brave. Why won’t they come out of the shadows? Because they are wrong. When they are outed, when they put their real faces and their real names behind their sickening ideas, they suffer the consequences meted out by civilized society. “There is no place for racial hatred or extremism in the Marine Corps,” wrote Maj. Brian Block in a release published by the Jacksonville Daily News in North Carolina, after the corps kicked out Lance Cpl. Vasillios Pistolis last week for his involvement in the Charlottesville rally. “Bigotry and radical extremism run contrary to our core values,” Block wrote. Pistolis lost his military career. Defense contractor Michael Miselis, who was also identified at the rally, lost his job. Student Allen Armentrout was kicked out of Pensacola Christian College in Florida after he was photographed standing in front of the Robert E. Lee statue in Charlottesville, Confederate flag in hand, three days after the violent rally. Sure, going public can be costly. You can see that in the court action that unfolded in California earlier this week, when Jane Doe — who also goes by the Nazi-affirming online handle “kristall.night” — fought for her anonymity. In the lawsuit filed by victims, counterprotesters and residents of Charlottesville against last year’s Unite the Right rally organizers, attorneys tried to unmask Kristall to learn more about the way the violence was promoted. Using a messaging app that helped hide her identity, Kristall urged demonstrators to bring helmets and shields, to use things like flagpoles as weapons. Apparently bold enough to organize violence and to use a handle referring to the deadly 1938 violence against Jews known as Kristallnacht, Kristall is apparently terrified of using her real name. But she may not have choice after a federal judge in California ordered the app to disclose her identity. If that happens, it will get uncomfortable for Kristall. When bigots stay anonymous, in their online groups and with their like-minded friends, their bubble protects them from a public reckoning. Sure, there is a school of thought that publicity and a public forum only normalizes their hatred and gives bigots the spotlight they crave. “Media coverage would only give them the attention they were hoping for, thereby encouraging them to do more of the same,” wrote Elizabeth Moore, a former member of the Canadian white extremist group, The Heritage Front, in a piece published this week in Maclean’s. “The only way to successfully deal with those who deal in hate, some argue, is to smother them with silence.” But, given her own experiences, she disagrees. “It is a reasonable theory, but it doesn’t work in practice. As a former extremist, I know this firsthand,” she wrote. Going public made her understand how out-of-whack their movement was. “They were eventually [are] stopped not through silence, but by exposing them and confronting them at every turn.”

# Bloggers

#### Im going to cut it down more this is the first draft

#### First, federal case law shows that bloggers are subject to reporter protection laws and can use this right to withhold the identity of trade secret leakers.

Samuel A. Terilli, J.D., is Associate Professor of Journalism in the School of Communication at the University of Miami, Don W. Stacks, Ph.D., is Professor of Public Relations and Associate Dean for Faculty Research and Creative Support in the School of Communication at the University of Miami, And, Paul D. Driscoll, Ph.D., is Vice-Dean, Academic Affairs, and Associate Professor of Electronic Media, Broadcast Journalism and Media Management in the School of Communication at the University of Miami, Getting Even or Getting Skewered: Piercing the Digital Veil of Anonymous Internet Speech as a Corporate Public Relations Tactic (Vengeance is Not Yours, Sayeth the Courts) pub in Public Relations Journal Vol. 4, No. 1, Winter 2010 , <https://www.researchgate.net/profile/Don_Stacks/publication/228791904_Getting_Even_or_Getting_Skewered_Piercing_the_Digital_Veil_of_Anonymous_Internet_Speech_as_a_Corporate_Public_Relations_Tactic_Vengeance_is_Not_Yours/links/55252e280cf2b123c51796a9/Getting-Even-or-Getting-Skewered-Piercing-the-Digital-Veil-of-Anonymous-Internet-Speech-as-a-Corporate-Public-Relations-Tactic-Vengeance-is-Not-Yours.pdf> ///AHS PB

The Apple litigation arose when Jason O’Grady, owner and publisher of ―O’Grady’s Power Page ‖ (a self-described online news magazine focused on information about Apple computers, hardware and software since 1995) and another website, ―Apple Insider‖ (described by someone known as Kasper Jade – a pseudonym – in much the same terms as O’Grady described PowerPage) beginning on November 4, 2004 published several articles about a rumored new, then-secret Apple product.27 The secret product related to Apple’s GarageBand application and digital audio recordings. The articles included drawings, details and technical information. They continued to appear, with more and more information and speculation, for several weeks on both sites. Apple concluded that much of the information had come from one of its own confidential electronic presentation files. The company demanded that the sites remove the references to the product because that information constituted trade secrets owned by Apple and published without its authorization.28 Apple filed its complaint against ―Doe 1, an unknown individual,‖ and ―Does 2-25,‖ who Apple ―described as unidentified persons or entities‖ that had misappropriated and distributed confidential information about an unreleased product. Apple also sought court orders allowing it to serve subpoenas on various websites, including the two discussed above as well as others, for the ―true identities of the persons who leaked the information.29 A few days later, O’Grady, ―Kasper Jade‖ and another person identified as a publisher of the ―MacNewsNetwork ‖ that hosts AppleInsider and other sites moved for protective orders. They successfully asserted that the reporter’s privilege under California law, and the First Amendment, protected their confidential sources; and, under the federal Stored Communications Act30 they argued that the subpoenas issued against a company that had hosted email accounts for PowerPage were illegal because they called for illegal disclosure of communications by demanding the identity of senders of emails with key words related to the leaks.31 Aside from losing the reporter’s privilege argument and cement[ed]ing the likely status of many bloggers as protected journalists under various state shield laws, Apple also managed to generate negative publicity and a negative ruling under the federal law that protects stored email communications as confidential. News media organizations jumped in the case on the side of the blogs and anonymous sources or speakers.32 Other bloggers and news organizations wrote negative articles. Perhaps, Apple thought any publicity was good publicity for a new product, but no credible argument was made to that effect at the time. More significantly, the case made clear that one cannot under federal law obtain access to confidential, stored electronic communications (e.g., e-mails) as a means of identifying the culprits. Apple argued that the federal law protecting stored emails from disclosure was not meant to apply in the context of civil litigation and attempts to identify people who misappropriated trade secrets. The court disagreed and did so in part because it concluded Congress meant to deny both government and private interests access to information that it could not have obtained before the digital age: It bears emphasis that the discovery sought here is theoretically possible only because of the ease with which digital data is replicated, stored, and left behind on various servers involved in its delivery, after which it may be retrieved and examined by anyone with the appropriate ―privileges‖ under a host system's security settings. Traditional communications rarely afforded any comparable possibility of discovery. After a letter was delivered, all tangible evidence of the communication remained in the sole possession and control of the recipient or, if the sender retained a copy, the parties. A telephone conversation was even less likely to be discoverable from a third party: in addition to its intrinsic privacy, it was as ephemeral as a conversation on a street corner; no facsimile of it existed unless a party recorded it—itself an illegal act in some jurisdictions, including California. If an employee wished to disclose his employer's trade secrets in the days before digital communications, he would have to either convey the secret orally, or cause the delivery, by mail or otherwise, of written documents. In the case of oral communications there would be no facsimile to discover; in the case of written communication, the original and any copies would remain in the hands of the recipient, and perhaps the sender, unless destroyed or otherwise disposed of. In order to obtain them, a civil litigant in Apple's position would have had to identify the parties to the communication and seek copies directly from them. Only in unusual circumstances would there be any third party from whom such discovery might be sought. Given these inherent traits of the traditional media of private communication, it would be far from irrational for Congress to conclude that one seeking disclosure of the contents of e-mail, like one seeking old-fashioned written correspondence, should direct his or her effort to the parties to the communication and not to a third party who served only as a medium and neutral repository for the message. Nor is such a regime as restrictive as Apple would make it sound. Copies may still be sought from the intermediary if the discovery can be brought within one of the statutory exceptions— most obviously, a disclosure with the consent of a party to the communication.33 In other words, the court made clear that it would not allow Apple to use digital communications technology to achieve what Apple could not have achieved in the days before e-mail. Furthermore, the court ruled that even mere identification of the names or account information related to the senders of the emails that included the key words would breach the law’s confidentiality requirements.34 Apple thus lost the case at its very core.

#### And the ability for companies to protect trade secrets from anonymous disclosure online is uniquely important, its key to global econ growth and for preventing a wave of litigation which makes doing the aff impossible.

Matthew Bloom, Vancouver Attorney and Graduate from Yale Law School, Subpoenaed Sources and the Internet: A Test for When Bloggers Should Reveal Who Misappropriated a Trade Secret, pub 2006 in Yale Law & Policy Review, Vol. 24, No. 2 (Spring, 2006), pp. 471-483, ///AHS PB

Without clear precedent, a variety of trends suggest that clashes between the First Amendment and trade secret protections will not subside but will become more common. First, as the global economy has become more information-based, trade secrets more often are used to protect information (increasingly with speech implications), as opposed to tangible inventions. Second, while just a few decades ago trade secret law was considered a relatively weak form of protection when balanced against competing interests, today courts like the Bunner court increasingly find that trade secrets provide strong legal protections.63 Perhaps related to the strengthening of trade secret protections, there has developed "a heightened awareness of the benefits of vigorous protection of intellectual property assets which seems to have induced firms to claim a broader range of non-public information as trade secrets."64 As a result of these trends, it appears that trade secret developers are beginning to use trade secrets to protect less important information.65 The traditional treatment of trade secrets, which does not distinguish between more valuable trade secrets and those that are less so, does not pose a barrier to the above described trends because firms' high-priced legal counsel can frame many things that the firm does as having the potential to derive an economic benefit from being kept secret. Thus, firms can simply label much of what they do as a "trade secret” This practice is problematic in situations like the Apple Computer scenario [second] Where trade secrets clash with the right of journalistic privilege, as any journalist who uncovers information that a firm does not want the public to know about faces a costly and burdensome legal threat. Further, in the absence of clear precedent, such lawsuits are relatively likely to proceed to even more costly trials because judges are able to balance competing interests in any way they see fit and the parties involved are less likely to feel comfortable relying on set outcomes. While ultimately judges may rule for either side depending on how they balance the competing First Amendment and trade secret interests at stake, the threat of costly litigation will jeopardize the public's right to fair and accurate reporting through journalists' use of confidential sources. Courts must find a new solution.

#### Thus the Counterplan: In the United States, reporters ought to have the right to protect the identity of confidential sources except in for in cases concerning the digital disclosure of trade secrets by bloggers, where a court using the case by case 3 step process established by the counterplan has ruled that the individual blogger has a legal responsibility to disclose the sources identity. To clarify the counterplan does the aff in all cases except for when a judge rules a blogger in an trade secrets case needs to give up their source. ( IM GOING TO CONSOLIDATE/MAKE IT LESS WORDY WHEN I WRITE THE ACTUAL TAG)

Matthew Bloom, Vancouver Attorney and Graduate from Yale Law School, Subpoenaed Sources and the Internet: A Test for When Bloggers Should Reveal Who Misappropriated a Trade Secret, pub 2006 in Yale Law & Policy Review, Vol. 24, No. 2 (Spring, 2006), pp. 471-483, ///AHS PB

The definition of "trade secret" appears to allow room for courts to distinguish between these cases based on the information that each trade secret seeks to protect. The Uniform Trade Secrets Act defines a trade secret as: information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. As is clear from this definition, all trade secrets share three elements: 1) the information must be unknown to the public; 2) the holder of the information must derive an economic benefit because the information is secret; and 3) the holder must take reasonable efforts to keep the information secret. The third element must remain as is: One should not recover damages or obtain an injunction for publicized information if he or she did not try to protect the trade secret in the first place. But courts can implement a two-part test in relation to the first and second elements, respectively: 1) Is the trade secret unique (i.e., is the same or substantially similar information not already on the market)? 2) In calculating the company's losses because of publication of the trade secret, is the economic damage to the company minor or severe? Based on these questions, courts can devise a continuum to distinguish the "strong" trade secrets from the "weak" ones and determine when a trade secret is important enough to trump a journalist's First Amendment privilege. Despite potential gray areas, such a continuum seems well-suited to ensure that truly valuable information remains protected, but also that the public's interest in fair and accurate reporting is not jeopardized vis-a-vis courts protecting "weak" trade secrets. Applying this test to the quintessential "strong" trade secret, the formula for Coca-Cola, demonstrates this point. Coca Cola's formula is unique and the economic damage to the company would be severe if the secret were published. Based on this test, if Coca-Cola's formula were ever illegally revealed to a journalist, its trade secret protections would trump any shield protections that might otherwise allow the publishing journalist to conceal the source. Critics may seek to attack this approach from an economic efficiency standpoint by claiming that the test, in reducing the protections afforded by less valuable trade secrets, will diminish creativity.68 They may also claim that this test would hinder firms' prospects of receiving returns on secret information by mitigating the harmful effects of free riding, and that the test would permit inefficient disclosure of less valuable secrets. The proposed test, however, is efficient. It would have the strategic effect of forcing firms to look introspectively at their information at an early juncture, to question whether their information is unique, and to question whether publication of the trade secret would result in severe economic loss to the firm. If the information [it] is unique and the economic loss would be severe, then the firm would, for the first time, be able to rely on the fact that its information is protected against First Amendment claims. Employees would refrain from disclosing the trade secret to journalists because they would know that the journalists cannot conceal the[ir] identities of the employee-sources. This scenario eliminates inefficiencies associated with trade secret misappropriation, and it reduces those transaction costs associated with litigation related to disclosure of valuable trade secrets.