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## JOURNALISM

**Student present at slaying invokes shield law**

May 19, 2009 | By Jaxon Van Derbeken, Chronicle Staff Writer

A potentially key witness to a killing last month in San Francisco - a college journalism student - is invoking a state law aimed at protecting working journalists' sources and unpublished material in refusing to cooperate with police.

The 22-year-old student at San Francisco State University was present when Norris Bennett was shot on the street in Bayview-Hunters Point and took photos that police believe could help them find the killer.

But the student maintains that he was on the scene as part of a school project chronicling life in the community, and that his witness account and the photos he took are covered by California's shield law for journalists.

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The case may be headed for a legal showdown that would help define, in an age of blurring boundaries in the media, who is a journalist and how far protections for the profession extend.

## Senior project

The San Francisco State student, who is not being named by The Chronicle out of concern for his safety, had been following the 21-year-old Bennett for several months as part of his senior project in photojournalism. He was with him the afternoon of April 17 when Bennett, a business student at City College of San Francisco, was shooting dice near Griffith Street and Navy Road in the neighborhood where he grew up.

Police will not reveal what they believe happened just before the slaying. They say, however, that the San Francisco State student soon phoned Bennett's family members and, crying, told them to come to the scene.

The first officers to arrive said the student had been taking photos while paramedics treated Bennett. Police investigators tried to interview him later, but he declined.

On May 3, police obtained a warrant to search the student's San Francisco home for the photographs, other possible evidence and even obtain his DNA. They seized some items, but it is not clear whether they found the photos.

The student has not returned to the apartment and has not been in direct contact with police, investigators say. He is being represented for free by an attorney who works with San Francisco State's journalism department, who says he will try to quash the search warrant on the grounds that the student is covered by the state shield law.

"The shield law is designed to allow reporters to cover events without becoming witnesses," said the attorney, Jim Wagstaffe, an expert on First Amendment law. Without that protection, he said, journalists could be forced to become "shills for police."

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"In this case," Wagstaffe said, "it would appear the police have other information, and we would hope they would turn to that other information."

## Safety fears

Wagstaffe said the shield law protects journalism students and bloggers as much as reporters working for a newspaper or TV stations. The San Francisco State student mentioned his project in a January posting on his blog.

Also, the student is "genuinely nervous" about his safety, Wagstaffe said. "When reporters are doing their job, covering sensitive matters, they sometimes can come in harm's way."

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Ken Kobre, head of the photojournalism department at San Francisco State, said the university is "following the law as carefully as we can."

"This is a tough decision for this young man," Kobre said. "It's horrible that he had to witness the death of someone he knew right in front of him. Now he's worried and frightened. ... His fear is that they are going to kill him."

Deputy Police Chief David Shinn would not comment on whether the student deserves shield-law protection, other than to say, "We are looking for evidence to bring forward a homicide case in San Francisco. We will use every legally available means to do exactly that."

He added, "We want to bring a killer to justice. Our position is to encourage anyone who is an eyewitness to come forward."

'I pray they do catch him'

In his January blog entry, the student wrote that he was becoming more at peace with the Bayview neighborhood. He said his project was an attempt to put a "a face to the community" that was imperiled by "predatory redevelopment."

The post included a photo of Bennett, who had a part-time job teaching fitness at a senior center. Relatives say Bennett had fought to avoid gang entanglements that claimed the life of one of his brothers, Gregory, 31, and left another brother, Deonte, jailed.

Bennett's aunt, Cecilia Harris, said she supports the student's decision not to cooperate with police. "His life is in danger," she said.

As for finding the killer, Harris said, "God is going to handle that. Whether police do their job or not, I'm just saying that God is going to see that justice is served.

"I pray they do catch him," she added.

Marzellia Blue, a Bennett family friend, also understands why the student would not want to come forward.

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To see something is one thing, she said, but "to tell it" is something else.

## Blogger's similar case

The student would not be the first non-mainstream media reporter to claim protection from official interrogation. Josh Wolf, a left-wing activist who maintained a blog, spent 226 days in jail after he posted a video of a July 2005 protest in San Francisco, then refused to turn over his outtakes to federal authorities looking for evidence that demonstrators had committed crimes.

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A police officer suffered a fractured skull during the protest, and authorities accused protesters of trying to light a police cruiser on fire. Wolf refused to cooperate with a federal grand jury and was released only when he posted the recording on his blog. It did not show any attack on the officer or arson attempt on the police car.

"It was always about the principle of protecting a reporter's right of confidentiality of sources and not being an agent of law enforcement," said Ben Rosenfeld, one of Wolf's attorneys.

Wolf could not claim protection under the state shield law because he was subpoenaed by federal authorities, and there is no federal law comparable to California's protections for reporters.

However, a federal appeals court that heard Wolf's case suggested that even if the case had unfolded in the state legal system, he would not have been able to claim shield law protection because he wasn't working for a media organization.

## 'Tough case'

Karl Olson, an attorney in San Francisco who often represents media organizations, said student journalists and bloggers are both protected by the shield law.

He added, however, that the question of whether the San Francisco State student must surrender his photographs of the Bennett killing, or otherwise cooperate with police, "is going to be a tough case."

"I would think a judge might be sympathetic to the police," Olson said. "The guy probably has shield-law protection. But it definitely doesn't seem, at first blush, to be sort of the 'All the President's Men,' 'I need to protect Deep Throat or else I won't be able to expose wrongdoing by the White House' situation."

He added, "This may be not the strongest case of invocation of the shield law."

Wagstaffe said he had hoped to sit down with police to explain the shield law. Instead, police searched his client's home.

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"We are prudent people," Wagstaffe said. "Right now, we intend to assert shield, but we are analyzing the situation. ... As there are other facts that develop, we will see how we go."

Shield law

**Who is protected?** California's shield law allows journalists to maintain the confidentiality of sources or of unpublished information obtained during reporting. It covers a "publisher, editor, reporter or other person connected with or employed by a newspaper, magazine or other periodical publication, or by a press association or wire service," and a "radio or television news reporter or other person connected with or employed by a radio or television station."

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**What is protected?** Material protected under the law typically includes all notes, photos and recordings and eyewitness observations in public places.

**Conflicting interests:** The law protects journalists from being found in contempt for defying a subpoena. But the state Supreme Court has found exceptions, including when the information is being sought by a defendant to protect his right to a fair trial.

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