

# Shield Law Overturns Warrant for Student Photographer

By [Brendan Seibel](#) [✉](#) July 22, 2009 | 4:04 pm | Categories: [Law](#), [Photojournalism](#)



SAN FRANCISCO – Legal protections for journalists were upheld last week in a San Francisco Superior Court decision. Counsel for a San Francisco State University photojournalism student successfully won a motion to quash a search warrant executed by police earlier this year.

In recognizing the journalistic entitlements of the student, whose name has been sealed by request of his lawyers, Judge Tomar Mason has strengthened persuasive authority supporting the rights of freelance photographers and journalists.

Legal wrangling erupted following the April 17th homicide of the student's primary subject, Norris Bennett, a resident of San Francisco's Bayview/Hunter's Point neighborhood. The student had met with Bennett earlier in the day and admits to being in the neighborhood at the time of the shooting. When police responded to the scene, the student was found photographing paramedics tending to Bennett but he refused to submit to an interview, citing protection under California's shield law.

Police were issued a search warrant by Judge Mason, which they executed on April 27, seizing photographs, files, cameras and DNA evidence from the student's home. While the student was not at home during the search, his lawyer spoke on the phone with detectives as it was conducted, arguing their client was protected from search and seizure by California law.

In overturning the original warrant, Judge Mason recognized the validity of the student's published freelance work, as well as the project underway when the student's subject Bennett was murdered. Police will have to return all items seized during the execution of the warrant. It is unclear whether the District Attorney's office will attempt to appeal the decision.

Attorneys for the student claimed that the search warrant was issued in violation of state law. "My client asserted his rights under the shield law, but the police circumvented that by raiding his apartment and seizing his photographs," said Michael Ng, one lawyer for the student.

"Even if they disagree with his entitlement to protection under the shield law, they can't simply ignore it and circumvent the process by seizing his work product," said Ng. "That sidestepping of the constitutional protections of the shield law is flatly forbidden by California statute." The issuance of a search warrant has no process for legal arguments whereas a subpoena could be argued against in court.

The city's position in defending the warrant has been to attack the professional credentials of the student. During initial arguments heard on June 12, Laura Zunino of the District Attorney's office dismissed any entitlement to journalistic protections, stating that the student was working on a school project. She objected further, citing a lack of established ties to a news agency.

Repeated calls to Zunino and to the District Attorney's press office were unanswered as of press time.

The student's attorneys argued that in the evolving media climate, freelance journalists are becoming commonplace. As news agencies scale back operations, reporters are submitting enterprise stories more frequently than agencies are assigning stories.

Supporters of the student, including professors and professional journalists, highlighted several instances of publication in sworn statements. According to testimony filed in the motion to quash, photographs taken by the student have appeared, both in print and online, in San Francisco State University's magazine, the *Wall Street Journal* and the *Oakland Tribune*. These articles have not been publicly connected to the photographer to protect his identity. The student had also approached the *Wall Street Journal* about publishing his current project, although the paper had not committed to purchasing the series.

Journalistic protections have been the subject of much legal wrangling. In a famous 2006 California case, video blogger Josh Wolf was held in contempt for a record-setting 226 days. Wolf contended that the state's shield law was intentionally circumvented by a Federal grand jury, which is not beholden to state laws. The 9th Circuit Court of Appeals, in its final opinion, dismissed Wolf's claims of being a journalist because he was not affiliated with a news agency at the time he filmed a protest in which a San Francisco police officer was wounded and a patrol car set on fire. Wolf's imprisonment ended when he and the prosecution agreed through judicial arbitration to simultaneously surrender and publish the contentious footage.

In a case cited in the motion to quash, *People v. Von Villas* (1992), the unpublished notes of freelance photographer Jan Golab were requested by Von Villas' representation in order to cross-examine a witness during trial. Again Golab's status as a journalist was called into question, because he was not under contract during his investigation. The court decided after reviewing materials in chambers that they bore no relevance to the defense and would not be disclosed. The opinion of the judge validated Golab's status as a journalist, noting that freelance reporters required the freedom and time to establish relationships indistinguishable from that enjoyed by reporters on payroll.

Protections for journalists are also contentious overseas. On June 18th of this year Belfast editor of the *Sunday Tribune*, Suzanne Breen, was exonerated from being compelled to hand over her notes regarding the group, The Real IRA. Police, citing anti-terror legislation, subpoenaed Breen in connection with the killing of two British soldiers. Although Breen's counsel argued that journalistic confidence was an issue, the judge based his ruling on the probability that The Real IRA would retaliate against Breen were she to turn over any evidence.

Photo: [What What/Flickr](#)

*Update: The language of the second paragraph has been changed due to concerns over the use of "precedent" voiced by a reader. We apologize for any confusion this may have caused.*

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