

1-1 By: Ellis, Duncan S.B. No. 604
1-2 (In the Senate - Filed February 18, 2005; March 1, 2005,
1-3 read first time and referred to Committee on Jurisprudence;
1-4 April 11, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 4, Nays 0; April 11, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 604 By: Duncan

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to a qualified privilege of a journalist not to testify.
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-12 SECTION 1. Subchapter B, Chapter 22, Civil Practice and
1-13 Remedies Code, is amended by adding Section 22.012 to read as
1-14 follows:
1-15 Sec. 22.012. JOURNALIST'S TESTIMONIAL PRIVILEGE. (a) In
1-16 this section:
1-17 (1) "Journalist" means a person, or an employee,
1-18 independent contractor, or agent of that person, engaged in the
1-19 business of gathering, compiling, writing, editing, photographing,
1-20 recording, or processing information for dissemination by any news
1-21 medium.
1-22 (2) "News medium" means a person who in the ordinary
1-23 course of business publishes, broadcasts, or otherwise
1-24 disseminates news by print, television, radio, or other electronic
1-25 means accessible to the public.
1-26 (3) "Official proceeding" means any type of
1-27 administrative, executive, legislative, or judicial proceeding
1-28 that may be conducted before a public servant.
1-29 (4) "Public servant" means a person elected, selected,
1-30 appointed, employed, or otherwise designated as one of the
1-31 following, even if the person has not yet qualified for office or
1-32 assumed the person's duties:
1-33 (A) an officer, employee, or agent of government;
1-34 (B) a juror or grand juror;
1-35 (C) an arbitrator, referee, or other person who
1-36 is authorized by law or private written agreement to hear or
1-37 determine a cause or controversy;
1-38 (D) an attorney at law or notary public when
1-39 participating in the performance of a governmental function; or
1-40 (E) a person who is performing a governmental
1-41 function under a claim of right although the person is not legally
1-42 qualified to do so.
1-43 (b) Except as provided by Subsection (c) or (e), a
1-44 journalist has a qualified privilege and may not be compelled to
1-45 disclose in an official proceeding any confidential or
1-46 nonconfidential information, document, or item legally obtained or
1-47 prepared while acting as a journalist.
1-48 (c) A journalist may be compelled to disclose any
1-49 information, document, or item obtained while acting as a
1-50 journalist if the person seeking the testimony or production
1-51 establishes by a preponderance of the evidence that the testimony
1-52 or production sought:
1-53 (1) is relevant and material to the proper
1-54 administration of the official proceeding for which the testimony
1-55 or production is sought; and
1-56 (2) is essential to the maintenance of a claim or
1-57 defense of the person seeking the testimony or production.
1-58 (d) An order to compel testimony or production as to which a
1-59 journalist has asserted a privilege under this section may be
1-60 issued only after notice to the journalist and a hearing. The order
1-61 must include clear and specific findings as to the showing made by
1-62 the person seeking the testimony or production.
1-63 (e) Notwithstanding Subsection (b), a journalist does not

2-1 have a privilege against disclosure of any information, document,
2-2 or item obtained as a result of the journalist's eyewitness
2-3 observation of or participation in criminal or tortious conduct,
2-4 including any physical evidence or visual or audio recording of the
2-5 observed conduct.

2-6 SECTION 2. Chapter 38, Code of Criminal Procedure, is
2-7 amended by adding Article 38.11 to read as follows:

2-8 Art. 38.11. JOURNALIST'S TESTIMONIAL PRIVILEGE. Section
2-9 22.012, Civil Practice and Remedies Code, applies to a criminal
2-10 proceeding.

2-11 SECTION 3. This Act applies only to information, documents,
2-12 or items obtained or prepared while acting as a journalist on or
2-13 after the effective date of this Act.

2-14 SECTION 4. This Act takes effect September 1, 2005.

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