

To: New Jersey Law Revision Commission
From: Susan G. Thatch & Chelsea A. Purdue
Re: Newspersons' Shield Law
Date: September 8, 2014

MEMORANDUM

This Memorandum is intended to provide the Commission with additional requested information in connection with a potential project regarding New Jersey's Newsperson's Shield Law.

Executive Summary

New Jersey's current Shield Law permits courts to assess factual circumstances in determining whether the benefits of the Shield Law should be extended to those operating as "citizen journalists." Given the present flexibility as well as pending Federal legislation in this area, the Commission may wish to refrain from commencing a project at this stage but instead monitor this area of the law to ascertain whether statutory modifications become appropriate in the future. In particular, as the case law continues to evolve it may be possible to draft a more cogent statutory scheme.

Introduction

At the March 20, 2014 Commission meeting, Legal Intern Alexandra Kutner presented a memo discussing the New Jersey Supreme Court decision *In re January 11, 2013 Subpoena By the Grand Jury of Union County*, in which the Court indicated that the Legislature has the ability, should they wish, to more clearly define the newsperson's privilege in the face of an ever-evolving news media. Specifically, Ms. Kutner noted, issues have begun to arise regarding not *what* the law protects, but rather *whom* the Legislature intended to cover with an absolute privilege. The Commission made no decision about whether or not to authorize a project in this area, but deferred for further discussion at a subsequent meeting. At the April 17, 2014 Commission meeting, it was noted that this is a fluid area of the law with limited guiding case law. Before determining the appropriateness of the project, several Commissioners requested further information regarding the manner in which other states have addressed this area of law and whether any relevant model acts could prove instructive.

Background

A. Federal

Historically, any federal newsperson's privilege has been established upon a Constitutional, rather than statutory, basis.¹ In the case of *Branzburg v. Hayes*, the Supreme Court held there was no First Amendment right of a newsperson to conceal the identity of a

¹ *Branzburg v. Hayes*, 408 U.S. 665 (1972) (holding in a 5-4 decision that "there is no First Amendment privilege to refuse to answer the relevant and material questions asked" regarding a confidential informant).

confidential informant.² Embracing the principal set forth in Powell’s concurring opinion, some federal courts have nevertheless used their common law powers under Federal Evidence Rule 501 to recognize such a privilege.³ Powell’s concurrence “emphasize[d] . . . the limited nature of the Court’s holding,” in assuring there was no blanket obligation on all newsmen in every situation to disclose confidential informants.⁴ Instead, each “asserted claim to privilege should be judged on its facts by the striking of a proper balance between the freedom of the press and the obligation of all citizens to give relevant testimony with respect to criminal conduct.”⁵

The D.C. Circuit, while reassuring that it would not grant protections greater than those assured in Branzburg, held the courts should “strike the categorical balance in favor of protection for [reporter’s] interests.”⁶ Similarly, the Second Circuit has held that Branzburg “do[es] not control” in cases where “First Amendment values outweigh the duty of a journalist to testify even in the context of a criminal investigation. The court relied on Powell’s concurring opinion in reinforcing that it is a “principle fundamental to our constitutional way of life, what where the press remains free so too will a people remain free.”⁷

In light of incidents of federal legal actions involving journalists such as James Risen⁸ and news stories alleging that the Justice Department has seized phone records from Associated Press and Fox News reporters,⁹ the federal government has been under increased pressure to establish statutory protection for reporters through adoption of a federal Shield Law. Accordingly, Senate Bill 987, popularly known as the Free Flow of Information Act (“FFIA”) was introduced in 2013 as a means of protecting journalists from federal subpoenas.

² *Ibid.*

³ *See e.g.*, Smith v. Plati, 258 F.3d 1167 (10th Cir. 2001) (“In Branzburg, the Supreme Court remarked that ‘without some protection for seeking out the news, freedom of the press could be eviscerated’ These statements are prefatory dicta and do not create a right of access.”).

⁴ *Id.* at 709.

⁵ *Id.* at 710 (“In short, the courts will be available to newsmen under circumstances where legitimate First Amendment interests require protection.”).

⁶ Reporters Comm. for Freedom of Press v. Am. Tel. & Tel. Co., 593 F.2d 1030, 1090 (D.C. Cir. 1978) (“In reaching the conclusion that appellants are entitled to judicial safeguards, I do not suggest that journalists generally enjoy greater First Amendment freedoms than the public. The people’s right to know is primary. But the function of the journalist in our society is to assist in informing the public honestly and fairly. And that high calling is diminished when Government, however well intentioned, secretly jeopardizes the journalists’ sources of information without prior judicial approval.”).

⁷ Baker v. F & F Inv., 470 F.2d 778, 784–85 (2d Cir. 1972).

⁸ Risen, a well-known and Pulitzer Prize winning author of *State of War* waged a battle to quash a subpoena requiring him to testify in the trial of defendant Jeffrey Sterling, a former CIA agent accused of espionage in connection with allegedly leaking secrets to Risen. In U.S. v. Sterling, the Fourth Circuit refused to find a First Amendment privilege protecting a reporter from testifying in a criminal trial and did not quash the issued subpoena. 724 F.3d 482, 533 (2013). On June 2, 2014, the Supreme Court declined to grant certiorari. Risen v. U.S., 134 S.Ct. 2696 (2014).

⁹ *See* Sari Horwitz, *Under sweeping subpoenas, Justice Department obtained AP phone records in leak investigation*, THE WASHINGTON POST (May 13, 2013), http://www.washingtonpost.com/world/national-security/under-sweeping-subpoenas-justice-department-obtained-ap-phone-records-in-leak-investigation/2013/05/13/11d1bb82-bc11-11e2-89c9-3be8095fe767_story.html. According to accounts, the Justice Department secretly obtained approximately two months of telephone records of as many as twenty Associated Press journalists in efforts to eliminate information leaks. *Ibid.*

The Senate's Committee on the Judiciary passed the bill in November of 2013, but it has not yet been scheduled for a formal vote of the entire Senate. As amended, the Bill defines a "covered journalist" as someone who:

- is, or on the date on which the protected information sought was obtained or created by the person asserting protection, **was an employee, independent contractor, or agent of an entity or service that disseminates news or information by various means** (newspaper; nonfiction book; wire service; news agency; news website, mobile application or other news or information service; news program; magazine or other periodical; or through television or radio broadcast, multichannel video programming distributor, or motion picture for public showing) and who, with the primary intent to investigate events and procure material to disseminate news to the public, engages, or as of the relevant date, engaged in the regular gathering, preparation, collection, photographing, recording, writing, editing, reporting, or publishing on such matters through specified methods; or
- at the inception of the process of gathering the news or information sought, had the primary intent to investigate issues or events and procure material in order to disseminate news to the public and regularly conducted interviews, reviewed documents, captured images of events, or directly observed events, and either: (1) would have been included as a member of specified news or information services for any continuous 1-year period within the 20 years prior to the relevant date or any continuous 3-month period within the 5 years prior to the relevant date; (2) had substantially contributed, as an author, editor, photographer, or producer, to a significant number of articles, stories, programs, or publications within 5 years prior to the relevant date; or (3) was a student participating in a journalistic medium at an institution of higher education on the relevant date.¹⁰

FFIA would also allow a U.S. judge to extend protection to an individual not meeting the definition of a "covered journalist" if it serves the interest of justice and necessary to protect lawful and appropriate newsgathering.¹¹

Throughout the Committee's evaluation, FFIA has been criticized both by those who believe it is overly broad¹² and by those that believe it is too narrow.¹³ Ultimately, after much

¹⁰ Free Flow of Information Act of 2013, S. 987, 113th Cong. (2013), available at http://dyn.realclearpolitics.com/congressional_bill_tracker/bill/113/s987.

¹¹ S. 987, 113th Cong. § 11(1)(B) (2013).

¹² See COMM. ON THE JUDICIARY, FREE FLOW OF INFORMATION ACT OF 2013, S. REP. No. 113-118, at 25-53 (2013) (stating that as defined the FFIA could protect terrorists or other criminals), available at <https://beta.congress.gov/113/crpt/srpt118/CRPT-113srpt118.pdf>.

¹³ See Tricia Todd & Eric Matthies, *Controlling the Flow: Thoughts on the Free Flow of Information Act*, HUFFINGTON POST (September 14, 2013), available at http://www.huffingtonpost.com/tricia-todd/dismantling-the-first-ame_b_3918368.html (claiming that under FFIA's definition of journalists "freelancers, independents, bloggers and self-declared journalists . . . are not protected"); see also Jason Stverak, *Media Shield Law Should Focus on Protecting, Not Defining, Journalists*, FORBES OPINION (April 4, 2014, 5:09PM), available at <http://www.forbes.com/sites/realspin/2014/04/04/media-shield-law-should-focus-on-protecting-not-defining-journalists> (arguing that FFIA definition of "journalist" would exclude many bloggers).

discussion and several amendments, the Bill was able to garner bipartisan support¹⁴ as well as the support of traditional news organizations.¹⁵ As recently as March, 2014, one of the bill's co-sponsors maintains that there are enough votes to pass FFIA through the Senate this year.¹⁶

B. Other Jurisdictions

A compendium of the relevant statutory provisions for each of the 50 states is attached as a reference. In attempts to clearly frame the issue at hand, we have presented *who* within each jurisdiction is entitled to assert some type of Newsperson's Shield. Since Staff's focus was on responding to the Commission discussion in this area, this document does not summarize the type or nature of information that is shielded in each jurisdiction.

Several states do address Internet or web-based media specifically,¹⁷ however, in each instance only employees or those deriving a livelihood from their journalism efforts are covered by their state's respective shield law. For example, Texas protects those who collect and transmit news for an internet company provided that it is done for "a substantial portion of the person's livelihood or for substantial financial gain."¹⁸ Similarly, New York has legislation pending that would expand its statutory language to include "web logs"¹⁹ but the overall protection is only afforded to a "professional journalist" who operates for gain or livelihood.²⁰

C. New Jersey

New Jersey's newsperson's privilege was first introduced in 1933 and has since evolved into one of the strongest in the nation.²¹ Originally protecting only the "source" of the information,²² the Legislature has since extended this protection to "the entire newsgathering process."²³ The privilege was expanded in 1960, parallel with the amendments to the New Jersey Rules of Evidence, and again in 1977 in response to an Appellate Division opinion upholding the imprisonment of a newspaper reporter for refusal to testify.²⁴ Two years later, the Legislature

¹⁴ Sen. Charles Schumer (D-NY) and Sen. Lindsey Graham (R-SC) are the original co-sponsors of FFIA. The bill currently has 26 co-sponsors including 22 Democratic Senators, 3 Republican Senators and 1 Independent Senator. S. 987, *supra* note 10.

¹⁵ See Sean O'Leary, *75 Media Companies and Journalism Organizations Call for a Senate Floor Vote on the Federal Shield Bill to Protect Journalists' Confidential Sources*, NEWSPAPER ASSOCIATION OF AMERICA (June 11, 2014), <http://www.naa.org/News-and-Media/Press-Center/Archives/2014/Shield-Law-Senate-Vote-Coalition-Letter.aspx>.

¹⁶ See Tal Kopan, *Chuck Schumer: Shield Bill could pass Senate*, POLITICO (March 21, 2014), available at <http://www.politico.com/story/2014/03/media-shield-bill-senate-104898.html> (quoting Senator Schumer as saying "It's very, very likely the Senate will pass a bill this year . . . Just about every Democrat is for the bill . . . We have five Republicans on record being for it, three of them are co-sponsors.>").

¹⁷ See, e.g., Ark. Code Ann. § 16-85-510 (2011); Tex. Civ. Prac. & Rem. Code Ann. § 22.021 (2009); Wash. Rev. Code Ann. § 5.68.010 (2007).

¹⁸ Tex. Civ. Prac. & Rem. Code Ann. § 22.021 (2009); Tex. Crim. Proc. Code Ann. art. 38.11(2009).

¹⁹ S. REP. NO. 2353, 236th Leg., (N.Y. 2013).

²⁰ N.Y. Civil Rights Law § 79-h (McKinney 1970).

²¹ *New Jersey - Privilege Compendium*, REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS (2010), <http://www.rcfp.org/new-jersey-privilege-compendium>.

²² *Too Much Media, LLC v. Hale*, 206 N.J. 209, 231 (2011).

²³ *Ibid*; see *Maressa v. N.J. Monthly*, 89 N.J. 176 (1982), *In re Venezia*, 191 N.J. 259 (2007).

²⁴ *Too Much Media*, 206 N.J. at 232 (*citing In re: Bridge 120 N.J. Super. 460 (App. Div. 1972)*).

updated the statute to reflect the Supreme Court's determination in *In re Farber* that the privilege may be overcome in some circumstances by criminal defendants.²⁵ Though the 1977 amendments predate the advent of the internet, they presciently expanded the statutory language from those working for "newspapers" to those working for "news media," granting protection to broader forms of communication.²⁶ The introduction of new forms of communication in our society, from blogs to chatrooms to websites, "merely broadens the possible spectrum of what the Shield Law *might* encompass," but "form alone does not tell us whether a particular method of dissemination qualifies as 'news media' under the statute."²⁷

New Jersey's statutes do not expressly address the issue of Internet based reporting or media. The seminal case regarding the interpretation of New Jersey's Newsperson's Privilege with respect to internet activity is *Too Much Media, LLC v. Hale*.²⁸ The circumstances of the case involved a defendant attempting to invoke the Shield Law's protections in connection with several allegedly defamatory posts made on a public internet bulletin board site.

Citing the basis for the appropriate utilization of the Shield Law established in N.J.S.A. § 2A:84A-21.3, the Court stated that a claimant must make a prima facie showing that "(1) they have the requisite connection to news media, (2) they have the necessary purpose to gather or generate news, and (3) the materials sought were obtained in the course of professional newsgathering activities."²⁹ The Court focused its analysis on the statutory definition of "news media" which is defined as "newspapers, magazines, press associations, news agencies, wire services, radio, television or other similar printed, photographic, mechanical or electronic means of disseminating news to the general public" (emphasis added).³⁰ In particular, the question at hand was whether "an online message board is *similar* to newspapers, magazines, press associations, news agencies, wire services, radio, [or] television."³¹

In its subsequent factual discussion about the nature of online message boards, the Court determined that "they are not the functional equivalent of the types of news media outlets outlined in the Shield Law."³² Significantly, the Court noted that certain online websites would be able to satisfy New Jersey's Shield Law standards³³ and further stated that it would indeed be possible for a single person operated blog to assert the Shield provided that he or she factually meets the three criteria set forth in the statute.³⁴

²⁵ *Ibid.* (citing *In re Farber*, 78 N.J. 259, 270 (1978)).

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ 206 N.J. 209 (2011).

²⁹ *Too Much Media*, 206 N.J. at 241–42; *see also* *In re January 11, 2013 Subpoena by Grand Jury of Union County*, 432 N.J. Super. 570, 577 (2013).

³⁰ N.J.S.A. § 2A:84A-21(a).

³¹ *Too Much Media*, 206 N.J. at 234 (internal quotations omitted); *see also*, N.J.S.A. 2A:84A-21(a); *Developments in the Law – The Law of Media*, 120 Harv. L. Rev. 990, 1002 (2007) (noting that protection under Shield Law's such as New Jersey's "will hinge on whether a court is willing to consider it a 'periodical,' 'magazine,' or 'journal' or, in some cases, as sufficiently similar to one of those entities").

³² *Too Much Media*, 206 N.J. at 235.

³³ *See e.g.*, *O'Grady v. Superior Court*, 139 Cal. App. 4th 1423 (2006) (holding "online news magazine" focusing on Apple hardware and software was "conceptually indistinguishable from publishing a newspaper, and we see no theoretical basis for treating it differently"); *see also* *Blumenthal v. Drudge*, 992 F.Supp. 44 (D.D.C. 1999) (holding that Matt Drudge, founder of website "The Drudge Report" qualified for reporter's privilege).

³⁴ *Too Much Media*, 206 N.J. at 237.

This holding was reapplied in short order. In the case *In re January 11, 2013 Subpoena by Grand Jury of Union County*,³⁵ a New Jersey trial court evaluated whether an individual operating and posting as a “citizen activist” on an internet blog was entitled to assert the protections of the Newsperson’s Shield. As in *Too Much Media*, a primary issue in the case was whether defendant was “connected or employed by an entity that is sufficiently similar to the traditional news media sources enumerated in the Shield Law”³⁶ set forth in N.J.S.A. § 2A:84A-21(a).

Yet in this instance, the operator of the blog “The County Watchers” prevailed and was afforded the protections of the New Jersey’s Shield Law. While the court refused to determine “whether a blog in and of itself meets the prima facie test for the news privilege”³⁷ as a matter of law, it factually held that the blog at issue was sufficiently similar to the enumerated traditional news media sources and therefore permitted Shield protection.

The trial court recognized and reiterated the N.J. Supreme Court’s position that “[i]n an era of ever-changing technology, with new and rapidly evolving ways of communicating, the Legislature may choose to reconsider who is a newsperson and add new criteria to the Shield Law.” In the meanwhile, the trial court also expressed some degree of judicial frustration with “the complicated legal analyses which the courts must engage in concerning claim of privilege for citizen journalists”³⁸ and noted that New Jersey’s shield law presents challenges in determining applicability in fact patterns such as the one presented.³⁹

Conclusion

In light of New Jersey’s statutory language and the New Jersey Supreme Court’s interpretation in *Too Much Media*, any judicial application of the existing Shield Law to online media will remain extremely fact-sensitive.

With respect to matters of reporters privilege, Chief Justice William Rehnquist has acknowledged that while the courts “have shown a special solicitude for freedom of speech and of the press, we have eschewed absolutes in favor of a more delicate calculus that carefully weighs the conflicting interests to determine which demands the greater protection under the particular circumstances presented.”⁴⁰ Likewise, New Jersey’s Shield Law provides the judicial branch with some degree of flexibility in analyzing the factual circumstances in determining whether the reporting in question constitutes “news media” for purposes of the Shield Law.

Crafting revised statutory language to adequately account for the spectrum of online information will likely require policy determinations that are within the province of the

³⁵ *In re January 11, 2013 Subpoena by Grand Jury of Union County*, 432 N.J. Super. 570 (2013).

³⁶ *Id.* at 587.

³⁷ *Id.* at 581.

³⁸ *Id.* at 592 (citing Stephanie B. Turner, *Protecting Citizen Journalists: Why Congress Should Adopt a Broad Federal Shield Law*, 30 Yale L. & Pol’y Rev. 503, 508-513 (2012)).

³⁹ *Ibid.*

⁴⁰ *U.S. v. Criden*, 633 F.2d 346, 357 (3d. Cir. 1980), *citing* *Smith v. Daily Mail Pushing Co.*, 443 U.S. 97, 106 (1979)

Legislature. Even more expansive statutory language could become quickly antiquated. Additionally, given the pending Federal legislation, the Commission may wish to refrain from commencing a project at this stage but rather continue to monitor this area of the law to ascertain whether statutory modifications become appropriate in the future.

NEWSPERSON'S SHIELD LAW – 50 STATE SURVEY

STATE	STATUTORY PROTECTION RELATING TO ONLINE	LAW	WHO IS COVERED
ALABAMA	No	Ala. Code § 12-21-142 (1935) <i>(never amended, no proposed legislation)</i>	Anyone “connected with or employed by” any newspaper, radio, television
ALASKA	No	AS §§ 09.25.300 – 09.25.390 (1967) <i>(never amended and no proposed leg.)</i>	“Reporter” regularly engaged in collecting or writing news for a newspaper, “periodical that reports news events, is issued at regular intervals, and has a general circulation,” wire, radio, television, facsimile
ARIZONA	No	Ariz. Rev. Stat. Ann. § 12-2237 (1960) <i>(never amended, no proposed legislation)</i>	Anyone "engaged in type of work, connected with or employed by newspaper, radio, television, or “reportorial work”
ARKANSAS	Yes	Ark. Code Ann. § 16-85-510 (1936) <i>(Amended 2011, no proposed legislation)</i>	Editor, reporter, writer, manager or owner of a newspaper, radio, periodical, television, internet news source
CALIFORNIA	No	Cal. Evid. Code § 1070 (1967) <i>(last amended 1974, no proposed legislation)</i>	Anyone connected with or employed by a “newspaper, magazine, or other periodical publication, or by a press association or wire service”
COLORADO	No	Colo. Rev. Stat. Ann. § 24-72.5-101 to -106	A member of the mass media or

		(1990) <i>(never amended, no proposed legislation)</i>	employee/contractor of newspaper, periodicals, wire service, radio, television, “news or feature syndicate”
CONNECTICUT	Maybe	Conn. Gen. Stat. Ann. § 52-146t (2006) <i>(never amended, no proposed legislation)</i>	Anyone who is an employee/contractor of a newspaper, magazine, periodical, book publisher, news agency, radio, television, or “any other transmission system or carrier, or channel or programming service for such station, network, system or carrier, or audio or audiovisual production company that disseminates information to the public, whether by print, broadcast, photographic, mechanical, <u>electronic</u> or any other means or medium”
DISTRICT OF COLUMBIA	Maybe	D.C. Code § 16-4701 to - 4704 (1992) <i>(One provision amended 1995, others never amended, and no proposed legislation)</i>	Anyone employed by a newspaper, magazine, journal, press associations, news agencies, wire services, radio, television, “[a]ny printed, photographic, mechanical, or <u>electronic</u> means of disseminating news and information to the public”

DELAWARE	No	Del. Code Ann. tit. 10, § 4320-4326 (1973) <i>(last amended 2002, no proposed legislation)</i>	“Reporter” means any journalist, scholar, educator, polemicist, or other individual who . . . was earning his or her principal livelihood by . . . obtaining or preparing information for dissemination with the aid of facilities for the mass reproduction of words, sounds, or images in a form available to the general public”
FLORIDA	No	Fla. Stat. Ann. § 90.5015 (1998) <i>(never amended, no proposed legislation)</i>	Information from a “professional journalist” salaried with a newspaper, news journal, press association, wire service, radio, television station, network, or news magazine
GEORGIA	N/A	Shield Law Ga. Code Ann. § 24-9-30 was repealed in 2013.	N/A
HAWAII	N/A	Haw. Rev. Stat. Â§ 4-33-621. “Laws 2008, ch. 210, § 1, effective July 2, 2008, adding an uncodified section relating to a limitation on compellable testimony from journalists and newscasters, was repealed June 30, 2013, by Laws 2008, ch. 210, § 3, as amended by Laws 2011, ch. 113, § 2.”	N/A
IDAHO	N/A	Judicially Created Rule	N/A
ILLINOIS	No	735 ILCS 5/8-901 to -909 (1985) <i>(Last amended 1985, no</i>	A “reporter” must work at least part-time as a reporter, writing

		<i>proposed legislation)</i>	through a news medium. A “news medium” means a newspaper or periodical whether print or electronic, a news service whether print or electronic, radio, television
INDIANA	No	Ind. Code Ann. § 34-46-4-1 (1998) <i>(never amended, no proposed legislation)</i>	Anyone connected with or employed by newspapers, periodicals, recognized press association or wire service
IOWA	N/A	Judicially Created Rule	N/A
KANSAS	Yes	Kan. Stat. Ann. § 60-480 (2010) <i>(never amended, no proposed legislation)</i>	“Journalist” means (1) employed as one, (2) “an online journal in the regular business of newsgathering and disseminating news or information to the public”
KENTUCKY	No	Ky. Rev. Stat. Ann. § 421.100 (1952) <i>(never amended, no proposed legislation)</i>	Anyone who gives information published via newspaper, radio, television
LOUISIANA	No	La. Rev. Stat. Ann. § 45:1451 (1964) <i>(never amended, no proposed legislation)</i>	Anyone “regularly engaged in the business of” collecting, writing or editing news for a newspaper, periodical, press associations, wire service, radio, television, news reels, motion picture news
MAINE	Maybe	Me. Rev. Stat. tit. 16, § 61 (2007) <i>(never amended, no proposed legislation)</i>	“Journalist” (neither case law nor statute defines)
MARYLAND	Yes	Md. Code Ann., Cts. & Jud. Proc. § 9-112 (1988) <u>amended by:</u> PRIVILEGED	Anyone employed by or is an independent contractor for newspapers,

		<p>COMMUNICATIONS— DISSEMINATION OF NEWS OR INFORMATION BY CERTAIN PERSONS, 2014 Maryland Laws Ch. 226 (H.B. 385) (Enacted 2014) NOTE: There is proposed legislation pending, but it does not affect the definition of “news media.”</p>	<p>magazines, journals, press associations, news agencies, wire services, radio, television, and “[a]ny printed, photographic, mechanical, or electronic means of disseminating news and information to the public”</p>
MASSACHUSETTS	N/A	Judicially Created Rule	N/A
MICHIGAN	No (but very broad)	<p>Mich. Comp. Laws Ann. §§ 767.5a, 767A.6 (1986) <i>(never amended, no proposed legislation)</i></p>	<p>Anyone involved in preparation of news to be published or “any unpublished information obtained from an informant, or any unpublished matter or documentation, in whatever manner recorded, relating to a communication with an informant, in any inquiry authorized by this act”</p>
MINNESOTA	No (but very broad)	<p>Minn. Stat. Ann. §§ 595.021-595.025 (1973) <i>(Amended 1981, no proposed legislation)</i></p>	<p>Any person directly engaged in gathering, editing or publishing information for the purpose of dissemination to the public</p>
MISSISSIPPI	N/A	Judicially Created Rule	N/A
MISSOURI	N/A	Judicially Created Rule	N/A
MONTANA	No	<p>Mont. Code Ann. §§ 26- 1-901 – 26-1-903 (1943) <i>(Amended 1979, no proposed legislation)</i></p>	<p>Anyone connected with or employed by a newspaper, magazine, press association, news agency, radio, television</p>

NEBRASKA	No (but very broad)	Neb. Rev. Stat. § 20-144 (1973) <i>(never amended and no proposed leg.)</i>	“[T]hose who gather, write, or edit information for the public or disseminate information to the public.”
NEVADA	No	Nev. Rev. Stat. Ann. § 49.275 (1969) <i>(Amended 1975, no proposed legislation)</i>	Any reporter or editorial employee of a newspaper, periodical, press association, radio, television
NEW HAMPSHIRE	N/A	Judicially Created Rule	N/A
NEW JERSEY	No	N.J. Stat. Ann. § 2A:84A-21 (1960) <i>(Amended 1977, no proposed legislation)</i>	Person engaged in or employed by news media to gather and transmit information to the public
NEW MEXICO	Maybe	N.M. R. Evid. 11-514; NMRA, Rule 11-514 (1982) <i>(Amended 2013, no proposed legislation)</i>	Anyone engaged or employed by a newspaper, magazine, press association, news agency, wire service, radio, television, “or other similar printed, photographic, mechanical, or electronic means of disseminating news to the general public” for the purpose of gathering or transmitting news
NEW YORK	No (but legislation proposed to change)	McKinney's Civil Rights Law § 79-h (1970) <i>(Amended 1990)</i> <i>2013 New York Senate Bill No. 2353, New York Two Hundred Thirty-Sixth Legislative Session (Jan 16, 2013) ,</i> <i>VERSION: Introduced,</i> <i>PROPOSED ACTION: Amended.</i> <i>(9) "Web log" shall mean</i>	“Professional journalist” for gain or livelihood was engaged in gathering or transmitting information for a “commercial organization that collects and supplies news to subscribing newspapers, magazines, periodicals

		<i>a website or webpage that contains an online journal containing news, comments and offers hyperlinks provided by the professional journalist or newscaster.</i>	and news broadcasters,” [Legislation proposed to add “web logs”]
NORTH CAROLINA	Maybe	N.C. Gen. Stat. Ann. § 8-53.11 (1999) <i>(never amended, no proposed legislation)</i>	Journalist: Anyone engaged in the business of gathering information for dissemination via a news medium News Medium: Any entity “regularly engaged in the business of publication” of news “via print, broadcast, or other electronic means accessible to the public”
NORTH DAKOTA	No	N.D. Cent. Code Ann. § 31-01-06.2 (1973) <i>(never amended, no proposed legislation)</i>	Anyone engaged in gathering/writing news and employed by organization that publishes news
OHIO	No	Ohio Rev. Code Ann. §§ 2739.04, 2739.12 (1977) <i>(never amended, no proposed legislation)</i>	Anyone engaged in the work of, connected with or employed by a radio, television, newspaper, press association
OKLAHOMA	No	Okla. Stat. Ann. tit. 12, § 2506 (1978) <i>(Amended 2002, no proposed legislation)</i>	Newspaper, periodical, press association, wire service, radio, television
OREGON	No	Or. Rev. Stat. Ann. § 44.510 (1973) <i>(Amended 2005, no proposed legislation)</i>	Newspaper, magazine, periodical, book, pamphlet, news service, wire service, television
PENNSYLVANIA	No	42 Pa. Cons. Stat. Ann. § 5942 (1976) <i>(never amended, no proposed legislation)</i>	Anyone who is a reporter, photographer, editor, commentator, journalist,

			correspondent, announcer, or other individual regularly engaged in gathering or transmitting news for a newspaper, radio, television, magazine
RHODE ISLAND	No	RI ST §§ 9-19.1-1 – 9-19.1-3 (1971) <i>(never amended, no proposed legislation)</i>	Newspaper, periodical, press association, wire service, radio, television
SOUTH CAROLINA	No	S.C. Code Ann. § 19-11-100 (1993) <i>(never amended, no proposed legislation)</i>	Anyone obtaining information in a capacity as a reporter, editor, commentator, journalist, writer, correspondent, newsphotographer, or other person directly engaged in the gathering or presentation of news for any accredited newspaper, book, magazine, radio, television, news or wire service
SOUTH DAKOTA	N/A	Judicially Created Rule	N/A
TENNESSEE	Maybe	Tenn. Code Ann. § 24-1-208 (1973) <i>(Never amended)</i> <i>2013 Tennessee House Bill No. 226, Tennessee One Hundred Eighth General Assembly - First Regular Session (Jan 30, 2013), VERSION: Introduced, PROPOSED ACTION: Amended</i> <i>“Subdivision (a)(1) shall apply with respect to any information related to the identity of a person who participates in online services offered by</i>	“A person engaged in gathering information for publication or broadcast connected with or employed by the news media or press, or who is independently engaged in gathering information for publication or broadcast”

		<i>the news media or press, including, but not limited to, name, phone number, postal address, e-mail address, or IP address.”</i>	
TEXAS	Maybe	Tex. Civ. Prac. & Rem. Code Ann. § 22.021 (2009); Tex. Crim. Proc. Code Ann. art. 38.11 (2009) <i>(never amended, no proposed legislation)</i>	Anyone “who for a substantial portion of the person’s livelihood or for substantial financial gain” collects and transmits news for a newspaper, magazine, periodical, book, news agency, wire service, radio, television, “Internet company”
UTAH	No	Utah R. Evid. 509 (2008) <i>(Amended 2011, no proposed legislation)</i>	A publisher, editor, reporter or “other similar person” gathering information for the primary purpose of disseminating it via newspaper, magazine, periodical, press association, wire service, radio station, television
VERMONT	N/A	Judicially Created Rule	N/A
VIRGINIA	N/A	Judicially Created Rule	N/A
WASHINGTON	No	Wash. Rev. Code Ann. § 5.68.010 (2007) <i>(never amended, no proposed legislation)</i>	Any employee/contractor that gathers information for a newspaper, magazine, periodical, book publisher, news agency, wire service, radio, television, “or any entity that is in the regular business of news gathering and disseminating news of

			information to the public by any means, including, but not limited to, print, broadcast, photographic, mechanical, internet, or electronic distribution”
WEST VIRGINIA	No	W. Va. Code Ann. § 57-3-10 (2011) <i>(never amended, no proposed legislation)</i>	Anyone who gathers information for dissemination to the public that get a substantial portion of their livelihood from news
WISCONSIN	No	Wis. Stat. Ann. § 885.14 (2010) <i>(never amended, no proposed legislation)</i>	Anyone engaged in gathering or transmitting information to the public for a newspaper, magazine, periodical, book, wire service, radio, television
WYOMING	N/A	Judicially Created Rule	N/A