Research exercise: Analyzing Circuit Court Rulings in Shield Law Cases

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Protection of News Sources  
Shield Laws and The Reporter’s Privilege to Confidential Sources  
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Branzburg v. Hayes  
U.S Supreme Court ruled there is no federal First Amendment privilege for reporters called to testify before a grand jury.  
Dissenting opinion argued a qualified privilege might be applicable in some situations unless the government can prove all three of the following:  
1) There is probable cause to believe the reporter possesses information which is specifically relevant to a violation of law.  
2) The information it seeks cannot be obtained by alternative means, which is to say, from sources other than the reporter.  
3) The state has a compelling and overriding interest in the information.

Ohio Shield Law  
Thesis  
Do Ohio’s shield laws offer an “absolute” or “qualified” reporter’s privilege, and to what extent are non-traditional newsgatherers covered by reporter’s privilege in common law and in state statutes?

Ohio Revised Code (Shield Law Statutes)  
In State v. Geis the Third Appellate Court of Ohio recognized a qualified reporter’s privilege in order to “protect the free flow of information from the source to the reporter.”

Non-Traditional News Gatherers  
In Deltec, Inc v. Dunn & Bradstreet, Inc. the court ordered Dunn & Bradstreet to disclose their confidential sources because its bi-monthly report on the financial status of individuals and businesses did not fit within the "newspaper or any press association” language of Ohio's statutory shield law.

Conclusion  
Ohio’s shield laws offer an absolute reporter’s privilege for confidential sources, as long as a reporter shows they are "engaged in the work of, or connected with, or employed by any newspaper or any press association for the purpose of gathering, procuring, compiling, editing, disseminating, or publishing news."

To date, non-traditional newsgatherers have been unsuccessful in claiming the qualified reporter’s privilege guaranteed to the press under Ohio shield law statutes.

Analyzing Circuit Court Rulings in Shield Law Cases  
Thesis  
How does the 2nd and 3rd circuit court use common law and state legislation to define who is protected by journalist’s privilege?

2nd Circuit Court  
States: New York, Connecticut, Vermont  
Defining Case: von Bulow v. von Bulow created a test that defines the protected class as “anyone who, at the inception of the newsgathering process, had the intent to disseminate information to the public.”  
Result: By this definition the person disseminating information is irrelevant so long as intent is present.

3rd Circuit Court  
States: Delaware: New Jersey, Pennsylvania  
Defining Case: In re Madden presents the issue of whether news for entertainment purposes qualifies reporter’s privilege. Case established a three-pronged test to define who is a part of the protected class. The claimant must be:  
1.) investigative reporting  
2.) gathering news  
3.) have intent, from the beginning of the news-gathering process, to disseminate news to the public.  
Result: A disseminator of “hype” is not a journalist.

Conclusion  
State legislation gives broad definition to who constitutes a journalist, mostly only specifically describing hired journalists and their associates. Common law gives greater specification to what kinds of journalists can be protected by reporter’s privilege but there are still holes to be filled in.