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Reporter's Privilege in the 21st Century

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In *Branzburg v. Hayes* (1972), the Supreme Court established that the privilege protecting reporters from testifying sensitive newsgathering information before a grand jury was not a constitutional right. Many states have enacted their own reporter’s privilege statutes. Four decades later, the national landscape has changed and an effort to pass a federal shield law is in progress.

**State Shield laws**

- Ohio protects only identity of sources
  - *Fawley v. Quirk* (1985), Privilege not absolute due to information sought as being relevant news to public
- New Jersey protects sources and newsgathering materials
  - *Gastman v. New Jersey Newspaper* (1992), protection shown to reporter, uninvolved editor and contributing author
- Appellate courts observe who is classified as journalists (not self-described)
- Types of privilege

**Branzburg’s Precedent**

- 5-4 ruling against constitutional protection
- Powell’s opinion
- Stewart’s test of privilege
  1. Probable cause that the reporter’s info is relevant to probable law violation
  2. Info cannot be obtained alternatively
  3. Compelling and overriding interest in info

**Federal Shield Law**

- Post 9/11 Presidential administrations
- Current bill was amended onto multiagency spending bill in June, proposed by Allen Grayson (R-Fla)