

6/8/64

First Supplement to Memorandum 64-39

Subject: Study No. 34(L) - Uniform Rules of Evidence (Newsmen's Privilege)

Attached as Exhibit I is a draft of Article 12 (Newsmen's Privilege) that could be added to the Privileges Division of the Evidence Code if the Commission desires.

The comment appended to the section would be included with the other comments on the Privileges Division sections.

The following matters also should be considered in connection with Memorandum 64-39:

Section 930

To make Section 930 consistent with the remaining sections of the privileges division, the words "under this section" should be inserted following "privilege" in the first line of subdivision (b).

Section 984

To make Section 984 consistent with other similar sections, it should be revised to read:

984. (a) There is no privilege under this article in a proceeding by one spouse against the other spouse.

(b) Where one spouse is dead, there is no privilege under this article as to a communication relevant to an issue between the surviving spouse and a person who claims through the deceased spouse, regardless of whether the claim is by testate or intestate succession or by inter vivos transaction.

Section 1060

To make this section consistent with the other sections of the Privileges Division, it should be revised to read:

1060. If he or his agent or employee claims the privilege,  
the owner of a trade secret has a privilege [~~,-which-may-be  
elaimed-by-him-or-by-his-agent-or-employee,~~] to refuse to dis-  
close the secret and to prevent another from disclosing it if the  
allowance of the privilege will not tend to conceal fraud or  
otherwise work injustice.

Respectfully submitted,

John H. DeMouly  
Executive Secretary

EXHIBIT I

Article 12. Newsmen's Privilege

1070. Newsmen's privilege

1070. (a) As used in this section:

(1) "Newsmen" means a person directly engaged either in the procurement of news for publication, or in the publication of news, by news media.

(2) "News media" means newspapers, press associations, wire services, and radio and television.

(b) A newsman has a privilege to refuse to disclose the source of news procured for publication and published by news media, unless the source has been disclosed previously or the disclosure of the source is required in the public interest.

COMMENT

This section provides a privilege of certain newsmen to maintain secrecy as to the source of their news. Because of the basic similarity between the governmental informer privilege and the newsmen's privilege--that is, both are privileges granted to maintain secrecy concerning the identity of a person who has furnished information to the holder of the privilege--the privilege given newsmen is substantially the same as that granted to public officials concerning the identity of their informers.

The term "news media" is defined to include the most important channels of communication of news to the public. Other news media are excluded and, hence, their newsmen will enjoy no privilege. This is consistent with

previously existing California law. Former CODE CIV. PROC. § 1881(6).

The policy of this section and of the previously existing law is to extend the privilege to those media that are most intimately engaged in the dissemination of current news. News magazines and other media, although concerned with news, are excluded. This limitation is imposed in recognition of the fact that the privilege will exclude pertinent information in some instances. Hence, the privilege is granted only where the need for it seems most crucial.

Like the previous existing California law, Section 1070 vests the privilege in the newsman. The privilege exists not so much to protect the informer as to protect the newsman's sources of information. Hence, if the newsman believes that a particular source of information does not need the protection of secrecy, he need not invoke the privilege and the informant cannot invoke the privilege.

Section 1070 requires the information to have been disseminated. This is similar to the requirement of subdivision 6 of former Code of Civil Procedure Section 1881 that the information be "published in a newspaper" or "used for news or news commentary purposes on radio or television."

Just as a judge may require disclosure of a governmental informer's identity when such disclosure is required in the interest of justice, Section 1070 also permits the judge to overrule a claim of privilege when the public interest requires that the information be disclosed.